

High Court

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Amending Legislation	Date of Commencement
Supreme Court Ordinance 1883 (No 9 of 1883)	18 June 1883
Supreme Court Ordinance 1893 (No 7 of 1893)	12 December 1893
Supreme Court Ordinance 1875 Amendment Ordinance 1899 (No 9 of 1899)	29 September 1899
Witnesses' Remuneration Ordinance 1904 (No 1 of 1904)	6 May 1904
Supreme Court Ordinance 1909 (No 7 of 1909)	12 June 1909
Supreme Court (Funds) Ordinance 1910 (No 7 of 1910)	20 June 1910
Supreme Court (Registrar) Ordinance 1916 (No 13 of 1916)	22 July 1916
Electoral Regulations Ordinance 1920 (No 5 of 1920)	14 May 1920
Arms and Ammunition Ordinance 1924 (No 4 of 1924)	22 October 1924
Supreme Court (Amendment) Ordinance 1929 (No 19 of 1929)	18 November 1929
Supreme Court (Amendment) Ordinance 1930 (No 5 of 1930)	1 January 1931
Supreme Court (Amendment) Ordinance (No 2) 1930 (No 32 of 1930)	25 October 1930
Supreme Court (Amendment) Ordinance 1931 (No 19 of 1931)	15 June 1931
Supreme Court (Amendment) Ordinance 1932 (No 29 of 1932)	12 July 1932
Supreme Court (Amendment) Ordinance 1937 (No 23 of 1937)	19 October 1937
Supreme Court (Amendment) Ordinance 1940 (No 3 of 1940)	28 February 1940
Supreme Court (Amendment) Ordinance 1940 (No 30 of 1940)	8 November 1940
Supreme Court (Amendment) Ordinance 1944 (No 21 of 1944)	29 January 1945
Law Revision Ordinance 1945 (No 2 of 1945)	1 May 1945

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Amending Legislation	Date of Commencement
Supreme Court (Amendment) Ordinance 1945 (No 3 of 1945)	3 March 1945
Supreme Court (Amendment) Ordinance 1951 (No 19 of 1951)	13 November 1951
Supreme Court (Amendment) Ordinance 1960 (No 44 of 1960)	16 December 1960
Supreme Court (Amendment) Ordinance 1961 (No 8 of 1961)	26 April 1961
Supreme Court (Amendment) (No 2) Ordinance 1961 (No 37 of 1961)	16 November 1961
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Supreme Court (Amendment) Ordinance 1965 (No 35 of 1965)	11 March 1966
Supreme Court (Amendment) Ordinance 1966 (FRG 41 of 1966)	5 August 1966
Constitution (Statutory Amendments) Order 1970 (LN 112 of 1970)	8 October 1970
Supreme Court (Amendment) Ordinance 1968 (No 28 of 1968)	19 August 1968
Supreme Court (Amendment) (No 2) Ordinance 1968 (No 59 of 1968)	24 December 1968
High Court (Amendment) Act 1998 (No 27 of 1998)	27 July 1998
High Court (Judicial Establishment Amendment) Act 1999 (No 37 of 1999)	23 December 1999
High Court (Amendment) Act 2002 (No 23 of 2002)	6 September 2002
High Court (Amendment) Promulgation 2007 (No 23 of 2007)	10 July 2007
High Court Act (Amendment) Decree 2009 (No 24 of 2009)	8 July 2009
High Court (Amendment) Decree 2011 (No 43 of 2011)	28 October 2011
High Court (Amendment) Decree 2012 (No 51 of 2012)	21 June 2012
Revised Edition of the Laws (Consequential Amendments) Act 2016 (No 31 of 2016)	1 December 2016
High Court (Amendment) Act 2019 (No 3 of 2019)	26 April 2019
High Court (Amendment) Act 2021 (No 1 of 2021)	15 February 2021
High Court (Amendment) Act 2023 (No 20 of 2023)	19 September 2023

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PART 1 — PRELIMINARY

[HC 1] Short title

1 This Act may be cited as the High Court Act 1875.

[HC 2] Interpretation

2 In this Act, unless the context otherwise requires—

Chief Justice and **Chief Registrar** include the persons for the time being acting as such respectively;

Court or **High Court** means the High Court established by the Constitution of the Republic of Fiji;

[def insrt Act 27 of 1998 s 3, opn 27 July 1998; am Act 31 of 2016 s 94, opn 1 Dec 2016]

Full Court means the Court constituted by not less than 3 Judges sitting together;

[def insrt Act 27 of 1998 s 3, opn 27 July 1998]

Imperial laws include General Rules or Orders of Court made under any Imperial Act; and

Judge means a Judge of the High Court, including the Chief Justice;

[def insrt Act 27 of 1998 s 3, opn 27 July 1998]

[HC 3] Name of Court and general jurisdiction

3 (1) The High Court shall be called “the High Court of Fiji”.

(2) The Court shall have all such powers and jurisdiction as are or may from time to time be vested in the Court under or by virtue of the Constitution of the Republic of Fiji, this Act or any law for the time being in force.

[HC 4] Seal of Court

4 The High Court shall have and use as occasion may require a seal or stamp bearing a device or impression of the Coat of Arms of the State with the inscription “The High Court of Fiji”, and all writs and process issuing out of the Court shall be sealed or stamped therewith.

[s 4 am Act 27 of 1998 s 4, opn 27 July 1998]

[The next page is 780,401]

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[HC 5] Constitution of Court

5 (1) The constitution of the Court shall be as provided for under section 100 of the Constitution of the Republic of Fiji.

[subs (1) subst Act 3 of 2019 s 2, opn 26 Apr 2019]

(2) An appointment of a puisne Judge may be made if the Judicial Services Commission is satisfied that it is required to enable the High Court effectively to despatch its business.

[subs (2) insrt Act 37 of 1999 s 2, opn 23 Dec 1999; am Act 3 of 2019 ss 2 and 3, opn 26 Apr 2019]

(3) The Court shall be deemed to be duly constituted notwithstanding any vacancy in the office of Chief Justice or of any Judge thereof.

[subs (3) subst Ordinance 3 of 1945 s 3, opn 3 Mar 1945; renum Act 37 of 1999 s 2, opn 23 Dec 1999]

[HC 5A] Prescribed countries

5A (1) The following countries are prescribed for the purposes of paragraphs (a) and (b) of section 105(2) of the Constitution of the Republic of Fiji —

- (a) Australia;
- (b) Canada;
- (c) New Zealand;
- (d) Papua New Guinea;
- (e) Samoa;
- (f) Sri Lanka;
- (g) Tonga;
- (h) United Kingdom;
- (i) Singapore;
- (j) Malaysia;
- (k) Hong Kong;
- (l) India; and
- (m) any country which is at the time of the appointment a member of the Commonwealth of nations.

[s 5A insrt Act 23 of 2002 s 2, opn 6 Sep 2002; am Promulgation 23 of 2007 s 2, opn 10 July 2007; Act 31 of 2016 s 94, opn 1 Dec 2016]

(2) Any appointment made before the commencement of this Act in respect of a person from a country prescribed under this Act is validated as if such country was a prescribed country at the date of appointment of such person.

[subs (2) insrt Act 23 of 2002 s 3, opn 6 Sep 2002]

[HC 6] Powers of Judges

6 (1) All the Judges of the Court shall have in all respects save as is herein expressly otherwise provided, equal power, authority and jurisdiction under this Act.

[subs (1) subst Ordinance 3 of 1945 s 4, opn 3 Mar 1945]

(2) Any Judge of the Court may exercise all or any part of the jurisdiction vested in the Court by or under the provisions of this or any other Act, and for such purpose shall be and form a court.

[subs (2) subst Ordinance 27 of 1966 s 3, opn 5 Aug 1966]

[HC 7] Precedence of Judges

7 The Chief Justice for the time being shall be the president of the Court and in his or her absence the senior Judge present shall preside.

The other Judges shall take precedence after the Chief Justice according to the date of their respective appointments.

[s 7 insrt Ordinance 3 of 1945 s 4, opn 3 Mar 1945]

[The next page is 780,601]

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PART 3 — OFFICERS OF THE COURT

[HC 8] Officers

8 There shall be of the High Court a Chief Registrar and such other officers, including sworn interpreters, as the Chief Justice with the approval of Parliament shall consider to be necessary for the administration of justice and the due execution of all the powers and authorities which are granted to or vested in the High Court.

[s 8 subst Ordinance 27 of 1966 s 4, opn 5 Aug 1966]

[HC 9] Functions of Chief Registrar

9 The Chief Registrar has power to administer oaths, and may perform such other functions as are assigned to the Chief Registrar by or under this Act or any other law or by the Rules of Court or as the Chief Justice directs.

[s 9 subst Act 27 of 1998 s 5, opn 27 July 1998]

[HC 10] When Chief Registrar unable to perform his or her duties

10 In case the Chief Registrar shall at any time be unable by reason of illness or other sufficient cause to the satisfaction of the Chief Justice to perform all or any of the duties of his or her office, the Judicial Services Commission may appoint a fit and proper person to perform all or any of such duties, and it shall thereupon be lawful for such person to perform all such acts and do all such things as would otherwise require to be performed and done in person by the Chief Registrar, and for such purpose he or she shall have all the powers, privileges and authority of the Chief Registrar.

[s 10 insrt Ordinance 13 of 1916 s 2, opn 22 July 1916; am Act 27 of 1998 s 6, opn 27 July 1998; Act 3 of 2019 s 3, opn 26 Apr 2019]

[HC 11] Magistrate to act as Chief Registrar in certain cases

11 Notwithstanding anything contained in section 10, at any sitting of the Court held outside Suva a Magistrate having jurisdiction in the division where such sitting is held may, if the Chief Justice so directs, act, in the absence of the Chief Registrar, as Chief Registrar of the Court during such sitting, provided that the Chief Justice may, if he or she shall deem it expedient, appoint such other person as he or she shall think fit to act as Chief Registrar at any such sitting of the Court in lieu of a Magistrate as aforesaid.

[s 11 subst Ordinance 21 of 1944 s 2, opn 29 Jan 1945]

[HC 12] Powers of Deputy Registrar or District Registrar

12 It shall be competent for any person holding office as a Deputy Registrar or a District Registrar, subject to such directions as the Chief Justice may from time to time deem expedient to give, to perform any act or to discharge any duty which the Chief Registrar of the High Court may lawfully do or is required by law to do and for such purpose the person holding any such office as aforesaid shall have all the powers, privileges and authority of the Chief Registrar of the High Court.

[s 12 subst Ordinance 27 of 1966 s 6, opn 5 Aug 1966]

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PART 4 — FUNDS IN COURT

[HC 13] Funds in Court

13 All moneys which shall be paid into Court and all securities for money which shall stand or be placed to the credit of any cause, matter or account in the High Court shall be paid or placed (as the case may be) to the account or credit of the Chief Registrar for and on behalf of the High Court.

[s 13 insrt Ordinance 7 of 1910 s 2, opn 20 June 1910]

[HC 14] Moneys to be held in trust

14 All moneys and securities paid or placed to the account or credit of the Chief Registrar as provided in section 13 shall be held in trust to attend the orders of the High Court thereto, subject to the provisions of the law for the time being in force.

[s 14 subst Act 28 of 1968 s 3, opn 19 Aug 1968]

[HC 15] Rules

15 The Chief Justice may from time to time make rules, supplementary to the provisions of any regulations made under the provisions of the Financial Management Act 2004 for giving effect to sections 13 and 14 of this Act and for regulating the manner in which, subject to the orders of the Court, the said moneys and securities shall be dealt with by the Chief Registrar.

[s 15 subst Act 28 of 1968 s 4, opn 19 Aug 1968; am Act 31 of 2016 s 94, opn 1 Dec 2016]

[HC 16] Liability of Consolidated Fund

16 The Consolidated Fund shall be liable to make good to the suitors of the Court all moneys and securities paid or placed to the account or credit of the Chief Registrar for and on behalf of the High Court in pursuance of the provisions of this Act.

[s 16 subst Act 28 of 1968 s 5, opn 19 Aug 1968]

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PART 5 — SHERIFF AND ADMIRALTY MARSHAL

[Pt heading insrt Act 35 of 1965 s 7, opn 11 Mar 1966]

[HC 17] Appointment and duties of Sheriff and Admiralty Marshal

17 The Chief Justice shall from time to time as occasion shall require appoint some fit person to act as Sheriff of Fiji and such Sheriff shall, by himself or herself or by his or her sufficient deputies to be by him or her appointed and authorised under his or her hand and for whom he or she shall be responsible during his or her continuance in such office, execute all such writs, warrants, orders, commands and process of the High Court as he or she shall be required by the said Court or any Judge thereof to execute, and make return of the same together with the manner of the execution thereof to the High Court, and receive and detain in prison all such persons as shall be committed to the custody of such Sheriff by the High Court, and shall be Marshal of the High Court in its Admiralty Jurisdiction, provided that, whenever the High Court directs or awards any process against the said Sheriff or awards any process in any cause, matter or thing wherein the said Sheriff by reason of any good cause of challenge which would be allowed against any Sheriff in England cannot by law execute the same, in every such case the High Court shall appoint some other fit person to execute and return the same and the said process shall be directed to the person so to be named for that purpose and the cause of such proceeding shall be entered on the records of the Court.

[s 17 am Ordinance 7 of 1893 s 2, opn 12 Dec 1893; Ordinance 9 of 1899 s 1, opn 29 Sep 1899; Ordinance 23 of 1937 s 2, opn 19 Oct 1937]

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[HC 18] Jurisdiction of the High Court

18 (1) The High Court has the jurisdiction conferred on it by the Constitution of the Republic of Fiji and by any other written law and all other jurisdiction necessary for the administration of justice in Fiji.

[subs (1) am Act 31 of 2016 s 94, opn 1 Dec 2016]

(2) The High Court has the admiralty jurisdiction which the High Court of Justice in England possessed on 4 December 1987.

(3) The High Court has the powers and authority which the Supreme Court had on 4 December 1987.

[s 18 subst Act 27 of 1998 s 7, opn 27 July 1998]

[HC 19] In probate, divorce and matrimonial causes

19 [s 19 rep Act 27 of 1998 s 8, opn 27 July 1998]

[HC 20] Power to appoint guardians and committees

20 [s 20 rep Act 27 of 1998 s 8, opn 27 July 1998]

[HC 21] Admiralty jurisdiction of Court

21 [s 21 rep Act 27 of 1998 s 8, opn 27 July 1998]

[HC 21A] Exercise of jurisdiction by Master or Chief Registrar

21A Provision may be made by the Rules of Court for the jurisdiction of the Court to be exercisable, in such cases and subject to such conditions as are specified in the Rules of Court, by a Master or by the Chief Registrar as the Rules may specify.

[s 21A insrt Act 27 of 1998 s 9, opn 27 July 1998; am Decree 24 of 2009 s 2, opn 8 July 2009]

[HC 21B] Exercise of jurisdiction by Master

21B (1) For the purposes of the exercise of jurisdiction conferred on the Masters by the Rules of Court, this Act has effect, subject to this section, as if the Court consisted of the Judges and the Masters.

[subs (1) am Decree 24 of 2009 s 3, opn 8 July 2009]

(2) A person who is dissatisfied with a judgment of a Master may appeal, as prescribed by the Rules of Court, to the Court constituted by a single Judge, but nothing in this subsection prevents the Chief Justice from constituting a Full Court to hear the appeal if the Chief Justice considers it appropriate.

[subs (2) am Decree 24 of 2009 s 3, opn 8 July 2009]

(3) On an appeal under subsection (2), the Court—

(a) shall have regard to the evidence given in the proceedings out of which the appeal arose; and

(b) has power—

(i) to draw inferences of fact; and

(ii) in its discretion, to receive further evidence.

(4) On an appeal under subsection (2), the Court may affirm, vary or set aside the judgment of a Master and may make such order as in all the circumstances it considers just.

[subs (4) am Decree 24 of 2009 s 3, opn 8 July 2009]

[s 21B insrt Act 27 of 1998 s 9, opn 27 July 1998]

[HC 21C] Exercise of jurisdiction by Chief Registrar

21C (1) For the purposes of the exercise of jurisdiction conferred on the Chief Registrar by the Rules of Court, this Act has effect, subject to this section, as if the Court consisted of the Judges and the Chief Registrar.

(2) A person who is dissatisfied with an order of the Chief Registrar may appeal, as prescribed by the Rules of Court, to the Court constituted by a single Judge.

(3) On an appeal under subsection (2), the Court may affirm, vary or set aside the order of the Chief Registrar and may make such order as in all the circumstances it considers just.

[s 21C insrt Act 27 of 1998 s 9, opn 27 July 1998]

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PART 6A — MASTERS

[Pt 6A insrt Act 27 of 1998 s 9, opn 27 July 1998; Heading am Decree 24 of 2009 s 4, opn 8 July 2009]

[HC 21D] Master

21D There shall be a Master of the Court and such additional Masters as the Chief Justice in consultation with the Minister responsible for justice shall consider necessary.

[s 21D am Decree 24 of 2009 s 5, opn 8 July 2009]

[HC 21E] Powers and duties of Master

21E A Master has power to administer oaths, and may exercise such other powers, and shall perform such duties, as are assigned to a Master by or under this Act.

[s 21E am Decree 24 of 2009 s 6, opn 8 July 2009]

[HC 21F] Appointment of Master

21F (1) A Master shall be appointed by the Judicial Services Commission.

[subs (1) am Decree 24 of 2009 s 7, opn 8 July 2009; Act 3 of 2019 s 3, opn 26 Apr 2019]

(2) A person shall not be appointed as a Master unless the person has had not less than 5 years' practice as a legal practitioner in Fiji.

[subs (2) am Decree 24 of 2009 s 7, opn 8 July 2009]

(3) A person who has reached the age of 70 shall not be appointed as a Master.

[subs (3) am Decree 24 of 2009 s 7, opn 8 July 2009]

[HC 21G] Term of office

21G (1) A Master—

(a) holds office on and from the day specified in the instrument of appointment; and

(b) holds office, subject to this Act—

(i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for reappointment; or

(ii) if the instrument of appointment so provides, until reaching the age of 70.

[subs (1) am Decree 24 of 2009 s 8, opn 8 July 2009]

(2) Subsection (1)(b)(i) does not authorise the Judicial Services Commission to appoint a Master for a term of office that will expire after he or she reaches the age of 70.

[subs (2) am Decree 24 of 2009 s 8, opn 8 July 2009; Act 3 of 2019 s 3, opn 26 Apr 2019]

[HC 21H] Terms and conditions not provided for by Act

21H In relation to matters not provided for by this Act, a Master holds office on such terms and conditions (if any) as are determined in writing by the Judicial Services Commission.

[s 21H am Decree 24 of 2009 s 9, opn 8 July 2009; Act 3 of 2019 s 3, opn 26 Apr 2019]

[HC 21I] Prohibition on holding other offices

21I A Master is not, without the approval of the Judicial Services Commission, entitled to—

(a) engage in remunerative employment otherwise than in connection with his or her duties as Master; or

(b) accept appointment to another office under a law of the State.

[s 21I am Decree 24 of 2009 s 10, opn 8 July 2009; Act 3 of 2019 s 3, opn 26 Apr 2019]

[HC 21J] Oath or affirmation of allegiance and office

21J Before proceeding to perform any functions of the office, a Master shall take the oath or affirmation of allegiance and office before the President in accordance with the Schedule to the Constitution of the Republic of Fiji.

[s 21J am Decree 24 of 2009 s 11, opn 8 July 2009; Act 31 of 2016 s 94, opn 1 Dec 2016]

[HC 21K] Resignation

21K A Master may resign by writing signed and delivered to the Judicial Services Commission.

[s 21K am Decree 24 of 2009 s 12, opn 8 July 2009; Act 3 of 2019 s 3, opn 26 Apr 2019]

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PART 6B — THE ANTI-CORRUPTION DIVISION OF THE HIGH COURT

[Repealed]

[Pt 6B rep Act 20 of 2023 s 2, opn 19 Sep 2023]

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[The next page is 781,601]

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[HC 22] What imperial laws to be in force

22 (1) The common law, the rules of equity and the statutes of general application which were in force in England at the date when Fiji obtained a local legislature, that is to say, on 2 January 1875, shall be in force within Fiji subject to the provisions of section 24.

(2) For the removal of doubt, it is hereby declared that the provisions of sections 24 and 25 of the Supreme Court of Judicature Act, 1873, are in force in Fiji notwithstanding that the commencement of that Act was postponed in England until after 2 January 1875.

[subs (2) insrt Ordinance 35 of 1965 s 11, opn 11 Mar 1966]

(3) For the removal of doubt, and notwithstanding anything contained in subsection (1), any amendment made on or after 2 January 1875 to the statutes of general application which were in force in England on 2 January 1875, shall not apply to Fiji and shall not be in force in Fiji.

[subs (3) insrt Decree 43 of 2011 s 2, opn 28 Oct 2011]

[HC 23] Practice

23 Such portions of the practice of the English courts as existed on 2 January 1875, shall be in force in Fiji subject to the provisions of section 24, and except so far as such practice may be inconsistent with any general rules of the High Court relating to practice and procedure.

[HC 24] Imperial laws to be subject to Fiji jurisdiction and Acts

24 All Imperial laws extended to Fiji by this or any future Act shall be in force therein so far only as the circumstances of Fiji and its inhabitants and the limits of its jurisdiction permit and subject to any existing or future Acts of the Parliament of Fiji and for the purpose of facilitating the application of the said laws it shall be lawful for the Court to construe the same with such verbal alteration not affecting the substance as may be necessary to render the same applicable to the matter before the Court, and every Judge or officer of the High Court having or exercising functions of the like kind or analogous to the functions of any Judge or officer referred to in any such law shall be deemed to be within the meaning of the enactments thereof relating to such last mentioned Judge or officer, and whenever the Great Seal or any other seal is mentioned in any such statute it shall be read as if the seal of the High Court were substituted therefore, and in matters of practice all documents may be written on ordinary paper notwithstanding any directions as to printing or engrossing on vellum, parchment or otherwise.

[The next page is 781,801]

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[HC 25] Power to make rules

25 (1) In this section “rule” includes any addition to or amendment or revocation of a rule.

(2) It shall be lawful for the Chief Justice to make rules of Court carrying this Act into effect and in particular for all or any of the following matters (that is to say)—

- (a) for regulating the sittings of the High Court for the dispatch of civil business therein and of a Judge sitting in chambers;
- (b) for regulating the pleading, practice and procedure in the High Court in civil cases and in matters which in Her Majesty’s High Court of Justice in England come within the jurisdiction of the Crown side of the Queen’s Bench Division thereof;
- (c) for regulating the hours of opening and closing the offices of the Court;
- (d) for regulating the forms to be used in the Court and for all matters connected therewith;
- (e) for regulating the receipt of money paid into Court, or received or recovered under or by virtue of any process of execution or distress;
- (f) for regulating the payment out of Court of all moneys to the persons entitled thereto;
- (g) for prescribing the books and forms of account to be kept and used in the High Court;
- (h) for prescribing fees, costs and amounts for service and execution of process which may be demanded and received by the Sheriff and officers of the Court in connection with the practice and procedure of the High Court;
- (i) for prescribing the manner of acceptance, retention and disposal of fees and costs;
- (j) for providing for the taxation of the fees and costs of legal practitioners;
- (k) generally for regulating any matters relating to the practice and procedure of the Court or to the duties of the officers thereof or the costs of proceedings therein.

[subs (2) am Ordinance 21 of 1944 s 5, opn 29 Jan 1945; Ordinance 3 of 1945 s 6, opn 3 Mar 1945; Ordinance 23 of 1965 s 85, opn 3 Dec 1965; Ordinance 27 of 1966, s 7, opn 5 Aug 1966]

(3) The power to make rules conferred by this section shall include the power to make rules with respect to all or any of the matters dealt with by the Rules of the Supreme Court in England made from time to time.

(4) Where any provisions in respect of the practice or procedure of any of Her Majesty’s Courts the jurisdiction of which or of any courts substituted for or united and consolidated with which is vested by this Act in the High Court are contained in any Act of the Imperial Parliament, rules of Court may be made under this section modifying those provisions to any extent that may be deemed necessary by the Chief Justice for adapting the same to the Court, and any provision relating to the payment, transfer or deposit into or in or out of High Court of any money or property or to the dealing therewith shall, for the purposes of this subsection, be deemed to be provisions relating to practice and procedure.

[The next page is 782,001]

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PART 9 — MISCELLANEOUS

[HC 26] Sittings of the Court

26 (1) The Court shall sit for the trial of criminal and civil causes and for the disposal of other legal business pending at such places and at such times as the Chief Justice may direct.

(2) The Chief Registrar shall ordinarily give notice beforehand of all such sittings.
[s 26 subst Ordinance 21 of 1944 s 6, opn 29 Jan 1945]

[HC 27] Delivery of judgments and orders

27 It shall be lawful for any decision of the Court or a Judge to be delivered by the effect thereof being pronounced, in Court or in chambers, as the case may be, provided that the full terms of such decision shall have been reduced to writing and that a copy thereof is made available to the parties.

[s 27 subst Ordinance 35 of 1965 s 12, opn 11 Mar 1966]

[HC 28] Vacations

28 The Chief Justice may, by order, direct such vacations, not exceeding, in the aggregate, 30 days in any one year, as he or she thinks fit.

[s 28 subst Ordinance 35 of 1965 s 13, opn 11 Mar 1966]

[HC 29] Expenses of witnesses in civil proceedings

29 (1) It shall be lawful for the Court in civil proceedings to order and allow to all persons examined or detained as witnesses such sum or sums of money as shall seem fit as well for defraying the reasonable expenses of such witnesses as for affording them a reasonable compensation for their trouble and loss of time and also, if the Court shall think fit, to order any witness present to give evidence notwithstanding that no *viaticum* or other payment to which he or she may be entitled has been paid or tendered to him or her.

(2) All sums of money so allowed shall be paid in civil proceedings by the party on whose behalf the witness is called and shall be recoverable as ordinary costs of suit if the Court shall so direct.

[HC 30] Expenses of witnesses in criminal proceedings

30 (1) Every person who attends any criminal sessions of the High Court as a witness for the prosecution, whether on his or her recognisance or in obedience to a subpoena or by virtue of a warrant, and every person who attends any such sessions as a witness for the defence on his or her recognisance, shall be entitled at the conclusion of the case and after his or her account has been duly taxed by the Chief Registrar, whether he or she has been examined or not, to such sums for his or her attendance and his or her travelling expenses as may from time to time be prescribed by rules of Court.

[subs (1) am Ordinance 21 of 1944 s 8, opn 29 Jan 1945]

(2) The Judge may, if he or she thinks fit, disallow the payment of any such sum to any such witness.

[subs (2) am Ordinance 3 of 1945 s 8, opn 3 Mar 1945]

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(3) If the Judge at any criminal sessions certifies that in his or her opinion any witness examined for the defence not being a witness as hereinbefore described—

- (a) has given material evidence;
- (b) has given his or her evidence in a truthful and satisfactory manner; and
- (c) that a reasonable explanation has been given as to the non-examination of such witness at the preliminary inquiry,

he or she may order that the allowance and travelling expenses of such witness shall be allowed and paid in the same manner as if he or she had attended on his or her recognisance, and the account of such witness shall be taxed and paid accordingly.

[subs (3) am Ordinance 3 of 1945 s 8, opn 3 Mar 1945]

(4) No claim made by a witness for any such sum shall be entertained unless the same is made within one month after the last day of the criminal sessions in respect of which such claim is made.

(5) Payment of any allowances or expenses under this section shall be made out of the Consolidated Fund.

[s 30 insrt Ordinance 1 of 1904 ss 2–6, opn 6 May 1904]

[HC 31] Mode of trial in civil causes

31 (1) Civil causes in the High Court shall be tried by a Judge alone, except where express provision to the contrary is made by this or any other Act.

(2) In any civil cause before the High Court the Court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear the cause or matter wholly or partly with their assistance.

(3) The remuneration, if any, to be paid to an assessor shall be determined by the Court.

[s 31 insrt Ordinance 37 of 1961 s 3, opn 16 Nov 1961]

[HC 32] Power to impose charge on land of judgment debtor

32 (1) The Court may, for the purpose of enforcing any judgment or order for the payment of money, by order impose on any land, or any estate or interest therein, of the debtor as may be specified in the order, a charge for securing the payment of any moneys due or to become due under the judgment or order.

(2) An order made under the provisions of subsection (1) may be made either absolutely or subject to such conditions as to notifying the debtor or as to the time when the charge is to become enforceable or as to other matter.

[s 32 insrt Ordinance 59 of 1968 s 2, opn 24 Dec 1968]

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High Court Rules 1988

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High Court Rules 1988

TABLE OF AMENDMENTS

High Court Rules 1988 (LN 37 of 1988) commenced on 31 March 1988, as amended by:

Amending Legislation	Date of Commencement
High Court (Amendment) Rules 1991 (LN 55 of 1991)	18 October 1991
High Court (Amendment) (No 2) Rules 1991 (LN 61 of 1991)	15 November 1991
High Court (Admiralty) (Amendment) Rules 1993 (LN 51 of 1993)	1 July 1993
High Court (Amendment) Rules 1993 (LN 67 of 1993)	9 August 1993
High Court (Amendment) Rules 1993 (LN 102 of 1993)	1 December 1993
High Court (Amendment) Rules 1994 (LN 30 of 1994)	15 March 1994
High Court (Amendment) Rules 1997 (LN 73 of 1997)	1 August 1997
High Court (Amendment) Rules 1998 (LN 72 of 1998)	15 May 1998
High Court (Amendment) (No 2) Rules 1998 (LN 154 of 1998)	30 December 1998
High Court (Amendment) (No 2) Rules 2005 (LN 47 of 2005)	19 September 2005
High Court (Amendment) (No 2) Rules 2005 No 59 (LN 59 of 2005)	11 November 2005
High Court (Amendment) Rules 2006 (LN 39 of 2006)	16 June 2006
Legal Practitioners (High Court Costs) Regulations 2006 (LN 76 of 2006)	7 July 2006
High Court (Amendment) Rules 2018 (LN 85 of 2018)	9 November 2018
Stamp Duties (Repeal) Act 2020 (No 16 of 2020)	1 August 2020

[The next page is 787,201]

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[HC 10,005] Short title and commencement

1 These Rules may be cited as the High Court Rules 1988 and shall come into force on 31 March 1988.

[HC 10,010] Practice and procedure in High Court

2 The practice and procedure relating to civil proceedings in the High Court shall be governed by the Rules described in the Schedule hereunder.

[HC 10,015] Transitional provision

3 Pending causes and matters in the High Court shall be conducted in accordance with these Rules so far as conveniently may be, subject to any directions given by the Court or a Judge in any particular case.

[HC 10,020] Revocation of Supreme Court Rules 1968

4 The Supreme Court Rules 1968 and all subsequent amendments made thereto shall be revoked as from 30 March 1988.

[The next page is 787,301]

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THE HIGH COURT RULES

The Rules of the High Court shall comprise those rules of court published and bound in book form under the general title “The High Court Rules 1988”.

PRELIMINARY

ORDER 1 — SHORT TITLE, INTERPRETATION APPLICATION, FORMS

Short title (O 1, R 1)

1 These Rules may be cited as the High Court Rules 1988.

Interpretation (O 1, R 2)

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

action means a civil proceeding commenced by writ or in such other manner as may be prescribed by these Rules but does not include a criminal proceeding by the State;

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

assisted person means a party proceeding in *forma pauperis* or with legal aid;

cause includes any action, suit or other original proceeding between a plaintiff and defendant;

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

judgment includes decree;

Master means the Master of the High Court;

[def insrt LN 39 of 2006 r 2, opn 16 June 2006]

matter includes every proceeding in court not in a cause;

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

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

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

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

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

pleading includes any petition or summons, and also includes the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of a defendant; but does not include a petition, summons or preliminary act;

Registrar means the Chief Registrar of the High Court and includes any Deputy Registrar when lawfully discharging any of the functions of the Chief Registrar under these Rules;

Registry means the Registry of the High Court in Suva, and includes any district registry of the High Court, where such district registry is established outside Suva;

solicitor means Barrister and Solicitor;

suit includes action;

the Court means the High Court or any Judge thereof, whether sitting in court or in chambers and, where appropriate, the Master or the Registrar; provided that this definition shall not be taken to affect any provision of these Rules and, in particular the provisions of Order 32, Rule 9 and Order 59 by virtue of which the authority and jurisdiction of the Registrar and the Master are defined and regulated; and

[def subst LN 39 of 2006 r 2, opn 16 June 2006]

writ means a writ of summons.

(2) In these Rules, unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the appropriate court office an acknowledgement of service of that document or, as the case may be, a notice of intention to defend those proceedings.

Construction of references to Orders, Rules etc (O 1, R 3)

3 (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 of the paragraph, in which the reference occurs.

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

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

Construction of references to action etc for possession of land (O 1, R 4)

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

Rules not to exclude conduct of business by post (O 1, R 5)

5 Nothing in these Rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

Forms (O 1, R 6)

6 The forms in Appendix 1 shall be used where applicable with such variations as the circumstances of the particular case may require, provided that—

- (i) the Court may permit departures from strict compliance with such forms;
- (ii) Admiralty forms used for the time being in Her Majesty's High Court of Justice in England shall have effect in Fiji subject to any law in force in Fiji with respect to Admiralty proceedings.

[r 6 am LN 67 of 1993 r 9, opn 9 Aug 1993]

Practice where no express provision in the Rules (O 1, R 7)

7 Where no express provision is made by these Rules with respect to the practice or procedure in any circumstances arising in any cause or matter, then the jurisdiction of the High Court shall be exercised in conformity with the practice and procedure being adopted in the like circumstances in Her Majesty's High Court of Justice in England.

Proceedings to which these Rules do not apply (O 1, R 8)

8 (1) Where, for the time being, by or under any law in force in Fiji, specific provision is made for regulating the practice and procedure in, or in relation to, any particular form of proceedings in the High Court, these Rules shall not apply thereto except in so far as any such provision applies, incorporates, or imports the application of these Rules, whether by express reference thereto or by reference to the rules of Court of, or the practice or procedure in, the High Court.

- (2) These Rules shall not apply to any criminal proceedings in the High Court.

Fees, costs etc (O 1, R 9)

9 (1) The fees set out in Appendix 2 shall be paid to and received in the Registry in respect of the matters set out therein. Fees payable and receivable in respect of any matter not specifically set out therein shall be as directed by the Chief Justice, provided that no fees shall be payable by a public officer in connection with any proceeding by or against him or her in his or her official capacity but any fee which would have been payable but for this proviso shall be recoverable from any other party ordered to pay the costs of such public officer in any such proceeding.

(2) The fees set out in Appendix 3 shall be paid to and received by the Sheriff or his or her deputies concerned in the execution of any process directed to the Sheriff, in the several proceedings mentioned therein.

- (3) (a) Subject to any special order made in any proceedings by the trial Judge there shall be allowed to barristers and solicitors in the High Court costs amounting to not less than those prescribed under the Lower Scale and not exceeding those prescribed under the Higher Scale in Part 1 of Appendix 4 in relation to the matters set out therein, in the discretion of the taxing officer.

(b) In exercising his or her discretion under subparagraph (a), the taxing officer shall have regard to all relevant circumstances and in particular to—

- (i) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (ii) the skill, specialised knowledge and responsibility required of, and the time and labour expended by the solicitor;
- (iii) the number and importance of the documents (however brief) prepared or perused;

- (iv) the place and circumstances in which the business involved is transacted and whether the solicitor concerned was in the circumstances obliged to act through his or her agent in Suva, Lautoka or Labasa, as the case may be;
 - (v) the importance of the cause or matter to the client;
 - (vi) where money or property is involved, its amount or value;
 - (vii) any other fees and allowances payable to the solicitor in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.
- (c) Fixed costs shall be allowed as provided in Part 2 of Appendix 4.

Pleading of criminal conviction (O 1, R 10)

10 (1) If in any action which is to be tried with pleadings any party intends, in reliance on section 9 of the Evidence Act 1944 (convictions as evidence in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Fiji, he or she must include in his or her pleading a statement of his or her intention with particulars of—

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

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

- (a) denies the conviction;
- (b) alleges that the conviction was erroneous; or
- (c) denies that the conviction is relevant to any issue in the proceedings,

he or she must make the denial in his or her pleading.

Non-contentious probate rules (O 1, R 11)

11 The Rules for the time being in force in Her Majesty's High Court of Justice in England, and the practice and procedure of that Court with respect of non-contentious probate business shall apply so far as they are applicable, with such modifications as may be necessary, to grants of probate and administration issued in common form from the Registry of the High Court.

Provision respecting acts etc required of consuls (O 1, R 12)

12 Where, under these Rules, any act or thing is required to be done in a country outside Fiji by a Fiji Consul, and there is no Fiji Consular Representation in that country, it shall be sufficient, for the purposes of these Rules, if such act or thing is done there by the consul of some other country in pursuance of an arrangement in force with respect to such acts or things between Fiji and the authority of such second mentioned country.

Repeal and savings (O 1, R 13)

13 (1) The High Court Rules in force immediately before the making of these Rules are hereby repealed.

(2) Nothing in this Rule shall affect any judgment, order, direction, writ, summons, petition, pleading or any other act or thing done, made, issued or given before the commencement of these Rules in accordance with Rules hereby repealed and every such judgment, order, direction, writ, summons, petition or other act or thing shall have effect as if done, made, issued or given under these Rules.

Commencement (O 1, R 14)

14 These Rules shall come into operation on such day as the Chief Justice shall by notice in the Gazette appoint.

DFLRC (RT) - 17/12/24

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[The next page is 787,401]

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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 anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

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

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

Application to set aside for irregularity (O 2, R 2)

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

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

[The next page is 787,501]

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ORDER 3 — TIME

“Month” means calendar month (O 3, R 1)

1 Without prejudice to any law affecting the interpretation of subsidiary legislation, the word “month”, where it occurs in any judgment, order, direction or other document forming part of any proceedings in the High Court, means a calendar month unless the context otherwise requires.

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

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

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

(5) Where, apart from this paragraph, the period in question, being a period of 7 days or less, would include a Saturday, Sunday or public holiday that day shall be excluded.

Time expires on Saturday, Sunday etc (O 3, R 3)

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

Extension etc of time (O 3, R 4)

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

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

(3) The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose, provided that wherever the period for filing any pleading or other document required to be filed by these Rules or by the Court is extended whether by order of the Court or by consent a late filing fee in respect of each extension shall be paid in the amount set out in Appendix 2 by the party filing the pleading or other document unless for good cause the Court orders that some or all of the same be waived.

[para (3) am LN 67 of 1993 r 2, opn 9 Aug 1993]

Notice of intention to proceed after 6 months delay (O 3, R 5)

5 Where 6 months or more have elapsed since the last proceeding in a cause or

matter, a party intending to proceed must give not less than one month's notice of that intention to every other party. An application on which no order was made is not a proceeding for the purpose of this Rule.

[r 5 subst LN 59 of 2005 r 3, opn 11 Nov 2005]

[The next page is 787,601]

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COMMENCEMENT AND PROGRESS OF PROCEEDINGS

ORDER 4 — CONSOLIDATION OF PROCEEDINGS

Venue (O 4, R 1)

1 (1) Proceedings must ordinarily be commenced in the High Court Registry located in the Division in which the cause of action arises.

(2) Applications for Probate or Letters of Administration and Resealing made under the provisions of the Succession, Probate and Administration Act 1970 shall be filed in the principal probate registry in Suva.

(3) Proceedings the subject matter of which is within the jurisdiction of a Magistrates Court must ordinarily be commenced in that court.

(4) Any action commenced in the High Court may be transferred by the Court from one High Court Registry to another or to a Magistrates Court.

[r 1 subst LN 73 of 1997 r 2, opn 1 Aug 1997]

Consolidation of Proceedings (O 4, R 2)

2 Where 2 or more causes or matters are pending, then, if it appears to the Court—

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

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

[r 1 renum as r 2 LN 67 of 1993 r 3, opn 9 Aug 1993]

[The next page is 787,701]

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ORDER 5 — MODE OF BEGINNING CIVIL PROCEEDINGS

Mode of beginning civil proceedings (O 5, R 1)

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

Proceedings which must be begun by writ (O 5, R 2)

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

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under an Act or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

Proceedings which must be begun by originating summons (O 5, R 3)

3 Proceedings by which an application is to be made to the High Court or a Judge thereof under any Act must be begun by originating summons except where by these Rules or by or under any Act the application in question is expressly required or authorised to be made by some other means. This Rule does not apply to an application made in pending proceedings.

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

4 (1) Except in the case of proceedings which by these Rules or by or under any Act are required to be begun by writ or originating summons or are required or authorised to be begun by petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings—

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

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

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

Right to sue in person (O 5, R 6)

6 (1) Subject to paragraph (2) and to Order 80, Rule 2, any person (whether or not he or she sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a barrister and solicitor or in person.

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

[The next page is 787,801]

Service 0

787,702

ORDER 6 — WRITS OF SUMMONS: GENERAL PROVISIONS

Form of writ (O 6, R 1)

1 Every writ must be in Form 1 in Appendix 1.

[r 1 am LN 67 of 1993 r 9, opn 9 Aug 1993]

Indorsement of claim (O 6, R 2)

2 Before a writ is issued it must be indorsed—

- (a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;
- (b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for appearing, the defendant pays the amount so claimed to the plaintiff, his or her solicitor or agent;
- (c) where the action is brought to enforce a right to recover possession of goods, with a statement showing the value of the goods.

Indorsement as to capacity (O 6, R 3)

3 Before a writ is issued it must be indorsed—

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

Indorsement as to solicitor and address (O 6, R 4)

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

- (a) 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 or her within the jurisdiction and also (if the solicitor is the agent of another) the name or firm and business address of his or her principal;
- (b) where the plaintiff sues in person, with the address of his or her place of residence and, if his or her place of residence is not within the jurisdiction or if he or she has no place of residence, the address of a place within the jurisdiction at or to which documents for him or her may be delivered or sent.

(2) The address for service of a plaintiff shall be—

- (a) where he or she sues by a solicitor, the business address of the solicitor indorsed on the writ or where there are two such addresses so indorsed, the business address of the solicitor who is acting as agent for the other;
- (b) where he or she sues in person, the address within the jurisdiction indorsed on the writ.

(3) Where a solicitor's name is indorsed on a writ, he or she must, if any defendant who has been served with or who has acknowledged service of the writ requests him or her in writing so to do, declare in writing whether the writ was issued by him or her or with his or her authority or privity.

(4) If a solicitor whose name is indorsed on a writ declares in writing that the writ was not issued by him or her or with his or her authority or privity, the Court may on the application of any defendant who has been served with or who has entered an appearance to the writ, stay all proceedings in the action begun by the writ.

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 at any time thereafter before the original writ ceases to be valid.

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

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

Issue of writ (O 6, R 6)

6 (1) No writ which is to be served out of the jurisdiction shall be issued without the leave of the Court, provided that if every claim made by a writ is one which by virtue of an enactment the High Court has power to hear and determine, notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction, the foregoing provision shall not apply to the writ.

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

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

(4) No writ shall be sealed unless at the time of tender thereof for sealing the person tendering it leaves at the Registry a copy thereof signed, where the plaintiff sues in person, by him or her or, where he or she does not so sue, by or on behalf of his or her solicitor and produces to an officer of the Registry a form of acknowledgement of service in Form 2 in Appendix 1 for service with the writ on each defendant.

[para (4) am LN 67 of 1993 r 9, opn 9 Aug 1993]

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 12 months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding 12 months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow.

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

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

[The next page is 787,901]

ORDER 7 — ORIGINATING SUMMONSES: GENERAL PROVISIONS

Application (O 7, R 1)

1 The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act.

Form of Summons etc (O 7, R 2)

2 (1) In every originating summons (other than an *ex parte* summons) shall be in Form 3 Appendix 1 or, if so authorised or required, in Form 4 in Appendix 1, and every *ex parte* originating summons shall be in Form 5 in Appendix 1.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

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

Contents of Summons (O 7, R 3)

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

(2) Order 6, Rules 3, 4 and 7 shall apply in relation to an originating summons as they apply in relation to a writ.

Ex parte originating summonses (O 7, R 4)

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

(2) Order 6, Rule 6(2) and (4) shall, with the necessary modifications, apply in relation to an *ex parte* originating summons as they apply in relation to a writ.

[The next page is 788,001]

Service 0

787,902

ORDER 8 — ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

Application (O 8, R 1)

1 The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these Rules or by or under any Act.

Notice of motion (O 8, R 2)

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

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

Form and issue of notice of motion (O 8, R 3)

3 (1) The notice of an originating motion must be in Form 6 in Appendix 1 and the notice of any other motion in Form 7 in that Appendix.

Where leave has been given under Rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) The notice of a motion must include a concise statement of the nature of the claim made or the relief or remedy required.

(3) Order 6, Rule 4, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) Issue of the notice of an originating motion takes place upon it being sealed by an officer of the Registry.

Service of notice of motion with writ etc (O 8, R 4)

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

Adjournment of hearing (O 8, R 5)

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

[The next page is 788,101]

Service 0

788,002

ORDER 9 — PETITIONS: GENERAL PROVISIONS

Application (O 9, R 1)

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

Contents of petition (O 9, R 2)

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

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

(3) Order 6, Rule 4, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

Answer to petition (O 9, R 3)

3 (1) A respondent who wishes to defend the petition or to dispute any facts alleged in it, shall, within 21 days after the date of the service thereof, file an answer to the petition.

(2) An answer may be filed at any time before directions have been given for the trial of the cause, notwithstanding that the time for filing the answer has expired.

(3) Where, in the opinion of the Court, it is expedient in the interests of justice to do so, the Court may direct the respondent to give notice of whether or not he or she intends to defend and limit the time within which the notice is to be given.

(4) If the respondent—

(a) fails to give notice of his or her intention within the time limited under paragraph (3); or

(b) having given such notice fails to file an answer to the petition within 21 days after the day of the giving of the notice,

he or she may be held to have admitted every material allegation of fact made in the petition.

Fixing time for hearing petition (O 9, R 4)

4 A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.

Certain applications not to be made by petition (O 9, R 5)

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

[The next page is 788,201]

Service 0

788,102

ORDER 10 — SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

General provisions (O 10, R 1)

1 (1) A writ must be served personally on each defendant by the plaintiff or his or her agent.

(2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him or her, be served—

- (a) by sending a copy of the writ by ordinary post to the defendant at his or her usual or last known address; or
- (b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant.

(3) Where a writ is served in accordance with paragraph (2)—

- (a) the date of service shall, unless the contrary is shown, be deemed to be the 7th day (ignoring Order 3, Rule 2(5)) after the date on which the copy was sent to or, as the case may be, inserted through the letter box for the address in question;
- (b) any affidavit proving due service of the writ must contain a statement to the effect that—
 - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or, as the case may be inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
 - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

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

(5) Subject to Order 12, Rule 7, where a writ is not duly served on a defendant but he or she acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him or her and to have been so served on the date on which he or she acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the High Court and shall be accompanied by a form of acknowledgement of service in Form 2 in Appendix 1, in which the title of the action and its numbers has been entered.

[para (6) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(7) This Rule shall have effect subject to the provision of any Act and these Rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

Service of writ on agent of oversea 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 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 or she is still in business relations with his or her principal, the Court may authorise service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

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

(3) Where an order is made under this Rule authorising service of a writ on a defendant's agent, a copy of the order and of the writ must be sent by post to the defendant at his or her 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 High Court shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the High 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 or her 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 High Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject to paragraph (2), be deemed to have been duly served on the defendant.

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

Service of writ in certain actions for possession of land (O 10, R 4)

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

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

Service of originating summons, notice of motion or petition (O 10, R 5)

5 (1) The foregoing Rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than *ex parte* originating summons or an originating summons under Order 113) as they apply in relation to a writ.

(2) Rule 1(1), (2), (3) and (4) shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

[The next page is 788,301]

ORDER 11 — SERVICE OF PROCESS ETC OUT OF THE JURISDICTION

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

1 (1) If a writ is not a writ to which paragraph (2) of this Rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ—

- (a) relief is sought against a person domiciled within the jurisdiction;
- (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
- (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
- (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages, or obtain other relief in respect of the breach of a contract, being (in either case) a contract which—
 - (i) was made within the jurisdiction;
 - (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;
 - (iii) is by its terms, or by implication, governed by the law of Fiji; or
 - (iv) contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract;
- (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
- (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (g) the whole subject matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
- (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to English law and of which the person to be served with the writ is a trustee or for any relief or remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
 - (l) the claim is brought in a probate action within the meaning of Order 76;
 - (m) the claim is brought to enforce any judgment or arbitral award.

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is a claim which by virtue of any enactment the High Court has power to hear and determine notwithstanding that the person against

whom the claim is made is not within the jurisdiction or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction.

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be 42 days.

Application for, and grant of, leave to serve writ out of jurisdiction (O 11, R 2)

2 (1) An application for the grant of leave under Rule 1(1) must be supported by an affidavit stating—

- (a) the grounds on which the application is made;
- (b) that in the deponent's belief the plaintiff has a good cause of action;
- (c) in what place or country the defendant is, or probably may be found; and
- (d) where the application is made under Rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(3) An order granting under Rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.

Service of writ abroad: general (O 11, R 3)

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

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

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

- (a) need not be served personally on the person required to be served so long as it is served on him or her in accordance with the law of the country in which service is effected; and
- (b) need not be served by the plaintiff or his or her agent if it is served by a method provided for by Rule 4.

(4) An official certificate stating that a writ as regards which Rule 4 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 Fiji consular authority in that country;
- (b) by the Government or judicial authorities of that country;
- (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.

(5) A document purporting to be such a certificate as is mentioned in paragraph (4) shall, until the contrary is proved, be deemed to be such a certificate.

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

Service of writ abroad through foreign governments, judicial authorities and Fiji consuls (O 11, R 4)

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

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

(2) Where in accordance with these Rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served—

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits—
 - (i) through the judicial authorities of that country; or
 - (ii) through a Fiji consular authority in that country.

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

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a Fiji consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (1), (2), or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected, provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a Fiji consular authority on a Fiji subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

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

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Minister with a request that he or she arrange the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

Undertaking to pay expenses of service (O 11, R 5)

5 Every request lodged under Rule 4(4) must contain an undertaking by the person making the request to be responsible 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 Minister and to produce a receipt for the payment to the Registrar.

Service of originating summons, petition, notice of motion etc (O 11, R 6)

6 (1) Subject to Order 73, Rule 4, Rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(2) Subject to Order 73, Rule 4, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these Rules or under any Act be served out of the jurisdiction without leave.

(3) Rule 2 shall, so far as applicable, apply in relation to an application for the grant of leave under this Rule as it applies in relation to an application for the grant of leave under Rule 1.

(4) An order granting under this Rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(5) Rules 3, 4 and 5 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this Rule as they apply in relation to a writ.

[The next page is 788,401]

ORDER 12 — ACKNOWLEDGEMENT OF SERVICE TO WRIT OR
ORIGINATING SUMMONS**Mode of acknowledging service (O 12, R 1)**

1 (1) Subject to paragraph (2) and to Order 80, Rule 2, a defendant to an action begun by writ may (whether or not he or she is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorised to act on the defendant's behalf but, except as aforesaid or as expressly provided by any enactment, such a defendant may not take steps in the action otherwise than by a solicitor.

(3) Service of a writ must be acknowledged by properly completing an acknowledgement of service as defined by Rule 2, by making a copy of it and by handing in at the Registry out of which the writ was issued the acknowledgement of service together with the copy made thereof.

[para (3) subst LN 67 of 1993 r 4, opn 9 Aug 1993]

(4) If 2 or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgement of service need be completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgement of service is received at the appropriate office.

Acknowledgement of service (O 12, R 2)

2 (1) An acknowledgement of service must be in Form 2 in Appendix 1, and, except as provided in Rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgement or, if the defendant is acting in person, by that defendant.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) An acknowledgement of service must specify—

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

(b) in the case of a defendant acknowledging service by a solicitor, a business address of his or her solicitor's within the jurisdiction,

and where the defendant acknowledges service in person, the address within the jurisdiction specified under subparagraph (a) shall be his or her address for service, but otherwise his or her solicitor's business address shall be his or her address for service. In relation to a body corporate the references in subparagraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgement of service must state that the first named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgement of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgement of

service is not genuine, the Court may on application by the plaintiff set aside the acknowledgement or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgement shall nevertheless have effect for the purposes of Order 10, Rule 1(5) and Order 65, Rule 9.

Procedure on receipt of acknowledgement of service (O 12, R 3)

- 3 (1) On receiving an acknowledgement of service an officer of the Registry must—
- (a) Affix to the acknowledgement of service and the copy thereof made by the defendant an official stamp showing the date on which it was received in the Registry;
 - (b) Enter the acknowledgement in the cause book with a note showing, in the case, that the defendant has indicated in the acknowledgement an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him or her in the proceedings;
 - (c) hand back the copy of the acknowledgement of service duly stamped to the person who handed in same.

(2) Where a defendant has acknowledged service of a writ he or she must on the date on which he or she acknowledged service serve or send 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 the copy of the acknowledgement of service handed back to him or her under paragraph (1)(c).

[r 3 subst LN 67 of 1993 r 5, opn 9 Aug 1993]

Time limited for acknowledging service (O 12, R 4)

4 References in these Rules to the time limited for acknowledging service are references—

- (a) in the case of a writ served within the jurisdiction, to 14 days after service of the writ (including the day of service) or where that time has been extended by or by virtue of these Rules, to that time as so extended; and
- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, Rule 2(2), Order 11, Rule 1(3) or, where that time has been extended as aforesaid, to that time as so extended.

Late acknowledgement of service (O 12, R 5)

5 (1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.

(2) Except as provided by paragraph (1), nothing in these Rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he or she shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he or she had acknowledged service within that time.

Acknowledgement not to constitute waiver (O 12, R 6)

6 The acknowledgement by a defendant of service of a writ shall not be treated as a waiver by him or her 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 7)

7 (1) A defendant who wishes to dispute the jurisdiction of the Court in the proceedings by reason of any such irregularity as is mentioned in Rule 6 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence apply to the Court for—

- (a) an order setting aside the writ or service of the writ on him or her;
- (b) an order declaring that the writ has not been duly served on him or her;
- (c) the discharge of any order giving leave to serve the writ on him or her 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) An application under paragraph (1) must be made by summons or motion, and the notice of motion or summons must state the grounds of the application.

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

(4) Upon hearing an application under paragraph (1), the Court, if it does not dispose of the matter in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(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 or her having given notice of intention to defend the action; and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to Rule 5(1), lodge a further acknowledgement of service and in that case 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 acknowledgement by a defendant of service of a writ shall, unless the acknowledgement 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.

Acknowledgement of service of originating summons (O 12, R 8)

8 (1) Each defendant named in and served with an originating summons (other than an *ex parte* originating summons or an originating summons under Order 113) must acknowledge service of the summons as if it were a writ.

(2) The foregoing Rules of this Order shall apply in relation to an originating summons (other than an *ex parte* originating summons or an originating summons under Order 113) as they apply to a writ except that after the word “extended”, wherever it occurs in Rule 4(a), there shall be inserted the words “or abridged” and for the reference in Rule 4(b) to Order 11, Rule 1(3), there shall be substituted a reference to Order 11, Rule 6(5).

Acknowledgement of service to be treated as entry of appearance (O 12, R 9)

9 For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of Court for responding to a writ or other process issuing out of the High Court, or of any rule of law, the acknowledgement of service of the writ or other process in accordance with these Rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.

[The next page is 788,501]

Service 0

788,404

ORDER 13 — FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

Claim for liquidated demand (O 13, R 1)

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

(2) A claim shall not be prevented from being treated for the purposes of this Rule as a claim for a liquidated demand by reason only that part of the claim is for interest 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 of 5%.

Claim for unliquidated damages (O 13, R 2)

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

Claim for detention of goods (O 13, R 3)

3 (1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant failed to give notice of intention to defend, the plaintiff may, after the prescribed time and subject to Order 42, Rule 2—

(a) at his or her option enter either—

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

(ii) interlocutory judgment for the value of the goods to be assessed and costs; or

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him or her the alternative of paying their assessed value, and in any case proceed with the action against the other defendants, if any.

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, Rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

Claim for possession of land (O 13, R 4)

4 (1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, subject to paragraph (2), if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time, and on producing a certificate by his or her solicitor, or (if he or she sues in person) an affidavit stating that he or she is not claiming any relief in the action of the nature specified in Order 88, Rule 1, enter judgment for possession of the land as against that defendant and 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 and until judgment for possession of the land has been entered against all the defendants.

Mixed claims (O 13, R 5)

5 Where a writ issued against any defendant is indorsed with 2 or more of the claims mentioned in the foregoing Rules, and no other claim, then, if that defendant fails to give

notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he or she would be entitled to enter under those Rules if that were the only claim indorsed on the writ, and proceed with the action against the other defendants, if any.

Other claims (O 13, R 6)

6 (1) Where a writ is indorsed with a claim of a description not mentioned in Rules 1 to 4 then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving service of the writ on him or her and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him or her, proceed with the action as if that defendant had given notice of intention to defend.

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

(3) An application for leave to enter judgment under paragraph (2) shall be by summons which must, unless the Court otherwise orders, and notwithstanding anything in Order 65, Rule 9, be served on the defendant against whom it is sought to enter judgment.

Prescribed time (O 13, R 7)

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

Proof of service of writ (O 13, R 8)

8 (1) Judgment shall not be entered against a defendant under this Order unless—

- (a) the defendant has acknowledged service on him or her of the writ;
- (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
- (c) the plaintiff produces the writ indorsed by the defendant's solicitor with a statement that he or she accepts service of the writ on the defendant's behalf.

(2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to acknowledge service, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party is in default of acknowledgement of service.

(3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, Rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post, undelivered to the addressee, the plaintiff, shall, before taking any step or further step in the action or the enforcement of the judgment either—

- (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served; or
- (b) apply to the Court for directions.

(4) A request under paragraph (3)(a) shall be made by producing to an officer of the

Registry and leaving with him or her for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the Registry for that purpose shall be marked accordingly.

(5) An application under paragraph (3)(b) shall be made *ex parte* by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may—

- (a) set aside the judgment;
- (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served; or
- (c) make such other order and give such other direction as the circumstances may require.

Stay of execution on default judgment (O 13, R 9)

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

Setting aside judgment (O 13, R 10)

10 Without prejudice to Rule 8(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.

[The next page is 788,601]

Service 0

788,504

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 given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

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

- (a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment;
- (b) an action which includes a claim by the plaintiff based on an allegation of fraud.

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

Manner in which application under Rule 1 must be made (O 14, R 2)

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

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

(3) The summons, a copy of the affidavit in support and of any exhibits referred to therein must be served on the defendant not less than 10 clear days before the return day.

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 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.

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

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

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

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

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

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

Directions (O 14, R 6)

6 Where the Court—

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

the Court shall give directions as to the further conduct of the action, and Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under Rule 1 of this Order or Rule 5 thereof, as the case may be, on which the order was made were a summons for directions.

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 relied on a contention which would entitle him or her to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to Rule 2(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 or her 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 or she may proceed with the action as respects any other claim or as respects the remainder of the claim or against any other defendant.

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

Judgment for delivery up of chattel (O 14, R 9)

9 Where the claim to which an application under Rule 1 or Rule 5 relates is for the delivery up of a specific chattel and the Court gives judgment under this Order for the applicant, it shall have the same power to order the party against whom judgment is given to deliver up the chattel without giving him or her 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 land on the ground of forfeiture for non-payment of rent has been given under this Order as if the judgment had been given after trial.

Setting aside judgment (O 14, R 11)

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

No summary judgment against the State (O 14, R 12)

12 Nothing in the foregoing provisions of this Order shall apply or be construed in derogation of, or in anyway affect, the provisions contained in Order 77 in so far as they apply in relation to proceedings against the State.

[The next page is 788,701]

Service 0

788,604

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 the 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 or her personal capacity but with reference to the same estate in respect of all the others; or
- (c) with the leave of the Court.

(2) An application for leave under this Rule must be made *ex parte* by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

Counterclaim against plaintiff (O 15, R 2)

2 (1) Subject to Rule 5(2), a defendant in any action who alleges that he or she 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 or she does so he or she must add the counterclaim to his or her defence.

(2) Rule 1 shall apply in relation to a counterclaim as if the counter claim were a separate action and as if the person making the counter claim 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 or her 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 or she 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 or she makes a counterclaim, he or she must add that person's name to the title of the action and serve on him or her a copy of the counterclaim and in the case of a person who is not already a party to the action, a form of acknowledgement of service in Form 2 in Appendix 1 with such modification as the circumstances may require; and a person on whom a copy of a counterclaim is served shall, if he or she 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 or her defence to the counterclaim and otherwise as if he or she had been duly sued in the ordinary way by the party making the counterclaim.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim

made by him or her on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, Rule 2, he or she must serve on the plaintiff the defence to which the counterclaim is added.

(4) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely, Order 10, 11, 12 and 13 shall apply in relation to the counterclaim and the proceedings arising from it as if—

- (a) the counterclaim were a writ and the proceedings arising from it an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form 8 in Appendix 1, addressed to that person.

[para (5) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Joinder of parties (O 15, R 4)

4 (1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where—

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

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

Court may order separate trials etc (O 15, R 5)

5 (1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 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 nonjoinder of parties (O 15, R 6)

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

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

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

(4) No person shall be added as a plaintiff without his or her consent signified in writing or in such other manner as may be authorised.

(5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either—

- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted; or
- (b) the relevant period arises under the provisions of subparagraph (i) of the proviso to paragraph 4(1)(d) of the Limitation Act 1971 and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph “any relevant period of limitation” means a time limit under the Limitation Act 1971.

(6) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5)(a) if, and only if, the Court is satisfied that—

- (a) the new party is a necessary party to the action in that property is vested in him or her at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined;
- (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally;
- (c) the new party is the Attorney-General and the proceedings should have been brought by relator proceedings in his or her name;
- (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company; or
- (e) the new party is sued jointly with the defendant and is not also liable severally with him or her and failure to join the new party might render the claim unenforceable.

Proceedings against estates (O 15, R 7)

7 (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 or her estate.

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

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

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

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

(6) Where an order is made under paragraph (4) appointing the Fiji Public Trustee Corporation Limited to represent the deceased's estate, the appointment shall be limited to his or her 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 Fiji Public Trustee Corporation Limited, directs that the appointment shall extend to taking further steps in the proceedings.

(7) Where an order is made under paragraph (4), Rules 8(4) and 9(3) and (4) shall apply as if the order had been made under Rule 8 on the application of the plaintiff.

(8) 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.

[The next page is 788,721]

Change of parties by reason of death etc (O 15, R 8)

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

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute 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 or she had been substituted for the first mentioned party.

An application for an order under this paragraph may be made *ex parte*.

(3) An order may be made under this Rule for a person to be made a party to a cause or matter notwithstanding that he or she 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 or she is already a party on the other side, the order shall be treated as containing a direction that he or she shall cease to be a party on that other side; and
- (b) if he or she is already a party on the same side but in another capacity, the order may contain a direction that he or she shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this Rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and form of acknowledgement of service in Form 2 in Appendix 1.

[para (4) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(5) Any application to the Court by a person served with an order made *ex parte* under this Rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

Provisions consequential on making of order under Rule 6 or 8 (O 15, R 9)

9 (1) Where an order is made under Rule 6 the writ by which the action in question was begun must be amended accordingly and must be indorsed with—

- (a) a reference to the order in pursuance of which the amendment is made; and
- (b) the date on which the amendment is made,

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

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

(3) Where by an order under Rule 6 or 8 a person is to be made a defendant, the Rules as to acknowledgement of service shall apply accordingly to acknowledgement of service by him or her, subject, in the case of a person to be made a defendant by an order under Rule 8, to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him or her under Rule 8(4) or, if the order is not required to be served on him or her, with the date on which the order is noted in the cause book.

(4) Where by an order under Rule 6 or 8 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 or her under this Rule and (if he or she is a defendant) has been served on him or her; or
- (b) where the order is made under Rule 8, the order has been served on him or her under Rule 8(4) or, if the order is not required to be served on him or her, the order has been noted in the cause book;

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

(5) The foregoing provisions of this Rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

Failure to proceed after death of a party (O 15, R 10)

10 (1) If after the death of a plaintiff or defendant in any action the cause or action survives, but no order under Rule 8 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 satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

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

Actions for possession of land (O 15, R 11)

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

(2) An application by any person for an order under this Rule may be made *ex parte*, supported by an affidavit showing that he or she is in possession of the land in question and if by a tenant, naming him or her. The affidavit shall specify the applicant's address for service and Order 12, Rule 2(2), (3) and (4), shall apply as if the affidavit were an acknowledgement of service.

(3) A person added as a defendant by an order under this Rule shall serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).

Actions for wrongful interference with goods (O 15, R 12)

12 (1) Where the plaintiff in an action for wrongful interference with goods is one of 2 or more persons having or claiming any interest in the goods, then, unless he or she has

the written authority of every other such person to sue on the latter's behalf, the writ or originating summons by which the action was begun shall be indorsed with a statement giving particulars of the plaintiff's title and identifying every other person who, to his or her knowledge, has or claims any interest in the goods. This paragraph shall not apply to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle.

(2) A defendant to an action for wrongful interference with goods who desires to show that a third party has a better right than the plaintiff as respects all or any part of the interest claimed by the plaintiff may, at any time after giving notice of intention to defend, and before any judgment or order is given or made on the plaintiff's claim, apply for directions as to whether any person named in the application (not being a person whose written authority the plaintiff has to sue on his or her behalf) should be joined with a view to establishing whether he or she has a better right than the plaintiff.

(3) An application under paragraph (2) shall be made by summons, which shall be served personally on every person named in it as well as being served on the plaintiff.

(4) Where a person named in an application under paragraph (2) fails to appear on the hearing of the summons or to comply with any direction given by the Court on the application, the Court may by order deprive him or her of any right of action against the defendant for the wrong, either unconditionally or subject to such terms and conditions as the Court thinks fit.

Relator actions (O 15, R 13)

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

Representative proceedings (O 15, R 14)

14 (1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in Rule 15, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

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

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

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

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

(6) The Court hearing an application for the grant of leave under paragraph (3) may

order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Representation of interested persons who cannot be ascertained etc (O 15, R 15)

- 15** (1) In any proceedings concerning—(a) the estate of a deceased person;
(b) property subject to a trust; or
(c) the construction of a written instrument, including a statute,

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

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

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

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

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

- (a) there is some other person in the same interest before the court who assents to the compromise or on whose behalf the court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents

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

Representation of beneficiaries by trustees etc (O 15, R 16)

16 (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 shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators could not or did not in fact represent the interests of those persons in the first mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under Rule 15.

Representation of deceased person interested in proceedings (O 15, R 17)

17 (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 or she 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 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 18)

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

Conduct of proceedings (O 15, R 19)

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

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ORDER 16 — THIRD PARTY AND SIMILAR PROCEEDINGS

Third party notice (O 16, R 1)

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

then, subject to paragraph (2), the defendant may issue a notice in Form 9 in Appendix 1, (in this Order referred to as a third party notice), containing a statement of the nature of the claim made against him or her and, as the case may be, either of the nature and grounds of the claim made by him or her or of the question or issue required to be determined.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

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

(3) Where a third party notice is served on the person against whom it is issued, he or she shall as from the time of service be a party to the action (in this Order referred to as a third party) with the same rights in respect of his or her defence against any claim made against him or her in the notice and otherwise as if he or she 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) Application for leave to issue a third party notice may be made *ex parte* but the Court may direct a summons for leave to be issued.

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

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

Issue, service and acknowledgement of service, of 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 must be served with every third party notice a copy of the writ or originating summons by which the action was begun and of the pleadings (if any) served in the action and a form of acknowledgement of service in Form 2 in Appendix 1 with such modifications as may be appropriate.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

- (3) Subject to the foregoing provisions of this Rule, the following provisions of these

Rules, namely, Order 6, Rule 6(3), Order 10, Order 11 and Order 12, shall apply in relation to a third party notice and to the proceedings begun thereby as if—

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

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

Third party directions (O 16, R 4)

4 (1) If the third party gives notice of intention to defend, the defendant who issued the third party notice must, by summons to be served on all the other parties to the action, apply to the Court for directions.

(2) If no summons is served on the third party under paragraph (1), the third party may, not earlier than 7 days after giving notice of intention to defend by summons to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.

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

- (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;
- (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
- (c) dismiss the application and terminate the proceedings on the third party notice, and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.

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

(5) Any order made or direction given under this Rule may be varied or rescinded by the Court at any time.

Default of third party etc (O 16, R 5)

5 (1) If a third party does not give notice of intention to defend or, having been ordered to serve a defence, fails to do so—

- (a) he or she 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 or her 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 or she is ordered to serve, the Court may, on the application by summons of that defendant or the third party, as the case may be, order such judgment to be entered for the applicant as he or she 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.

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

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.

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 by summons or motion, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.

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

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

- 8 (1) Where in any action a defendant who has given notice of intention to defend—
- (a) claims against a person who is already a party to the action any contribution or indemnity;
 - (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;
 - (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 or herself 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 or her claim or, as the case may be, of the question or issue required to be determined.

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

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

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 were a defendant; and similarly where any further person to whom by virtue of this Rule this Order applies as if he or she were a third party makes such a claim or requirement.

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

(3) A third party may not issue a notice under Rule 1 without the leave of the Court unless the action in question was begun by writ and he or she issues the notice before the expiration of 14 days after the time limited for acknowledging service of the notice issued against him or her.

Offer of contribution (O 16, R 10)

10 If, at any time after he or she has acknowledged service, a party to an action who stands to be held liable in the action to another party to contribute towards any debt or damages which may be recovered against that other party in the action, makes (without prejudice to his or her defence) a written offer to that other party to contribute to a specified extent to the debt or damages, then, notwithstanding that he or she 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 were the original subject matter of the action, and as if the person making the counter claim were the plaintiff and the person against whom it is made a defendant.

[The next page is 788,921]

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 or she is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by 2 or more persons making adverse claims thereto; or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a 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,

the person under liability as mentioned in subparagraph (a), or (subject to Rule 2) the sheriff, may apply to the Court for relief by way of interpleader.

(2) References 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 High Court.

Claim to goods etc taken in execution (O 17, R 2)

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

(2) On receipt of a claim made under this Rule the sheriff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the sheriff informing him or her whether he or she 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 made under this Rule is not withdrawn, the sheriff may apply to the Court for relief under this Order.

(4) A sheriff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this Rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him or her for or in respect of his or her having taken possession of that money or those goods or chattels.

Mode of application (O 17, R 3)

3 (1) An application for relief under this Order must be made by originating summons unless made in a pending action, in which case it must be made by summons in the action.

(2) Where the applicant is a sheriff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under Rule 2(4), the

summons must be served on any person who made a claim under that Rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(3) An originating summons under this Rule shall be in Form 10 in Appendix 1.

[para (3) am LN 67 of 1993 r 9, opn 9 Aug 1993]

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

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

(5) Where the applicant's a sheriff, he or she shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court so to do.

(6) Any person who makes a claim under Rule 2 and who is served with a summons under this Rule shall within 14 days serve on the execution creditor and the sheriff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

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

Powers of Court hearing summons (O 17, R 4)

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

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

(2) Where—

- (a) the applicant on a summons under this Order is a 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.

(3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him or her, forever barred from prosecuting his or her claim against the applicant for such relief and all persons claiming under him or her, 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 5)

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

Power to stay proceedings (O 17, R 6)

6 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.

Other powers (O 17, R 7)

7 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 matters (O 17, R 8)

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

Discovery (O 17, R 9)

9 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 10)

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

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

[The next page is 789,021]

Service 0

788,924

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 indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are 2 or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

Service of defence (O 18, R 2)

2 (1) Subject to paragraph (2), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him or her, whichever is the later.

(2) If a summons under Order 14, Rule 1, or under Order 86, Rule 1 is served on a defendant before he or she serves his or her defence, paragraph (1) shall not have effect in relation to him or her unless by the order made on the summons he or she is given leave to defend the action and, in that case, shall have effect as if it required him or her to serve his or her defence within 14 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 must serve a reply on that defendant if it is needed for compliance with Rule 7 and if no reply is served, Rule 13(1) will apply.

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

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

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him or her of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him or her of the counterclaim to which it relates.

Pleadings subsequent to reply (O 18, R 4)

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

Pleadings: formal requirements (O 18, R 5)

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

- (a) the year in which the writ in the action was issued and the number of the action;
- (b) the title of the action;
- (c) the description of the pleading; and
- (d) the date on which it was served.

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

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

- (4) Every pleading of a party must be indorsed—
- (a) where the party sues or defends in person, with his or her name and address;
 - (b) in any other case, with the name or firm and business address of the solicitor by whom it was served and also (if the solicitor is the agent of another) the name or firm and business address of his or her principal.
- (5) Every pleading must be signed by the party's solicitor or by the party, if he or she sues or defends in person.

Facts, not evidence, to be pleaded (O 18, R 6)

6 (1) Subject to the provisions of this Rule, and Rules 9, 10 and 11, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his or her claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

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

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

Matters which must be specifically pleaded (O 18, R 7)

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

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

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

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

Matter may be pleaded whenever arising (O 18, R 8)

8 Subject to Rules 6(1), 9 and 14(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 9)

9 (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 or her.

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

Points of law may be pleaded (O 18, R 10)

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

Particulars of pleading (O 18, R 11)

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

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

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served and, if so, when, or is to be served with the pleading.

(3) The Court may order a party to serve on any other party particulars of any claim, defence or other matter stated in his or her pleading, or in any affidavit of his or her ordered to stand as a pleading, or a statement of the nature of the case on which he or she 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 or she alleges knowledge, particulars of the facts on which he or she relies; and
- (b) where he or she 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 or she requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

Admissions and denials (O 18, R 12)

12 (1) Subject to paragraph (4), any allegation of fact made by a party in his or her pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his or her pleading or a joinder of issue under Rule 13 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 or her in his or her defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them.

(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 13)

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

(2) Subject to paragraph (3)—

- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served; and
- (b) a party may in his or her 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 14)

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

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

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

Defence of tender (O 18, R 15)

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

Defence of set-off (O 18, R 16)

16 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 17)

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

- (a) Rule 14(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff;

- (b) Rules 7(2), 15 and 16 shall, with the necessary modifications apply to a defence to counterclaim as they apply to a defence.

Striking out pleadings and indorsements (O 18, R 18)

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

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

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

(3) This Rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Close of pleadings (O 18, R 19)

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

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

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

Trial without pleadings (O 18, R 20)

20 (1) Where in an action to which this Rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings, or further pleadings, as the case may be.

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

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 6(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this Rule were a summons for directions.

(4) This Rule applies to every action begun by writ other than one which includes—

- (a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or
- (b) a claim by the plaintiff based on an allegation of fraud.

Conviction etc to be adduced in evidence: matters to be pleaded (O 18, R 21)

21 (1) If in any action which is to be tried with pleadings, any party intends to adduce evidence that a person was convicted of an offence by or before a court in Fiji or by a Fiji court martial there or elsewhere, he or she must include in his or her pleading a statement of his or her intention with particulars of—

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

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

- (a) denies the conviction, to which the statement relates;
- (b) alleges that the conviction was erroneous; or
- (c) denies that the conviction is relevant to any issue in the proceedings,

he or she must make the denial or allegation in his or her pleading.

[The next page is 789,121]

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

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 by or under these Rules for service of the defence, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any.

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

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 by or under these Rules for service of the defence, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

Default of defence: claim for detention of goods (O 19, R 4)

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

(a) at his or her option enter either—

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

(b) apply by summons for judgment against that defendant for delivery of the goods without giving him or her the alternative of paying their assessed value,

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

(2) A summons under paragraph (1)(b) must be supported by affidavit and, notwithstanding Order 65, Rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

Default of defence: claim for possession of land (O 19, R 5)

5 (1) Where the plaintiff's claim against a defendant is for possession of land only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may after the expiration of the period fixed by or under these Rules for service of the defence, and on producing a certificate by his or her barrister and solicitor, or (if he or she sues in person) an affidavit, stating that he or she is not claiming any relief in the action of the nature specified in Order 88 Rule 1, enter judgment for possession of the land as against that defendant and for costs, and proceed with the action against the other defendants, if any.

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

Default of defence: mixed claims (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 by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he or she 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 by or under these Rules for service of the defence, apply to the Court for judgment, and on the hearing of the application the Court shall give such judgment as the plaintiff appears entitled to on his or her statement of claim.

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

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

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

Default of defence to counterclaim (O 19, R 8)

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

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.

[The next page is 789,221]

ORDER 20 — AMENDMENT

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 must be served on each defendant to the action.

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

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

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

Amendment of acknowledgement of service (O 20, R 2)

2 (1) Subject to paragraph (2), a party may not amend his or her acknowledgement of service without the leave of the Court.

(2) A party whose acknowledgement of service contains a statement to the effect that—

- (a) he or she does; or
- (b) he or she does not,

intend to contest the proceedings to which the acknowledgement relates may, without the leave of the Court, amend the acknowledgement by substituting for that statement a statement to the opposite effect, provided that in a case falling under subparagraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgement of service is authorised to be amended under this Rule, a fresh acknowledgement, amended as so authorised, must be handed in at or sent by post to the Registry and Order 12, Rule 3 shall apply accordingly.

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 or her once at any time before the pleadings are deemed to be closed and, where he or she does so, he or she must serve the amended pleading on the opposite party.

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

- (a) the defendant, if he or she has already served a defence on the plaintiff, may amend his or her defence; and
- (b) the period for service of his or her defence or amended defence, as the case may be, shall be either the period fixed by or under these Rules for service of his or her defence or a period of 14 days after the amended statement of claim is served on him or her, whichever expires later.

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

- (a) the plaintiff, if he or she has already served a reply on that defendant, may amend his or her reply; and
- (b) the period for service of his or her reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him or her.

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

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

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him or her under paragraph (1), then, if that party does not amend his or her pleading under the foregoing provisions of this Rule, he or she shall be taken to rely on it in answer to the amended pleading, and Order 18, Rule 13(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 14 days after the service on a party of a writ amended under Rule 1(1) or of a pleading amended under Rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this Rule is satisfied that if an application for leave to make the amendment in question had been made under Rule 5 at the date when the amendment was made under Rule 1(1) or Rule 3(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part to be struck out.

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

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

5 (1) Subject to Order 15, Rules 6, 8 and 9 and the following provisions of this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his or her writ, or any party to amend his or her pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

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

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the 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 may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

Amendment of other originating process (O 20, R 6)

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

Amendment of certain other documents (O 20, R 7)

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

(2) This Rule shall not have effect in relation to a judgment or order.

Failure to amend after order (O 20, R 8)

8 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 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

Mode of amendment of writ etc (O 20, R 9)

9 (1) Where the amendments authorised under any Rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorised, must be prepared and, in the case of a writ or originating summons, reissued, but, except as aforesaid and subject to any direction given under Rule 5 or 7, the amendments so authorised may be effected by making in writing the necessary alterations of the document and, in the case of a writ or originating summons, causing it to be resealed and filing a copy thereof.

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

Amendment of judgment and orders (O 20, R 10)

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

[The next page is 789,321]

Service 0

789,224

ORDER 21 — WITHDRAWAL AND DISCONTINUANCE

Withdrawal of acknowledgement of service (O 21, R 1)

1 A party who has acknowledged service in an action may withdraw the acknowledgement at any time with the leave of the Court.

Discontinuance of action etc without leave (O 21, R 2)

2 (1) Subject to paragraph (3), 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 or her therein, as against any or all of the defendants at any time not later than 14 days after service of the defence on him or her, or, if there are 2 or more defendants, of the defence last served, by serving a notice to that effect on the defendant concerned, and filing in the Registry a copy thereof.

(2) Subject to paragraph (3), a defendant to an action begun by writ may, without the leave of the Court—

- (a) withdraw his or her defence or any part of it at any time,
- (b) discontinue a counterclaim, or withdraw any particular claim made by him or her therein, as against any or all of the parties against whom it is made, at any time not later than 14 days after service on him or her of a defence to counterclaim or, if the counterclaim is made against 2 or more parties, of the defence to counterclaim last served,

by serving a notice to that effect on the plaintiff or other party concerned, and filing in the Registry a copy thereof.

(3) A party in whose favour an interim payment has been ordered, in accordance with Order 29, Rule 11, may not discontinue any action or counterclaim, or withdraw any particular claim therein, except with the leave of the Court or the consent of all the other parties.

(4) Where there are 2 or more defendants to an action begun by writ not all of whom serve a defence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his or her defence expires after the latest date on which any other defendant serves his or her defence, paragraph (1) shall have effect as if the reference therein to the service of the defence last served were a reference to the expiration of that period.

This paragraph shall apply in relation to a counterclaim as it applies in relation to an action with the substitution for references to a defence, to the plaintiff and to paragraph (1), of references to a defence to counterclaim, to the defendant and to paragraph (2) respectively.

(5) The plaintiff in an action begun by originating summons may, without the leave of the Court, discontinue the action or withdraw any particular question or claim in the originating summons, as against any or all of the defendants at any time not later than 14 days after service on him or her of the defendant's affidavit evidence filed pursuant to Order 28, Rule 2 or, if there are 2 or more defendants, of such evidence last served, by serving a notice to that effect on the defendant concerned.

(6) When there are 2 or more defendants to an action begun by originating summons not all of whom serve affidavit evidence on the plaintiff, and the period fixed by or under these Rules for service by any of those defendants of his or her affidavit evidence expires after the latest date on which any other defendant serves his or her affidavit evidence, paragraph (5) shall have effect as if the reference therein to the service of the affidavit evidence last served were a reference to the expiration of that period.

(7) 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 a written consent to the action being withdrawn signed by all the parties.

Discontinuance of action etc 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 or her therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against any or all of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.

(2) An application for the grant of leave under this Rule may be made by summons or motion or by notice under Order 25, Rule 7.

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 or her 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 or her therein and he or she is liable to pay any other party's costs of the action or counterclaim or the costs occasioned to any other party by the claim withdrawn, then if, before payment of those costs, he or she subsequently brings an action for the same, or substantially the same, cause of action, the Court may order the proceedings in that action to be stayed until those costs are paid.

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

Withdrawal of summons (O 21, R 6)

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

[The next page is 789,421]

ORDER 22 — PAYMENT INTO AND OUT OF COURT

Payment into Court (O 22, R 1)

1 (1) In any action for a debt or damages any defendant may at any time pay into Court a sum of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.

(2) On making any payment into Court under this Rule, and on increasing any such payment already made, the defendant must give notice thereof in Form 11 in Appendix 1 to the plaintiff and every other defendant (if any); and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgement of its receipt.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) A defendant may, without leave, give notice of an increase in a payment made under this Rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.

(4) Where two or more causes of action are joined in the action and money is paid into Court under this Rule in respect of all, or some only of, those causes of action, the notice of payment—

- (a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which the payment is made; and
- (b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.

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

(6) Where a cause of action under the Compensation to Relatives Act 1920 and a cause of action under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 are joined in an action, with or without any other cause of action, the causes of action under the said Acts shall, for the purpose of paragraph (5), be treated as one cause of action.

(7) For the purposes of this Rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, if judgment were given at the date of the payment into Court.

Payment in by defendant who has counterclaimed (O 22, R 2)

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

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

Acceptance of money paid into Court (O 22, R 3)

3 (1) Where money is paid into Court under Rule 1, then subject to paragraph (2), within 21 days after receipt of the notice of payment or, where more than one payment has

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been made or the notice has been amended, within 21 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—

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

by giving notice in Form 12 in Appendix 1 to every defendant to the action.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) Where after the trial or hearing of an action has begun—

(a) money is paid into court under Rule 1; or

(b) money in court is increased by a further payment into court under that Rule, the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the Judge begins to deliver judgment.

(3) Rule 1(5) shall not apply in relation to money paid into Court in an action after the trial or hearing of the action has begun.

(4) On the plaintiff accepting any money paid into Court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him or her shall be stayed.

(5) Where money is paid into Court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or causes of action in respect of which he or she claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into Court shall, subject to Rules 4 and 9 and Order 80, Rule 10, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

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

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

- (a) by some but not all of the defendants sued jointly or in the alternative by him or her;
- (b) with a defence of tender before action; or
- (c) in satisfaction either of causes of action arising under the Compensation to Relatives Act 1920 and the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935, or of a cause of action arising under the first mentioned Act where more than one person is entitled to the money,

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

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(a), then if, either before or after accepting the money paid into Court by

some only of the defendants sued jointly or in the alternative by him or her, the plaintiff discontinues the action against all other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

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

Money remaining in court (O 22, R 5)

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

Counterclaim (O 22, R 6)

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

Non-disclosure of payment into Court (O 22, R 7)

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

Money paid into Court under order (O 22, R 8)

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

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

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

and money appropriated in accordance with this Rule shall be deemed to be money paid into Court in accordance with Rule 1 or money paid into Court with a plea of tender, as the case may be, and this Order shall apply accordingly.

To whom payment to be made (O 22, R 9)

9 Payment out of money in Court shall be made to the person entitled or, on his or her written authority, to his or her solicitor, or, if the Court so orders, to his or her solicitor without such authority.

Payment out: small intestate estates (O 22, R 10)

10 Where a person entitled to a fund in Court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his or her estate has been made and that the assets of his or her estate do not exceed \$2,000 in value, including the value of the fund or share, it may order that the fund or share shall be paid to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

Mode in which money in Court to be dealt with (O 22, R 11)

11 Money to be paid into Court shall be paid to the Registrar who shall pay it into his or her official banking account.

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ORDER 23 — SECURITY FOR COSTS

Security for costs of action etc (O 23, R 1)

1 (1) Where, on the application of a defendant to an action or other proceeding in the High 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 benefit of some other person and that there is reason to believe that he or she 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 other originating process or is incorrectly stated therein; or
- (d) that the plaintiff has changed his or her address during the course of the proceedings with a view to evading the consequences of the litigation,

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

(2) The Court shall not require a plaintiff to give security by reason only of paragraph (1)(c) if he or she satisfies the Court that the failure to state his or her address or the misstatement thereof was made innocently and without intention to deceive.

(3) The references in the foregoing paragraphs to a plaintiff and a defendant shall be construed as references to the person (howsoever described on the record) who is in the position of plaintiff or defendant, as the case may be, in the proceeding in question, including a proceeding on a counterclaim.

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 enactments (O 23, R 3)

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

The State may not be ordered to give security (O 23, R 4)

4 For the avoidance of doubt it is hereby declared that an order to give security for costs may not be made against the State in any proceedings.

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ORDER 24 — DISCOVERY AND INSPECTION OF DOCUMENTS

Mutual discovery of documents (O 24, R 1)

1 (1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

Discovery by parties without order (O 24, R 2)

2 (1) Subject to the provisions of this Rule and of Rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him or her and any other party, make and serve on that other party a list of the documents which are or have been in his or her possession, custody or power relating to any matter in question between them in the action. Without prejudice to any directions given by the Court under Order 16, Rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

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

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

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

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

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

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

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

(7) Any party to whom discovery of documents is required to be made under this Rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him or her to make an affidavit verifying the list he or she is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

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

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

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

Order for determination of issue etc before discovery (O 24, R 4)

4 (1) Where on an application for an order under Rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this Rule for the determination of an issue or question, Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

Form of list and affidavit (O 24, R 5)

5 (1) A list of documents made in compliance with Rule 2 or with an order under Rule 3 must be in Form 13 in Appendix 1, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form 14 in Appendix 1.

[para (3) am LN 67 of 1993 r 9, opn 9 Aug 1993]

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 by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under Rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him or her 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 or her possession, custody or power, and if not then in his or her possession, custody or power, when he or she parted with it and what has become of it.

(2) An order may be made against a party under this Rule notwithstanding that he or she may already have made or been required to make a list of documents or affidavit under Rule 2 or 3.

(3) An application for an order under this Rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this Rule has, or at some time had, in his or her possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Discovery to be ordered only if necessary (O 24, R 8)

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

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, whether in compliance with Rule 2 or with an order under Rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he or she objects to produce) and to take copies thereof and, accordingly, he and she must when he or she serves the list on the other party also serve on him or her a notice stating a time within 7 days after the service thereof at which the said 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 on any other party in whose pleadings or affidavits reference is made to any document requiring him or her to produce that document for the inspection of the party giving the notice and to permit him or her to take copies thereof.

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he or she does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he or she objects to produce and on what grounds.

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 inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there;

then, subject to Rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

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

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

Order for production to Court (O 24, R 12)

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

Production to be ordered only if necessary etc (O 24, R 13)

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

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

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.

Document disclosure of which would be injurious to public interest: saving (O 24, R 15)

15 The foregoing provisions of this Order shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

Failure to comply with requirement for discovery etc (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 Rules 3(2) and 11(1)—

- (a) that party shall not be entitled subsequently to produce a document in respect of which default was made without the leave of the Court; and
- (b) the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he or she shall be liable to committal.

(3) Service on a party's barrister and solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he or she had no notice or knowledge of the order.

(4) A barrister and solicitor on whom such an order made against his or her client is served and who fails without reasonable excuse to give notice thereof to his or her client shall be liable to committal.

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

Summons for directions (O 25, R 1)

1 (1) With a view to providing, in every action to which this Rule applies, an occasion for the consideration by the Court of the preparations for the trial of the action, so that—

- (a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with; and
- (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff must, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these Rules referred to as a summons for directions) returnable in not less than 14 days.

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

- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;
- (b) actions in which the plaintiff or defendant has applied under Order 18, Rule 20, for trial without pleadings or further pleadings and directions have been given under that Rule;
- (c) actions in which an order has been made under Order 24, Rule 4, for the trial of an issue or question before discovery;
- (d) actions in which directions have been given under Order 29, Rule 7;
- (e) actions in which an order for the taking of an account has been made under Order 43, R 1;
- (f) actions for personal injuries for which automatic directions are provided by Rule 8.

(3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, Rule 2, the period of 14 days referred to in paragraph (1) of that Rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this Rule shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said Rule 2 as so extended.

(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this Rule, the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this Rule to the plaintiff and defendant shall be construed respectively as references to the party making the counter claim and the defendant to the counterclaim.

(7) Notwithstanding anything in paragraph (1), any party to an action to which this Rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are 2 or more defendants, at least one of them has given such notice.

Duty to consider all matters (O 25, R 2)

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

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

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

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

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the subsequent Rules of this Order, are required to be considered on the hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, on the summons for directions, an action is ordered to be transferred to a Magistrates Court or some other court or tribunal, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order on the summons.

(6) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 2 days' notice to the other parties.

Particular matters for consideration (O 25, R 3)

3 On the hearing of the summons for directions the Court shall in particular consider, if necessary of its own motion, whether for the purpose of saving costs any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say—

- (a) section 3(2) of the Evidence Act 1944 (which enables the Court to order the admission in evidence of statements in documents notwithstanding that the makers of the statements are not called as witnesses and notwithstanding that the original document is not produced);
- (b) Order 20, Rule 5 and Order 38, Rules 2 to 7.

Admissions and agreements to be made (O 25, R 4)

4 At the hearing of the summons for directions, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the

summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

Limitation of right of appeal (O 25, R 5)

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

Duty to give all information at hearing (O 25, R 6)

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

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

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

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

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

(4) Notwithstanding anything in the foregoing provisions of this Rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this Rule or by the advisers of any party otherwise than with the consent of that party.

Duty to make all interlocutory applications on summons for directions (O 25, R 7)

7 (1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he or she may desire as to any matter capable of being dealt with on an interlocutory application in the action and must not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he or she must, not less

than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

Automatic directions in personal injury actions (O 25, R 8)

8 (1) When the pleadings in any action to which this Rule applies are deemed to be closed the following directions shall take effect automatically—

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, Rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;
- (b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he or she shall, within 10 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;
- (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding subparagraph, except that the number of expert witnesses shall be limited in any case to 2 medical experts and one expert of any other kind;
- (d) photographs, a sketch plan and the contents of any police accident report book shall be receivable in evidence at the trial, and shall be agreed if possible.

(2) Where paragraph 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 purposes of this Rule—

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

documents relating to special damages include documents relating to any industrial injury, industrial disablement or sickness benefit rights.

(5) This Rule applies to any action for personal injuries except any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

Strike out for want of prosecution (O 25, R 9)

9 (1) If no step has been taken in any cause or matter for 6 months then any party on application or the Court of its own motion may list the cause or matter for the parties to show cause why it should not be struck out for want of prosecution or as an abuse of the process of the Court.

(2) Upon hearing the application the Court may either dismiss the cause or matter on such terms as may be just, or deal with the application as if it were a summons for directions.

[r 9 insrt LN 47 of 2005 r 3, opn 19 Sep 2005]

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[The next page is 789,821]

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ORDER 26 — INTERROGATORIES

Discovery by interrogatories (O 26, R 1)

- 1 (1) A party to any cause or matter may apply to the Court for an order—
- (a) giving him or her leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter; and
 - (b) requiring that other party to answer the interrogatories on affidavit within such period as may be specified in the order.

(2) A copy of the proposed interrogatories must be served with the summons, or the notice under Order 25, Rule 7, by which the application for such leave is made.

(3) On the hearing of an application under this Rule, the Court shall give leave as to such only of the interrogatories as it considers necessary either for disposing fairly of the cause or matter or for saving costs; and in deciding whether to give leave the Court shall take into account any offer made by the party to be interrogated to give particulars or to make admissions or to produce documents relating to any matter in question.

(4) A proposed interrogatory which does not relate to such a matter as is mentioned in paragraph (1) shall be disallowed notwithstanding that it might be admissible in oral cross-examination of a witness.

Interrogatories where party is a body of persons (O 26, R 2)

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

Statement as to party etc required to answer (O 26, R 3)

3 Where interrogatories are to be served on 2 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 4)

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

Insufficient answer (O 26, R 5)

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

Failure to comply with order (O 26, R 6)

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

(2) If a party against whom an order is made under Rule 1 or 5 fails to comply with it, then, without prejudice to paragraph (1), he or she 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 or she had no notice or knowledge of the order.

(4) A solicitor on whom an order to answer interrogatories made against his or her client is served and who fails without reasonable excuse to give notice thereof to his or her client shall be liable to committal.

Use of answers to interrogatories at trial (O 26, R 7)

7 A party may put in evidence at the trial of a cause or matter, or of any issue therein, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the whole of that answer, but the Court may look at the whole of the answers and if of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the Court may direct that that other answer or part shall be put in evidence.

Revocation and variation of orders (O 26, R 8)

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

[The next page is 789,921]

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 or her pleading or otherwise in writing, that he or she admits the truth of the whole or any part of the case of any other party.

Notice to admit (O 27, R 2)

2 (1) A party to a cause or matter may not later than 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him or her to admit, for the purpose of that cause or matter only, such facts or such part of his or her case as may be specified in the notice.

(2) An admission made in compliance with a notice under this Rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the Court may at any time allow a party to amend or withdraw an admission so made by him or her on such terms as may be just.

Judgment on admissions (O 27, R 3)

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

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 of Order 24 shall, unless the Court otherwise orders, be deemed to admit—

- (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and
- (b) that any document described therein as a copy is a true copy.

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

(2) If before the expiration of 21 days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is the later, the party on whom the list is served serves on the party whose list it is a notice stating, in relation to any document specified therein, that he or she does not admit the authenticity of that document and requires it to be proved at the trial, he or she shall not be deemed to make any admission in relation to that document under paragraph (1).

(3) A party to a cause or matter by whom a list of documents is served on any other party in pursuance of any provision of Order 24 shall be deemed to have been served by that other party with a notice requiring him or her to produce at the trial of the cause or matter such of the documents specified in the list as are in his or her possession, custody or power.

(4) The foregoing provisions of this Rule apply in relation to an affidavit made in

compliance with an order under Order 24, Rule 7, as they apply in relation to a list of documents served in pursuance of any provision of that Order.

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 21 days after the cause or matter is set down for trial serve on any other party a notice requiring him or her 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 or she must, within 21 days after service of the notice, serve on the party by whom it was given a notice stating that he or she does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with paragraph (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the Court otherwise orders.

(4) Except where Rule 4(3) applies, a party to a cause or matter may serve on any other party a notice requiring him or her to produce the documents specified in the notice at the trial of the cause or matter.

[The next page is 790,021]

ORDER 28 — ORIGINATING SUMMONS PROCEDURE

Application (O 28, R 1)

1 The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these Rules or by or under any Act; and, subject as aforesaid, Order 32, Rule 5, shall apply in relation to originating summonses as it applies in relation to other summonses.

Affidavit evidence (O 28, R 2)

2 (1) In any cause or matter begun by originating summons (not being an *ex parte* summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are 2 or more defendants, at least one of them has acknowledged service, file with the Registry the affidavit evidence on which he or she intends to rely.

(2) In the case of an *ex parte* summons the applicant must file his or her affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are 2 or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he or she must within 28 days after service on him or her of copies of the plaintiff's affidavit evidence under paragraph (3) file his or her own affidavit evidence with the Registry and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file with the Registry further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this Rule apply subject to any direction by the Court to the contrary.

(9) In this Rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

Fixing time for attendance of parties before Court (O 28, R 3)

3 (1) In the case of an originating summons which is in Form 3 in Appendix 1 the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under Rule 2, obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form 15 in Appendix 1) sealed with the seal of the Court.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form 14 in Appendix 1, or for the hearing of an *ex parte* originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and, in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on

the next day but one before the day so fixed, and the time limits for lodging affidavits under Rule 2(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he or she has acknowledged service of the originating summons.

Notice of hearing (O 28, R 4)

4 (1) Not less than 4 clear days before the day fixed under Rule 3 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form 3 in Appendix 1, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party who has acknowledged service of the summons and, if the first mentioned party is a defendant, on the plaintiff.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) Not less than 4 clear days before the day fixed under Rule 3 for the hearing of an originating summons which is in Form 4 in Appendix 1, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for hearing.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Directions etc by Court (O 28, R 5)

5 (1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing, or order, the cause or matter begun by it to be transferred to a Magistrates Court or some other Court or tribunal or make an order under Rule 9, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.

Adjournment of summons (O 28, R 6)

6 (1) The hearing of the summons by the Court may (if necessary) be adjourned from

time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under Rule 5 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, the party on whose application the day for its hearing was fixed under Rule 3 may restore it to the list on 2 days' notice to all the other parties (except, unless the Court otherwise directs, a defendant who, in the case of a summons in Form 13 in Appendix 1, has failed to acknowledge service of the summons or, in the case of a summons in Form 14 in Appendix 1, has not been served with the summons), and any of those parties may restore it with the leave of the Court.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Applications affecting party who has not acknowledged service (O 28, R 7)

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

Counterclaim by defendant (O 28, R 8)

8 (1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he or she has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this Rule must at as early a stage in the proceedings as is practicable, inform the Court of the nature of his or her 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 5 or Rule 9.

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

Continuation of proceedings as if cause or matter begun by writ (O 28, R 9)

9 (1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This Rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Every 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 10)

10 Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a Magistrates Court or some other Court or tribunal or makes an order in relation to it under Rule 9 or some other provision of these Rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.

Failure to prosecute proceedings with dispatch (O 28, R 11)

11 (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 dispatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under Rule, 8 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under Rule 9, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this Rule shall not apply in relation to the cause or matter after the making of the order.

Abatement etc of action (O 28, R 12)

12 Order 34, Rule 5, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

[The next page is 790,121]

ORDER 29 — INTERLOCUTORY INJUNCTIONS, INTERIM
PRESERVATION OF PROPERTY, INTERIM PAYMENTS ETC

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 writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency and the delay caused by proceeding in the ordinary way would entail irreparable or serious mischief such application may be made *ex parte* on affidavit but except as aforesaid such application must be made by notice of motion or summons.

[para (2) subst LN 61 of 1991 r 2, opn 15 Nov 1991]

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

Detention, preservation etc 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 authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.

(4) An order under this Rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this Rule must be made by summons or by notice under Order 25, Rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he or she acknowledges service of the writ or originating summons by which the cause or matter was begun.

Power to order samples to be taken etc (O 29, R 3)

3 (1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorise or require any sample to be taken of any property which is the subject matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

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

Sale of perishable property etc (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 property (other than land) which is the subject matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith. In this paragraph "land" includes any interest in, or right over, land.

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

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.

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

Recovery of personal property subject to lien etc (O 29, R 6)

6 Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

Directions (O 29, R 7)

7 (1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

(2) If, in an action begun by writ, not being any such action as is mentioned in Order 25, Rule 1(2)(a) to (c) and (e), the Court thinks fit to give directions under this Rule before the summons for directions, Rules 2 to 7 of that Order shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

Allowance of income of property *pendente lite* (O 29, R 8)

8 Where any real or personal property forms the subject matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period

as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

2. INTERIM PAYMENTS

Interpretation of Part 2 (O 29, R 9)

9 In this Part of this Order—

interim payments, in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he or she may be held liable to pay to or for the benefit of the plaintiff; and 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 29, R 10)

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

(2) An application under this Rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.

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

- (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application.

(4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

Order for interim payment in respect of damages (O 29, R 11)

11 (1) If, on the hearing of an application under Rule 10 in an action for damages, the Court is satisfied—

- (a) that the defendant against whom the order is sought (in this paragraph referred to as “the respondent”) has admitted liability for the plaintiff’s damages;
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are 2 or more defendants, against any of them,

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

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely—

- (a) a person who is insured in respect of the plaintiff’s claim;
- (b) a public authority; or

- (c) a person whose means and resources are such as to enable him or her to make the interim payment.

Order for interim payment in respect of sums other than damages (O 29, R 12)

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

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

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, crossclaim or counterclaim on which the defendant may be entitled to rely.

Manner of payment (O 29, R 13)

13 (1) Subject to Order 80, Rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into Court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him or her at such time or times as the Court thinks fit.

(2) An application under the preceding paragraph for money in Court to be paid out may be made *ex parte*, but the Court may direct a summons to be issued.

(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 10 (O 29, R 14)

14 Where an application is made under Rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

Non-disclosure of interim payment (O 29, R 15)

15 The fact that an order has been made under Rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any question or issue as to liability or damages until all questions of liability and amount have been determined.

Payment into Court in satisfaction (O 29, R 16)

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

Adjustment on final judgment or order or on discontinuance (O 29, R 17)

17 Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his or her 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;
- (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 or her 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 29, R 18)

18 The preceding Rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

[The next page is 790,221]

Service 0

790,126

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 summons or motion.

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he or she may do so *ex parte* on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons returnable on such date as the Court may direct, to be issued.

Giving of security by receiver (O 30, R 2)

2 (1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be receiver a person is required to give security in accordance with this Rule, he or she must give security approved by the Court duly to account for what he or she receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the Registry and it shall be kept there as of record until duly vacated.

Remuneration of receiver (O 30, R 3)

3 A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorised by the Court, and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

Service of order and notice (O 30, R 4)

4 A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause of matter in which the receiver has been appointed.

Receiver's accounts (O 30, R 5)

5 (1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.

(2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.

(3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his or her accounts with the Court and a copy of such notice shall be lodged in the Registry.

(4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the Registrar, and an order may thereupon be made as to any costs or expenses incurred.

Payment into Court by receiver (O 30, R 6)

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

Default by receiver (O 30, R 7)

7 (1) Where a receiver fails to attend for the examination of any account of his or her, or fails to submit any account, provide access to any books or papers or do any other thing which he or she is required to submit, provide or do, he or she and any or all of the parties to the cause or matter in which he or she was appointed may be required to attend in Chambers to show cause for the failure, and the Court may, either in Chambers or after adjournment into Court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or her or fails to submit any account or fails to pay into Court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he or she has failed to pay any such sum into Court, charge him or her with interest, if any, as may be currently payable in respect of judgment debts in the High Court.

Directions to receivers (O 30, R 8)

8 A receiver may at any time request the Court to give him or her directions and such a request shall state in writing the matters with regard to which directions are required.

[The next page is 790,321]

ORDER 31 — SALES ETC OF LAND BY ORDER OF COURT

Power to order sale of land (O 31, R 1)

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

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

Manner of carrying out sale (O 31, R 2)

2 (1) Where an order is made, whether in Court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he or she thinks fit, or may direct that the land be sold in such manner as the Court may direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The Court may give 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;
- (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 or her.

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 must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
- (b) in any other case, by the 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 must file the certificate and any affidavit in the Registry.

Mortgage, exchange or partition under order of the Court (O 31, R 4)

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

[The next page is 790,421]

Service 0

790,322

ORDER 32 — APPLICATIONS AND PROCEEDINGS IN CHAMBERS

Mode of making application (O 32, R 1)

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

Issue of summons (O 32, R 2)

2 (1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed by the Registrar.

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

Service of summons (O 32, R 3)

3 A summons asking only for the extension or abridgment of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these Rules otherwise provides, a summons must be served on every other party not less than 2 clear days before the day so specified.

Adjournment of hearing (O 32, R 4)

4 The hearing of a summons may be adjourned from time to time, either generally or to restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

Proceeding in absence of party failing to attend (O 32, R 5)

5 (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his or her absence if, having regard to the nature of the application, it thinks it expedient so to do.

(2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.

(3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may rehear the summons.

(4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

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 A writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry by or on the authority of the Registrar.

Persons authorised to administer oaths (O 32, R 8)

8 The following officers of the Judicial Department, namely the Registrar, any officer being a Commissioner for Oaths or a Magistrate, and any officer specially authorised by

the Chief Justice in that behalf shall have authority to administer oaths and take affidavits for the purpose of proceedings in the High Court.

Jurisdiction of the Registrar (O 32, R 9)

9 The Registrar shall, subject to the directions of the Chief Justice given generally or in respect of any particular case, have the powers, authority and jurisdiction of a Judge in chambers with respect to the following matters—

- (a) the place, time for setting down for trial, and mode of trial and other matters usually arising on a summons for directions;
- (b) the discovery of documents, and production of documents for inspection and discovery by interrogatories;
- (c) the amendment of a writ, pleading, memorandum of appearance, or other document;
- (d) extension or enlargement of time;
- (e) renewal of writ;
- (f) addition, omission or substitution of parties;
- (g) substituted service;
- (h) garnishee orders nisi, orders to third persons to attend garnishee proceedings (under Order 49, Rule 6) and garnishee orders absolute;
- (i) security for costs;
- (j) leave to enter judgment for costs under Order 13, Rule 6(2);
- (k) transfer of proceedings under Order 4, Rule 1;
- (l) order for pre-trial conference under Order 34, Rule 2(3);
- (m) leave to withdraw summons under Order 21, Rule 6;
- (n) judgment or order on an admission, or on a summons under Order 27, Rule 3, for a sum of money only;
- (o) leave to serve writ out of the jurisdiction;
- (p) orders by consent;
- (q) order admitting to prove a will as contained in a copy;
- (r) extension of time for registration of a Bill of Sale.

[r 9 subst LN 73 of 1997 r 3, opn 1 Aug 1997]

Reference of matter to Judge (O 32, R 10)

10 The Registrar may refer to a Judge any matter which he or she thinks should properly be decided by a Judge and the Judge may either dispose of the matter or refer it back to the Registrar with such directions as he or she thinks fit.

Power to direct hearing in Court (O 32, R 11)

11 (1) The Judge in chambers may direct that any summons, application or appeal shall be heard in Court or shall be adjourned into Court to be so heard if he or she considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in Court by virtue of a direction under paragraph (1) may be adjourned from Court into chambers.

The Registrar may summon parties etc (O 32, R 12)

12 (1) For the purpose of any proceedings before him or her the Registrar may—

- (a) issue a summons requiring any party to the proceedings to attend before him or her;
- (b) at the request of any such party, issue a summons requiring any person to attend before him or her as a witness;

- (c) require the production of documents; and
- (d) examine any party or witness either orally or on interrogatories.

(2) A summons under paragraph (1)(b) must be served personally on the person against whom it is issued.

(3) If a person refuses or fails to obey a summons duly served on him or her under this Rule the Registrar may make an order requiring that person to attend before him or her.

(4) The Registrar may examine any party or witness either orally or on interrogatories.

Obtaining assistance of experts (O 32, R 13)

13 If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person especially qualified to advise on that matter and may act upon his or her opinion.

Notice of filing etc of affidavit (O 32, R 14)

14 Any party—

- (a) filing an affidavit intended to be used by him or her in any proceedings in chambers; or
- (b) intending to use in any such proceedings any affidavit filed by him or her in previous proceedings,

must serve every other party with a copy of the affidavit not less than 2 clear days before the hearing.

Disposal of matters in chambers (O 32, R 15)

15 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 or she may specify shall be disposed of in chambers.

Papers for use of Court etc (O 32, R 16)

16 The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

Notes of proceedings in chambers (O 32, R 17)

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

Wasted hearing fee (O 32, R 18)

18 (1) Upon filing a summons, motion, application or appeal in chambers the party seeking relief shall forthwith pay such fee as is set out in Appendix 2.

(2) Where the hearing in chambers is adjourned and the Court is satisfied that the cause or partial cause of the adjournment is the default of a party or his or her legal representative the Court may order that party or the legal representative to pay a wasted hearing fee as set out in Appendix 2.

(3) A wasted hearing fee shall not be recoverable in costs.

(4) Failure to comply with a wasted hearing fee order within the time specified by the Court shall debar the party or the legal representative from taking any further part in the proceedings.

Providing that the Court may for good cause waive all or part of a hearing or wasted hearing fee and may enlarge the time previously specified for the payment of such fee.

[r 18 insrt LN 72 of 1998 r 2, opn 15 May 1998]

Jurisdiction of the Master (O 32, R 19)

19 A Master of the High Court shall, subject to the directions of the Chief Justice given generally or in respect of any particular case have the powers, authority and jurisdiction conferred on the Registrar by these Rules.

[r 19 insrt LN 47 of 2005 r 4, opn 19 Sep 2005]

[The next page is 790,521]

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790,424

ORDER 33 — PLACE AND MODE OF TRIAL

Place of trial (O 33, R 1)

1 Subject to the provisions of these Rules, the place of trial of a cause or matter, or of any question or issue arising therein, shall be determined by the Court.

Mode of trial (O 33, R 2)

2 Subject to the provisions of these Rules, a cause or matter, or any question or issue arising therein, may be tried before—

- (a) a Judge alone; or
- (b) a Judge with the assistance of assessors.

Time etc of trial of questions or issues (O 33, R 3)

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

Determining the place and mode of trial (O 33, R 4)

4 (1) In every action begun by writ, an order made on the summons for directions shall determine the place and mode of the trial, and any such order may be varied by a subsequent order of the Court made at or before the trial.

(2) In any such action different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

Split trial: offer on liability (O 33, R 5)

5 (1) This Rule applies where an order is made under Rule 4(2) for the issue of liability to be tried before any issue or question concerning the amount of damages to be awarded if liability is established.

(2) After the making of an order to which paragraph (1) applies, any party against whom a finding of liability is sought may (without prejudice to his or her defence) make a written offer to the other party to accept liability up to a specified proportion.

(3) Any offer made under the preceding paragraph may be brought to the attention of the Judge after the issue of liability has been decided, but not before.

Trial with assistance of assessors (O 33, R 6)

6 A trial of a cause or matter with the assistance of assessors shall take place in such manner and on such terms as the Court may direct.

Dismissal of action etc after decision of preliminary issue (O 33, R 7)

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

[The next page is 790,621]

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790,522

ORDER 34 — SETTING DOWN FOR TRIAL

Time for setting down action (O 34, R 1)

1 (1) Every order made in an action which provides for trial before a Judge shall, wherever the trial is to take place, fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

Pre-trial conference (O 34, R 2)

2 (1) The provisions of this Rule apply only in proceedings in which all the parties are represented by solicitors.

(2) Before an action may be set down for trial the solicitor acting for any of the parties shall make a written request to all the other solicitors acting for other parties to the action to attend a conference at a mutually convenient time and place, with the object of reaching agreement as to possible ways of curtailing the duration of the trial, and, in particular, as to all or any of the following matters—

- (a) the possibility of obtaining admission of facts or documents;
- (b) the holding of inspections and examinations;
- (c) the discovery of documents;
- (d) the exchange between parties of reports of experts;
- (e) the plans, diagrams, photographs, models and similar articles to be used at the trial;
- (f) the quantum of damages; and
- (g) the consolidation of trials.

(3) If any solicitor refuses to attend such a conference, the solicitor requesting the same may apply to the Court for an order that such conference be held, and the Court may order that such conference be held at such time and place and for such purpose as shall be specified in the order, or may order that such conference need not be held.

(4) At the conclusion of any such conference the solicitors attending it shall draw up and sign a minute containing a succinct statement of—

- (a) the matters, if any, upon which they are agreed; and
- (b) the issues whether of fact, law or procedure remaining for determination by the Court.

[para (4) subst LN 67 of 1993 r 7, opn 9 Aug 1993]

(5) When a solicitor sets an action down for trial or makes a written request for the date of the hearing thereof he or she must state in writing whether a pretrial conference under this Rule has been held and if not must state the reasons therefore.

[para (5) subst LN 67 of 1993 r 7, opn 9 Aug 1993]

(6) Before the trial proceeds the Judge may call to his or her chambers the solicitors representing the parties in the action with a view to bringing about an agreement on any matter likely to curtail the duration of the trial or save the costs.

(7) When giving judgment on the action the Court may award portions of the costs against any parties who should have agreed to certain matters at a pretrial conference but had refused to do so, if such an agreement would have curtailed the duration of the trial or saved the costs.

Setting down for trial on points of law only or where pretrial conference has been held (O 34, R 3)

3 (1) In cases where—

- (a) the parties have stated a special case for the adjudication of the Court on a question of law only; or
- (b) an order has been made under Order 33, Rule 4 that a question of law shall be tried before other questions or issues,

any of the parties may apply to the Registrar to set the case down for trial on a date to be agreed upon by all the parties and the Registrar.

(2) In cases where the pleadings have been closed and a pretrial conference has been held, the plaintiff may apply to the Registrar to set the case down for trial and, if he or she does not so apply within 30 days of the date on which the pleadings were closed or on which the pretrial conference was held (whichever shall be the later date) either the plaintiff or the defendant may set the case down for trial.

(3) At least 2 days notice of the date on which application will be made under paragraph (1) or (2) must be given to all other parties who shall be entitled to appear before the Registrar and to state any objections they may have to the proposed date of set down.

(4) When a case has been set down the party who sets it down shall forthwith give written notice of the set down to all other parties. Thereafter the party who sets the case down may withdraw the set down only with the consent of all the other parties or by order of the Court given after application has been made on notice to all other parties.

(5) After a set down has been withdrawn either party may apply to the Registrar for a new date on which the case may be set down. Notice of such application must be given to all the parties.

Lodging of documents when setting down (O 34, R 4)

4. (1) In order to enter an action for trial, the party seeking to enter it for trial shall take out a summons returnable before the Registrar applying for an order that the action be entered for trial at the place specified in the order made on the summons for directions.

(2) The party taking out the summons shall file in the Registry 2 certified true copies (which may be photostat copies or copies made by a similar process) of the following documents, bound up in book form in chronological order—

- (a) the writ;
- (b) the pleadings (including any affidavits ordered to stand as pleadings), any request or order for particulars and the particulars given;
- (c) the minutes of a pretrial conference, if any, held under Rule 2; and
- (d) all orders made on the summons for directions.

One set of such copies shall serve as the record and the other shall be for the use of the Judge.

(3) At the hearing of the summons the Registrar shall enquire of the parties whether his or her assistance would be likely to facilitate a settlement or compromise of the action before it is entered for trial.

(4) If the parties agree that further time is required for consideration of a settlement of the action the Registrar shall adjourn the hearing to such time and place as he or she thinks fit.

(5) Where at the hearing of the summons or at any adjournment thereof the parties agree that such assistance is desirable to facilitate a settlement, the Registrar may in his or her discretion either afford such assistance himself or herself, or adjourn the hearing

and direct that the matter be referred to a person designated by him or her for the purpose of facilitating the bringing about of a settlement.

(6) Where the Registrar refers the summons to another person under paragraph (5), that person shall hear and discuss the matter with the parties in an attempt to bring about a settlement and shall report to the Registrar either the terms of settlement that have been reached or his or her failure to bring about a settlement.

(7) Except where a party having been duly served with the summons fails to attend at the hearing, no order to enter an action for trial shall be made unless the Registrar is satisfied that the parties have had a reasonable opportunity to consider and reach a settlement or that no settlement appears to be likely to be reached between them.

(8) No court record shall be kept of any such discussions held with a view to bringing about a settlement and no statement, concessions or admissions made thereat shall be admissible in evidence at the trial of the action or the trial of any other action.

(9) Any such discussions as aforesaid shall, unless a settlement is reached and entered by consent as a judgment of the Court, be without prejudice and shall be deemed to have been held in confidence on an occasion of absolute privilege.

(10) No process of the Court shall be issued for the purpose of enforcing the attendance at any court or tribunal of any person as a witness to give evidence of anything said or disclosed at the hearing of a summons for an order for the entry of an action for trial, or any adjournment thereof, or at any discussion between the parties by a person referred to in paragraph (6).

(11) At the hearing of any summons or any adjournment thereof the Registrar, after hearing the parties, may either enter judgment by consent on any terms agreed or order that the case be entered for trial or make such other order as may be appropriate.

(12) In this Rule the words "party" and "parties" mean, where a plaintiff or defendant is legally represented, his or her barrister and solicitor, and where he or she is not so represented, the plaintiff or defendant in person. In any case where the plaintiff or defendant is legally represented he or she may, if he or she wishes, be present in chambers in person with his or her barrister and solicitor or, if his or her barrister and solicitor consents, without his or her barrister and solicitor.

Abatement etc of action (O 34, R 5)

5 (1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or devolves on some other person, the barrister and solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the Registrar who shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

Wasted hearing fee (O 34, R 6)

6 (1) Upon filing a summons to set an action down for trial the plaintiff shall pay such fee as is set out in Appendix 2.

(2) When the trial of an action is adjourned and the Court is satisfied that the cause or partial cause of the adjournment is the default of a party or his or her legal representative the Court may order that party or the legal representative to pay a wasted hearing fee as is set out in Appendix 2.

(3) A wasted hearing fee shall not be recoverable in costs.

(4) Failure to comply with a wasted hearing fee order within the time specified by the Court shall debar the party or the legal representative from taking any further part in the proceedings. Providing that the Court may for good cause waive all or part of a hearing or wasted hearing fee and may enlarge the time previously specified for the payment of such fee.

[r 6 insrt LN 72 of 1998 r 3, opn 15 May 1998]

[The next page is 790,721]

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 action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a Judge.

(2) If, when the trial of an action is called on, one party does not appear, the Judge may proceed with the trial of the action or any counterclaim in the absence of that party.

Judgment etc given in absence of party may be set aside (O 35, R 2)

2 (1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this Rule must be made within 7 days after the trial.

Adjournment of trial (O 35, R 3)

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

Change of place of trial etc (O 35, R 4)

4 If the Judge in any place is of opinion that any cause or matter set down for trial at that place cannot, for any sufficient reason, be conveniently tried at that place, or at that place and at the appointed time, he or she may, upon or without an application for that purpose, change the place of trial or postpone the trial.

Order of speeches (O 35, R 5)

5 (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 or her case.

(3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his or her behalf has been given, make a second speech closing his or her case and the defendant shall then state his or her case.

(4) If the defendant elects to adduce evidence, he or she may, after any evidence on behalf of the plaintiff has been given, open his or her case and, after the evidence on his or her behalf has been given, make a second speech closing his or her case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are 2 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 or her case in the order in which his or her name appears on the record;
- (b) if each of them elects to adduce evidence, each of them may open his or her 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 or her 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 2 or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him or her and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

Inspection by Judge (O 35, R 6)

6 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.

Death of party before giving of judgment (O 35, R 7)

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

List of exhibits (O 35, R 8)

8 (1) The Court clerk in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the 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 Court clerk shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have 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 It shall be the duty of every party to an action who has put in any exhibit to apply to the Court clerk immediately after the trial for the return of the exhibit, and, so far as is practicable, regard being had to the nature of the exhibit, to keep it duly marked and labelled as before, so that in the event of an appeal to the Court of Appeal or the Supreme Court of Fiji he and she may be able to produce the exhibit so marked and labelled at the hearing of the appeal in case he and she is required by the Court of Appeal or the Supreme Court of Fiji to do so.

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 motion, provided that where a law officer makes a written request in that behalf, documents so impounded shall be delivered into his or her custody.

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

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[The next page is 790,821]

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ORDER 36 — INQUIRIES BY THE REGISTRAR AND SPECIAL REFEREES

Application and interpretation (O 36, R 1)

1 In this Order the Registrar's or special referees' business includes, without prejudice to any right to a trial, any cause or matter—

- (a) which involves a prolonged examination of documents or accounts, or a technical, scientific or local investigation such as could more conveniently be conducted by the Registrar or special referee; or
- (b) for which a report by the Registrar or special referee is desirable in the interests of one or more of the parties on grounds of expedition, economy or convenience or otherwise.

Reference to the Registrar or special referee (O 36, R 2)

2 (1) In any cause or matter the Court may refer to the Registrar or to a special referee (being a person nominated by the Court) for inquiry and report any question or issue of fact or mixed law and fact arising therein, and, unless the Court otherwise orders, further consideration of the cause or matter shall stand adjourned until the receipt of the report.

(2) Before a special referee enters upon the reference, the Registrar shall supply him or her with—

- (a) a certified copy of the order of reference;
- (b) a copy of the pleadings; and
- (c) a copy of such other documents as may be directed by the Court.

(3) The court may make such order as it thinks fit to provide for the remuneration of a special referee and may give such directions as may be necessary for the collection thereof from the parties and for the payment thereof to the special referee.

Report on reference under Rule 2 (O 36, R 3)

3 (1) The report made by the Registrar or special referee in pursuance of a reference under this Order shall be made to the Court and notice thereof served on the parties to the reference.

(2) The Registrar or the special referee may in his or her report submit any question arising therein for the decision of the Court or make a special statement of facts from which the Court may draw such inferences as it thinks fit.

(3) On the receipt of the report of the Registrar or special referee the Court may—

- (a) adopt the report in whole or in part;
- (b) vary the report;
- (c) require an explanation from him or her;
- (d) remit the whole or any part of the question or issue originally referred to him or her for further consideration by him or her or any other special referee; or
- (e) decide the question or issue originally referred to him on the evidence taken before him or her, either with or without additional evidence.

(4) When the report has been made, an application to vary the report or remit the whole or any part of the question or issue originally referred may be made on the hearing by the Court of the further consideration of the cause or matter, after giving not less than 4 days' notice thereof, and any other application with respect to the report may be made on that hearing without notice.

(5) Where the Court orders that the further consideration of the cause or matter in question shall not stand adjourned until the receipt of the report, the order may contain

directions with respect to the proceedings on the receipt of the report, and the foregoing provisions of this Rule shall have effect subject to any such directions.

Powers etc of official referees (O 36, R 4)

4 (1) Subject to any directions contained in the order referring any business to the Registrar or special referee—

- (a) the Registrar or special referee shall for the purpose of dealing with any matter (including any interlocutory application therein) or any other business referred to him or her have the same jurisdiction, powers and duties (including the power of committal and discretion as to costs) as a Judge, exercisable or, as the case may be, to be performed as nearly as circumstances admit in the like cases, in the like manner and subject to the like limitations; and
- (b) proceedings before the Registrar or special referee shall, as nearly as circumstances admit, be conducted in the like manner as the like proceedings before a Judge.

(2) No steps or proceedings shall be taken to enforce any order made or any direction given by the Registrar or special referee in the exercise of any of the powers referred to in paragraph (1)(a) until such order or direction has been confirmed by a Judge.

(3) The Registrar or special referee may hold any proceeding before him or her at any place which appears to him or her to be convenient and may adjourn the proceedings from place to place as he or she thinks fit.

[The next page is 790,921]

ORDER 37 — ASSESSMENT OF DAMAGES

Assessment of damages (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 may, after obtaining the necessary appointment from the Registrar and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 65, Rule 9, a notice under this Rule must be served on the party against whom the judgment is given.

(3) Without prejudice to the powers of the Registrar under Order 32, Rule 12, the attendance of witnesses and the production of documents before the proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

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 or she shall certify the amount of the damages and file the certificate in the Registry.

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 for failure to give notice of intention to defend or in default of defence, and the action proceeds against other defendants, the damages under the judgment shall be assessed at the trial unless the Court otherwise orders.

Assessment by special referee etc (O 37, R 4)

- 4 (1) Where judgment is given for damages to be assessed, the Court may order—
- that the assessment of the damages be referred to a special referee;
 - that the damages be assessed by the Registrar; or
 - that the action shall proceed to trial before a Judge as respects the damages.

(2) Where the Court orders that the action shall proceed to trial, Order 25, Rules 2 to 7, shall, with the omission of so much of Rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application to the Court in pursuance of which the Court makes the order, were a summons for directions under Order 25.

Assessment of value (O 37, R 5)

5 The foregoing provisions of this Order shall apply in relation to a judgment for the value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed, and references in those provisions to the assessment of damages shall be construed accordingly.

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.

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ORDER 38 — EVIDENCE

1. GENERAL RULES

General rule, witnesses to be examined orally (O 38, R 1)

1 Subject to the provisions of these Rules and of the Evidence Act 1944 and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

Evidence by affidavit (O 38, R 2)

2 (1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

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

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.

(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 district, by the production of a specified newspaper which contains a statement of that fact.

Limitation of expert evidence (O 38, R 4)

4 The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

Limitation of plans etc in evidence (O 38, R 5)

5 Unless, at or before the trial, the Court otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before

the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

Revocation or variation of orders under Rules 2 to 5 (O 38, R 6)

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

Evidence of finding on foreign law (O 38, R 7)

7 (1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law shall—

- (a) in the case of an action to which Order 25, Rule 1, applies, within 14 days after the pleadings in the action are deemed to be closed; and
- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his or her intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

Application to trials of issues, references etc (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 actions.

Depositions, when receivable in evidence at trial (O 38, R 9)

9 (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless—

- (a) the deposition was taken in pursuance of an order under Order 39, Rule 1; and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his or her intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

Court documents admissible or receivable in evidence (O 38, R 10)

10 (1) Office copies of writs, records, pleadings and documents filed in the High Court or Court of Appeal shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department of the High Court or Court of Appeal 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, that office or department 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 or her 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 proceeding 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 proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he or she could not be compelled to produce at the trial of that cause or matter.

2. WRITS OF SUBPOENA

Form and issue of writ of subpoena (O 38, R 14)

14 (1) A writ of subpoena must be in Form 16 in Appendix 1.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) Issue of a writ of subpoena takes place upon it being sealed by an officer of the Court.

(3) Before a writ of subpoena is issued a *praecipe* for the issue of the writ must be filed in the office out of which the writ is to issue and the *praecipe* must contain the name and address of the party issuing the writ, if he or she is acting in person, or the name or firm and business address of that party's barrister and solicitor and also (if the barrister and solicitor is the agent of another) the name or firm and business address of his or her principal, and the name and address of the person to be summoned.

(4) Unless the Court otherwise directs every writ of subpoena which is issued or served less than 7 clear days before the date of hearing shall bear the following endorsement—

“NOTE — If this subpoena is served less than 7 clear days before the hearing you are not obliged to attend if, as a result of short notice, it is inconvenient for you to do so. In this event you should so inform the Court.”

(5) Unless a writ of subpoena is duly served on the person to whom it is directed not less than 7 clear days, or such other period as the Court may fix, before the date of hearing together with appropriate conduct money that person shall not be liable to any penalty or process for failing to obey the writ.

More than one name may be included in one writ of subpoena (O 38, R 15)

15 The names of 2 or more persons may be included in one writ of subpoena *ad testificandum*.

Amendment of writ of subpoena (O 38, R 16)

16 Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ resealed in correct form by filing a second *praecipe* under Rule 14(3) indorsed with the words "Amended and resealed".

Service of writ of subpoena (O 38, R 17)

17 A writ of subpoena must be served personally and, subject to Rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than 4 days or such other period as the Court may fix, before the day on which attendance before the Court is required.

Duration of writ of subpoena (O 38, R 18)

18 Subject to Rule 19, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

Writ of subpoena in aid of inferior court or tribunal (O 38, R 19)

19 (1) The office of the High Court out of which a writ of subpoena *ad testificandum* or a writ of subpoena *duces tecum* in aid of an inferior court or tribunal may be issued in the Registry, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 7 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal shall be heard by a Judge.

[The next page is 791,121]

ORDER 39 — EVIDENCE BY DEPOSITION: EXAMINERS OF THE COURT

Power to order deposition 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 17 in Appendix 1) for the examination on oath before a Judge, an officer of the Court or some other person, at any place, of any person.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(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 the 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 18 in Appendix 1) under that Rule for the issue of a letter of request to the judicial authorities of the country in which that person is to take, or cause to be taken, the evidence of that person; or
- (b) if the government of that country allows a person in that country to be examined before a person appointed by the Court, for an order (in Form 19 in Appendix 1) under that Rule appointing a special examiner to take the evidence of that person in that country.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) An application may be made for the appointment as special examiner of a Fiji consul in the country in which the evidence is to be taken or his or her 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 Attorney-General.

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 must prepare the letter of request and lodge it in the Registry, and the letter must be in Form 20 in Appendix 1, with such variations as the order may require.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) If the evidence of the person to be examined is to be obtained by means of written questions, there must be lodged with the letter of request a copy of the interrogatories and cross-interrogatories to be put to him or her on examination.

(4) Each document lodged under paragraph (2) or (3) must be accompanied by a translation of the document in the official language of the country in which the examination is to be taken or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where the examination is to be taken unless one of the official languages of that country is English.

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

(6) The party obtaining the order must, when he or she lodges in the Registry the documents mentioned in paragraphs (2) to (5), also file in that office an undertaking signed by him or her or his or her solicitor to be responsible personally for all expenses incurred by the Attorney-General in respect of the letter of request and, on receiving due notification of the amount of those expenses, to pay that amount to the Attorney-General.

Enforcing attendance of witness at examination (O 39, R 4)

4 Where an order has been made under Rule 1—

- (a) for the examination of any person before an officer of the Court or some other person (in this Rule and Rules 5 to 14 referred to as “the examiner”); or
- (b) for the cross-examination before the examiner of any person who has made an affidavit which is to be used in any cause or matter,

the attendance of that person before the examiner and the production by him or her of any document at the examination may be enforced by writ of subpoena in like manner as the attendance of a witness and the production by a witness of a document at a trial may be enforced.

Refusal of witness to attend, be sworn etc (O 39, R 5)

5 (1) If any person, having been duly summoned by writ of subpoena to attend before the examiner, refuses or fails to attend or refuses to be sworn for the purpose of the examination or to answer any lawful question or produce any document therein, a certificate of his or her refusal or failure, signed by the examiner, must be filed in the Registry, and upon the filing of the certificate the party by whom the attendance of that person was required may apply to the Court for an order requiring that person to attend, or to be sworn or to answer any question or produce any document, as the case may be.

(2) An application for an order under this Rule may be made *ex parte*.

(3) If the Court makes an order under this Rule, it may order the person against whom the order is made to pay any costs occasioned by his or her refusal or failure.

(4) A person who wilfully disobeys any order made against him under paragraph (1) is guilty of contempt of court.

Taking of depositions (O 39, R 11)

11 (1) The deposition of any person examined before the examiner must be taken down by the examiner or a shorthand writer or some other person in the presence of the examiner but, subject to paragraph (2) and Rule 10(1), the deposition need not set out every question and answer so long as it contains as nearly as may be the statement of the person examined.

(2) The examiner may direct the exact words of any particular question and the answer thereto to be set out in the deposition if that question and answer appear to him or her to have special importance.

(3) The deposition of any person shall be read to him or her, and he or she shall be asked to sign it, in the presence of such of the parties as may attend, but the parties may agree in writing to dispense with the foregoing provision.

If a person refuses to sign a deposition when asked under this paragraph to do so, the examiner must sign the deposition.

(4) The original deposition of any person, authenticated by the signature of the examiner before whom it was taken, must be sent by the examiner to the Registry and shall be filed therein.

Time taken by examination to be indorsed on depositions (O 39, R 12)

12 Before sending any deposition to the Registry under Rule 11(4), the examiner must indorse on the deposition a statement signed by him or her of the time occupied in taking the examination and the fees received in respect thereof.

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 or her 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 or she may report that fact to the Court, and the Court may direct the Registrar to apply for an order against the party on whose application the order for examination was made to pay the examiner the fees and expenses due to him or her 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 or her 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 or her 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.

Fees and expenses of examiners (O 39, R 16)

16 (1) The party prosecuting the order must pay all reasonable expenses as certified by the Registrar in addition to the prescribed fees for an examination.

(2) The Registrar may require an amount estimated by him or her to cover the expenses of the examination to be deposited before the order for the examination is sealed.

[The next page is 791,221]

Service 0

791,124

ORDER 40 — COURT EXPERT

Appointment of expert to report on certain questions (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 the application of any party, appoint an independent expert or, if more than one such question arises, 2 or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction. An expert appointed under this paragraph is referred to in this Order as a “court expert”.

(2) Any court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.

(3) The question to be submitted to the Court expert and the instructions (if any) given to him or her shall, failing agreement between the parties, be settled by the Court.

(4) In this Rule “expert”, in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his or her opinion on it would be admissible in evidence.

Report of court expert (O 40, R 2)

2 (1) The court expert must send his or her report to the Court, together with such number of copies thereof as the Court may direct, and the Registrar must send copies of the report to the parties or their barrister and solicitors.

(2) The Court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert’s report which is not accepted by all the parties to the cause or matter in which it is made shall be treated as information furnished to the Court and be given such weight as the Court thinks fit.

Experiments and tests (O 40, R 3)

3 If the Court expert is of opinion that an experiment or test of any kind (other than one of a trifling character) is necessary to enable him or her to make a satisfactory report he or she shall inform the parties or their solicitors and shall, if possible, make an arrangement with them as to the expenses involved, the persons to attend and other relevant matters; and if the parties are unable to agree on any of those matters it shall be settled by the Court.

Cross-examination of court expert (O 40, R 4)

4 Any party may, within 14 days after receiving a copy of the court expert’s report, apply to the Court for leave to cross-examine the expert on his or her 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 or her report and a proper sum for each day during which he or she 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 or her remuneration, but where the appointment of a court expert is opposed the Court may, as a condition of

making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the Court thinks fit.

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 parties a reasonable time before the trial notice of his or her intention to do so, call one expert witness to give evidence on the question reported on by the Court expert but no party may call more than one such witness without the leave of the Court, and the Court shall not grant leave unless it considers the circumstances of the case to be exceptional.

[The next page is 791,321]

Service 0

791,222

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 must be entitled in that cause or matter.

(2) Where a cause or matter is entitled in more than one matter, it shall be sufficient to state the first matter followed by the words “and other matters”, and where a cause or matter is entitled in a matter or matters and between parties, that part of the title which consists of the matter or matters may be omitted.

(3) Where there are more plaintiffs than one, it shall be sufficient to state the full name of the first followed by the words “and others”, and similarly with respect to defendants.

(4) Every affidavit must be expressed in the first person and, unless the Court otherwise directs, must state the place of residence of the deponent and his or her occupation or, if he or she has none, his or her description, and if he or she is, or is employed by, a party to the cause or matter in which the affidavit is sworn, the affidavit must state that fact. In the case of a deponent who is giving evidence in a professional, business or other occupational capacity the affidavit may, instead of stating the deponent’s place of residence, state the address at which he or she works, the position he or she holds and the name of his or her firm or employer, if any.

(5) Every affidavit must be in book form, following continuously from page to page.

(6) Every affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(7) Dates, sums and other numbers must be expressed in an affidavit in figures and not in words.

(8) Every affidavit must be signed by the deponent and the jurat must be completed and signed by the person before whom it is sworn.

Affidavit by 2 or more deponents (O 41, R 2)

2 Where an affidavit is made by 2 or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the “abovenamed” deponents.

Affidavit by illiterate or blind person or person who does not understand English (O 41, R 3)

3 (1) Where it appears to the person administering the oath that the deponent is illiterate or blind, he or she must certify in the jurat that—

- (a) the affidavit was read in his or her presence to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his or her signature or mark in his or her 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.

(2) Where it appears to the person administering the oath that the deponent does not understand the English language he or she must certify in the jurat that—

- (a) the affidavit was read, explained and interpreted, either by himself or herself or through the medium of a sworn and named interpreter in his or her presence, to the deponent in a specified language with which the deponent was familiar;
- (b) the deponent seemed perfectly to understand it; and

(c) the deponent made his or her signature or mark in his or her presence, and the affidavit shall not be used in evidence without such a certificate.

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 Order 86, Rule 2(1), to paragraph (2) of this Rule and to any order made under Order 38, Rule 3, an affidavit may contain only such facts as the deponent is able of his or her own knowledge to prove.

(2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

Scandalous etc matter in affidavit (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 rewritten in the margin of the affidavit any words or figures written on the erasure and has signed or initialled them.

(2) Where an affidavit is sworn at any office of the High Court, the official stamp of that office may be substituted for the signature or initials required by this Rule.

Affidavit not to be sworn before barrister and solicitor of party etc (O 41, R 8)

8 No affidavit shall be sufficient if sworn before the barrister and solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that barrister and solicitor.

Filing of affidavits (O 41, R 9)

9 (1) Except as otherwise provided by these Rules, every affidavit must be filed in the Registry.

(2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

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 notwithstanding that it has not been filed in accordance with Rule 9.

(2) [para (2) rep Act 16 of 2020 s 4 and Sch, opn 1 Aug 2020]

(3) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he or she must immediately after it is used leave it with the proper officer in court or in chambers, as the case may be, and that officer shall send it to be filed.

(4) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

Document to be used in conjunction with affidavit to be exhibited to it (O 41, R 11)

11 (1) Any document to be used in conjunction with an affidavit must be exhibited to the affidavit.

(2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.

Affidavit taken in Commonwealth country admissible without proof of seal etc (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 part of the Commonwealth outside Fiji in testimony of an affidavit being taken before it or him or her in that part shall be admitted in evidence without proof of the seal or signature being the seal or signature of that court, judge, notary public or person.

[The next page is 791,421]

Service 13

791,324

ORDER 42 — JUDGMENTS AND ORDERS

Form of judgment etc (O 42, R 1)

1 (1) If, in the case of any judgment, a form thereof is prescribed by Appendix 1 the judgment must be in that form.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) The party entering any judgment shall be entitled to have recited therein a statement of the manner in which, and the place at which, the writ or other originating process by which the cause or matter in question was begun was served.

(3) Every order must be marked with the name of the Judge or other person by whom it was made and must be sealed.

Judgment in favour of reversioner for detention of goods (O 42, R 2)

2 Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only. In this paragraph “partial owner” means one of 2 or more persons having interests in the goods, unless he or she has the written authority of every other such person to sue on the latter’s behalf.

Judgment etc requiring act to be done, time for doing it (O 42, R 3)

3 (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.

(2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the act is to be done need not be specified in the judgment or order by virtue of paragraph (1), but the foregoing provision shall not affect the power of the Court to specify such a time and to adjudge or order accordingly.

Date from which judgment or order takes effect (O 42, R 4)

4 (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.

Orders required to be drawn up (O 42, R 5)

5 (1) Subject to paragraph (2), every order of the Court shall be drawn up unless the Court otherwise directs.

(2) An order—

(a) which—

(i) extends the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act; or

(ii) grants leave for the doing of any of the acts mentioned in paragraph (3);
and

(b) which neither imposes any special terms nor includes any special directions other than a direction as to costs,

need not be drawn up unless the Court otherwise directs.

(3) The acts referred to in paragraph (2)(a)(ii) are—

- (a) The issue of any writ, other than a writ of summons for service out of the jurisdiction;
- (b) the amendment of a writ of summons or other originating process or a pleading;
- (c) the filing of any document;
- (d) any act to be done by an officer of the Court other than a barrister and solicitor.

Drawing up and entry of judgments and orders (O 42, R 6)

6 (1) Every judgment given in a cause or matter and every order required to be drawn up shall be settled by or under the direction of the Registrar before being entered or drawn up.

(2) The party seeking to enter a judgment or to have an order drawn up may and shall if so required by the Registrar prepare a draft of the judgment or order and present the draft to the Registrar.

(3) If the party in whose favour a judgment is given or an order is made does not prepare it, have it settled and enter it within 21 days after it is given or made any other party affected by the judgment or order may prepare it, have it settled and entered.

(4) Every judgment when entered shall be endorsed with the date of entry.

Default in connection with drawing up judgments etc (O 42, R 7)

7 If a party fails to attend an appointment made by a Judge or the Registrar for settling any judgment or order or fails to produce any documents required by the Judge or the Registrar in order to enable him or her to draw up the judgment or order, the Judge or the Registrar may draw up and pass the judgment or order in the absence of that party.

Service of Judgments (O 42, R 8)

8 The party entering judgment must serve a copy of the sealed judgment on every other party not later than 14 days after entry of the judgment.

[r 8 insrt LN 47 of 2005 r 5, opn 19 Sep 2005]

[The next page is 791,521]

ORDER 43 — ACCOUNTS AND INQUIRIES

Summary order for account (O 43, R 1)

1 (1) Where a writ is indorsed with a claim for an account or a claim which necessarily involves taking an account, the plaintiff may, at any time after the defendant has acknowledged service of the writ or after the time limited for acknowledging service, apply for an order under this Rule.

(2) A defendant to an action begun by writ who has served a counterclaim, which includes a claim for an account 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 by virtue of such service,

may apply for an order under this Rule.

(3) An application under this Rule must be made by summons and, if the Court so directs, must be supported by affidavit or other evidence.

(4) On the hearing of the application, the Court may, unless satisfied by the defendant 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 or her within a time specified in the order.

Court may direct taking of accounts etc (O 43, R 2)

2 (1) The Court may, on an application made by summons at any stage of the proceedings in a cause or matter, direct any necessary accounts or inquiries to be taken or made.

(2) Every direction for the taking of an account or the making of an inquiry shall be numbered in the judgment or order so that, as far as may be, each distinct account and inquiry may be designated by a number.

Directions as to manner of taking account or making inquiry (O 43, R 3)

3 (1) Where the Court orders an account to be taken or inquiry to be made it may by the same or a subsequent order give directions with regard to the manner in which the account is to be taken or vouched or the inquiry is to be made.

(2) Without prejudice to the generality of paragraph (1), the Court may direct that in taking an account the relevant books of account shall be evidence of the matters contained therein with liberty to the parties interested to take such objections thereto as they think fit.

Account to be made, verified etc (O 43, R 4)

4 (1) Where an account has been ordered to be taken, the accounting party must make out his or her account and, unless the Court otherwise directs, verify it by an affidavit to which the account must be exhibited.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the order for the taking of the account otherwise directs, the accounting party must lodge the account with the Court and must at the same time notify the other parties that he or she 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 etc in account (O 43, R 5)

5 Any party who seeks to charge an accounting party with an amount beyond that which he or she has by his or her account admitted to have received or who alleges that any item in his or her account is erroneous in respect of amount or in any other respect must give him or her notice thereof stating, so far as he or she 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.

Allowances (O 43, R 6)

6 In taking any account directed by any judgment or order all just allowances shall be made without any direction to that effect.

Delay in prosecution of accounts etc (O 43, R 7)

7 (1) If it appears to the Court that there is undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court may require the party having the conduct of the proceedings or any other party to explain the delay and may then make such order for staying the proceedings or for expediting them or for the conduct thereof and for costs as the circumstances require.

(2) The Court may direct any party or appoint a suitable person to take over the conduct of the proceedings in question and to carry out any directions made by an order under this Rule and may make such order as it thinks fit as to the payment of any costs incurred.

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 ascertained without reserving any part of those shares to meet the subsequent costs of ascertaining those other persons.

Guardian's accounts (O 43, R 9)

9 The accounts of a person appointed guardian of a minor's estate must be verified and passed in such manner as the Court may direct.

[The next page is 791,621]

ORDER 44 — PROCEEDINGS UNDER JUDGMENTS AND ORDERS

Application to Orders (O 44, R 1)

1 In this Order references to a judgment include references to an order.

Service of notice of judgment on person not a party (O 44, R 2)

- 2 (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,

the Court gives a judgment or makes a direction which affects persons not parties to the action, the Court may when giving the judgment or at any stage of the proceedings under the judgment direct notice of the judgment to be served on any such person and any person so served shall, subject to paragraph (4), be bound by the judgment as if he or she had originally been a party to the action.

(2) Every notice of a judgment for service under this Rule must be indorsed with a memorandum in Form 21 in Appendix 1 and accompanied by a form of acknowledgement of service in Form 2 in Appendix 1 with such modifications as may be appropriate.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) A person served with notice of a judgment may, within one month after service of the notice on him or her, and without acknowledging service apply to the Court to discharge, vary or add to the judgment.

(4) A person served with notice of a judgment may, after acknowledging service of the notice, attend the proceedings under the judgment.

(5) Order 12, Rules 1 to 3, shall apply in relation to the acknowledgement of service of 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 the Court (O 44, R 3)

3 (1) Where a judgment given in a cause or matter contains directions which make it necessary to proceed in chambers under the judgment the Court may, when giving the judgment or at any time during proceedings under the judgment, give further directions for the conduct of those proceedings, including, in particular, directions with respect to—

- (a) the manner in which any account or inquiry is to be prosecuted;
- (b) the evidence to be adduced in support thereof;
- (c) the preparation and service on the parties to be bound thereby of the draft of any deed or other instrument which is directed by the judgment to be settled by the Court and the service of any objections to the draft;
- (d) the parties required to attend all or any part of the proceedings;
- (e) the representation by the same barristers and solicitors of parties who constitute a class and by different barristers and solicitors of parties who ought to be separately represented; and
- (f) the time within which each proceeding is to be taken, and may fix a day or days for the further attendance of the parties.

(2) The Court may revoke or vary any directions given under this Rule.

Application of Rules 5 to 8 (O 44, R 4)

4 Rules 5 to 8 apply—

- (a) where in proceedings for the administration under the direction of the Court of the estate of a deceased person the judgment directs any account of debts or other

liabilities of the deceased's estate to be taken or any inquiry for next of kin or other ascertained claimants to be made; and

- (b) where in proceedings for the execution under the direction of the Court of a trust the judgment directs any such inquiry to be made, and those Rules shall, with the necessary modifications, apply where in any other proceedings the judgment directs an account of debts or other liabilities to be taken or any inquiry to be made.

Advertisements for creditors and other claimants (O 44, R 5)

5 The Court may, when giving a judgment or at any stage of proceedings under a judgment, give directions for the issue of advertisements for creditors or other claimants and may fix the time within which creditors and claimants may respond.

Examination of claims (O 44, R 6)

6 (1) Where an account of debts or other liabilities of the estate of a deceased person has been directed, such party as the Court may direct must—

- (a) examine the claims of persons claiming to be creditors of the estate;
- (b) determine, so far as he or she is able, to which of such claims the estate is liable; and
- (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his or her findings and his or her reasons for them and listing all the other debts of the deceased which are or may still be due.

(2) Where an inquiry for next of kin or other unascertained claimants has been directed, such party as the Court may direct must—

- (a) examine the claims;
- (b) determine, so far as he or she is able, which of them are valid; and
- (c) at least 7 clear days before the time appointed for adjudicating on claims, make an affidavit stating his or her findings and his or her reasons for them.

(3) If the personal representatives or trustees concerned are not the parties directed by the Court to examine claims, they must join with the party directed to examine them in making the affidavit required by this Rule.

Adjudication on claims (O 44, R 7)

7 For the purpose of adjudicating on claims the Court may—

- (a) direct any claim to be investigated in such manner as it thinks fit;
- (b) require any claimant to attend and prove his or her claim or to furnish further particulars or evidence of it; or
- (c) allow any claim after or without proof thereof.

Notice of adjudication (O 44, R 8)

8 The Court shall give directions that there be served on every creditor whose claim or any part thereof has been allowed or disallowed, and who did not attend when the claim was disposed of, a notice informing him or her of that fact.

Interest on debts (O 44, R 9)

9 (1) Where an account of the debts of a deceased person is directed by any judgment, then, unless the deceased's estate is insolvent or the Court otherwise orders, interest shall be allowed—

- (a) on any such debt as carries interest, at the rate it carries; and

(b) on any other debt, from the date of the judgment at the rate payable on judgment debts at that date.

(2) A creditor who has established his or her debt in proceedings under the judgment and whose debt does not carry interest shall be entitled to interest on his or her debt in accordance with paragraph (1)(b) out of any assets which may remain after satisfying the costs of the cause or matter, the debts which have been established and the interest on such of those debts as by law carry interest.

(3) For the purposes of this Rule “debt” includes funeral, testamentary or administration expenses and, in relation to expenses incurred after the judgment, for the reference in paragraph (1)(b) to the date of the judgment there shall be substituted a reference to the date when the expenses became payable.

Interest on legacies (O 44, R 10)

10 Where an account of legacies is directed by any judgment, then, subject to any directions contained in the will or codicil in question and to any order made by the Court, interest shall be allowed on each legacy at the rate of 5%, per annum beginning at the expiration of one year after the testator’s death.

Registrar’s order (O 44, R 11)

11 (1) The result of proceedings under a judgment shall be stated in the form of an order.

(2) Subject to any direction under paragraph (3) an order under this Rule shall have effect as a final order disposing of the cause or matter in which it is made.

(3) An order under this Rule shall contain such directions as the Court thinks fit as to the further consideration, either in Court or in chambers, of the cause or matter in which it is made.

(4) Every order made under this Rule shall have immediate binding effect on the parties to the cause or matter in which it is made and copies of the order shall be served on such of the parties as the Court may direct.

Appeal against Registrar’s order (O 44, R 12)

12 Order 58, Rule 1 shall apply to an order under this Rule as it applies to any judgment, order or decision of the Registrar.

[The next page is 791,721]

Service 0

791,624

ORDER 45 — ENFORCEMENT OF JUDGMENTS AND ORDERS: GENERAL

Enforcement of judgment etc 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, that is to say—

- (a) writ of *feri facias*;
- (b) garnishee proceedings;
- (c) a charging order;
- (d) the appointment of a receiver;
- (e) in a case in which Rule 4 applies, an order of committal;
- (f) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the payment of money into court may be enforced by one or more of the following means that is to say—

- (a) the appointment of a receiver;
- (b) in a case in which Rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(3) Paragraphs (1) and (2) are without prejudice to any other remedy available to enforce such a judgment or order as is therein mentioned or to the power of a Court under the Debtors Act 1886, to commit to prison a person who makes default in paying money adjudged or ordered to be paid by him or her, or to the right of a person prosecuting a judgment or order for the payment of money to a person to apply under any enactment to have the judgment or order enforced in a Magistrates Court or to the enactments relating to bankruptcy or the winding up of companies.

(4) In this Order references to any writ shall be construed as including references to any further writ in aid of the first mentioned writ.

Enforcement of judgment for possession of land (O 45, R 2)

2 (1) Subject to the provisions of these Rules, a judgment or order for the giving of possession of land may be enforced by one or more of the following means, that is to say—

- (a) writ of possession;
- (b) in a case in which Rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A writ of possession to enforce a judgment or order for the giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 88 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him or her to apply to the Court for any relief to which he or she 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 goods (O 45, R 3)

3 (1) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods which does not give a person against whom the judgment is given or order made the alternative of paying the assessed value of the goods may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods without alternative provision for recovery of the assessed value thereof (hereafter in this Rule referred to as a “writ of specific delivery”);
- (b) in a case in which Rule 4 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) Subject to the provisions of these Rules, a judgment or order for the delivery of any goods or payment of their assessed value may be enforced by one or more of the following means, that is to say—

- (a) writ of delivery to recover the goods or their assessed value;
- (b) by order of the Court, writ of specific delivery;
- (c) in a case in which Rule 4 applies, writ of sequestration.

An application for an order under subparagraph (b) shall be made by summons, which must, notwithstanding Order 65, Rule 9, be served on the defendant against whom the judgment or order sought to be enforced was given or made.

(3) A writ of specific delivery, and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

Enforcement of judgment to do or abstain from doing any act (O 45, R 4)

4 (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 4; or
- (b) a person, disobeys a judgment or order requiring him or her to abstain from doing an act,

then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means, that is to say—

- (i) with the leave of the Court, a writ of sequestration against the property of that person;
- (ii) where that person is a body corporate, with the leave of the Court, a writ of sequestration against the property of any director or other officer of the body;
- (iii) subject to the provisions of the Debtors Act 1886, 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 5 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 5.

(3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the Court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver the goods to the applicant within a time specified in the order, and that order may be so enforced.

Judgment etc requiring act to be done, order fixing time for doing it (O 45, R 5)

5 (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 4 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 3(1), or by reason of Order 42 Rule 3(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the Court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this Rule must be made by summons and the summons must, notwithstanding anything in Order 65, Rule 9, be served on the person required to do the act in question.

Service of copy of judgment etc prerequisite to enforcement under Rule 5 (O 45, R 6)

6 (1) In this Rule references to an order shall be construed as including references to a judgment.

(2) Subject to Order 24, Rule 16(3), Order 26, Rule 6(3), and paragraphs (6) and (7) of this Rule, an order shall not be enforced under Rule 4 unless—

- (a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and
- (b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he or she 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 4(1)(b)(ii) or (iii) unless—

- (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and
- (b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be indorsed on the copy of an order served under this Rule a notice informing the person on whom the copy is served—

- (a) in the case of service under paragraph (2), that if he or she neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he or she disobeys the order, he or she is liable to process of execution to compel him or her to obey it; and
- (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he or she is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this Rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, Rule 4, extending or abridging the time for doing the act and, where the first mentioned order was made under Rule 4(3) or 5 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 4 notwithstanding that service of a copy of the order has not been effected in

accordance with this Rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either—

- (a) by being present when the order was made; or
- (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.

(7) Without prejudice to its powers under Order 65, Rule 4, the Court may dispense with service of a copy of an order under this Rule if it thinks it just to do so.

Court may order act to be done at expense of disobedient party (O 45, R 7)

7 If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to 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 8)

8 (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 or she 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 or she were a party.

Conditional judgment, waiver (O 45, R 9)

9 A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

Matters occurring after judgment, stay of execution etc (O 45, R 10)

10 Without prejudice to Order 47, Rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order and the Court may by order grant such relief, and on such terms, as it thinks just.

Forms of writs (O 45, R 11)

11 (1) A writ of *fiery facias* must be in Form 22 in Appendix 1.

[para (1) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(2) A writ of delivery must be in Form 23 in Appendix 1.

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(3) A writ of possession must be in Form 24 in Appendix 1.

[para (3) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(4) A writ of sequestration must be in Form 25 in Appendix 1.

[para (4) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Enforcement of judgments and orders for recovery of money etc (O 45, R 12)

12 (1) Rule 1(1), with the omission of subparagraphs (e) and (f) thereof, and Orders 46 to 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money.

(2) Rule 2, with the omission of paragraph (1)(b) and (c) thereof, and Order 47, Rule 2(2) shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.

(3) Rule 3, with the omission of paragraphs (1)(b) and (c) and (2)(c) thereof, and Order 47, Rule 2(2), shall apply in relation to a judgment or order that a person do have a return of any goods, and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof, as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

791,725

Service 0

[The next page is 791,821]

Service 0

791,726

ORDER 46 — WRITS OF EXECUTIONS: GENERAL

Definition (O 46, R 1)

1 In this Order, unless the context otherwise requires, **writ of execution** includes a writ of *feri facias*, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs.

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 issue without the leave of the Court in the following cases, that is to say—

- (a) where 6 years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his or her executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to any enactment or Rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this Rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

Leave required for issue of writ in aid of other writ (O 46, R 3)

3 A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

Application for leave to issue writ (O 46, R 4)

4 (1) An application for leave to issue a writ of execution may be made *ex parte* unless the Court directs it to be made by summons.

(2) Such an application must be supported by an affidavit—

- (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due 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 or she has refused or failed to do so;

- (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.

(3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

Application for leave to issue writ of sequestration (O 46, R 5)

5 (1) Notwithstanding anything in Rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a Judge by motion.

(2) Subject to paragraph (3), the notice of motion, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.

(3) Without prejudice to its powers under Order 65, Rule 4, the Court may dispense with service of the notice of motion under this Rule if it thinks it just to do so.

(4) The Judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he or she would be entitled to do so by virtue of Order 52, Rule 5, but, except in such a case, the application shall be heard in open court.

Issue of writ of execution (O 46, R 6)

6 (1) Issue of a writ of execution takes place on it being sealed by an officer of the Registry.

(2) Before such a writ is issued a *praecipe* for its issue must be filed.

(3) The *praecipe* must be signed by or on behalf of the barrister and solicitor of the person entitled to execution or, if that person is acting in person, by him or her.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing—

(a) the person tendering it produces—

(i) the judgment or order on which the writ is to issue, or an office copy thereof;

(ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it; and

(b) the officer authorised 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 thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

Duration and renewal of writ of execution (O 46, R 7)

7 (1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which has been extended under this Rule is executed,

either the writ must be sealed with the seal of the Registry showing the date on which the order extending its validity was made or the applicant for the order must serve a notice sealed as aforesaid, on the sheriff to whom the writ is directed informing him or her of the making of the order and the date thereof.

(4) The priority of a writ, the validity of which has been extended under this Rule, shall be determined by reference to the date on which it was originally delivered to the sheriff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ referred to in that notice, has been extended under this Rule.

Return to writ of execution (O 46, R 8)

8 (1) Any party at whose instance a writ of execution was issued may serve a notice on the sheriff to whom the writ was directed requiring him or her, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he or she has executed it and to send to that party a copy of the statement.

(2) If a sheriff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the sheriff to comply with the notice.

[The next page is 791,921]

Service 0

791,824

ORDER 47 — WRITS OF *FIERI FACIAS***Power to stay execution by writ of *fieri facias* (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, the Court may by order stay the execution of the judgment or order by writ of *fieri facias* either absolutely or for such period and subject to such conditions as the Court thinks fit.

(2) An application under this Rule, if not made at the time the judgment is given or order made, must be made by summons and may be so made notwithstanding that the party liable to execution did not acknowledge service of the writ of originating summons in the action or did not state in his or her acknowledgement of service that he or she intended to apply for a stay of execution under this Rule pursuant to Order 13, Rule 9.

(3) An application made by summons must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his or her income, the nature and value of any property of his or her and the amount of any other liabilities of his or her.

(4) The summons and a copy of the supporting affidavit must, not less than 4 clear days before the return day, be served on the party entitled to enforce the judgment or order.

(5) An order staying execution under this Rule may be varied or revoked by a subsequent order.

Separate writs to enforce payment of costs etc (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 *fieri facias* to enforce payment of the sum (other than for costs) adjudged or ordered and, not less than 8 days after the issue of that writ, he or she 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 or she so elects, issue a separate writ of *fieri facias* to enforce payment of any damages or costs awarded to him or her by that judgment or order.

[The next page is 792,021]

Service 0

791,922

ORDER 48 — EXAMINATION OF JUDGMENT DEBTOR ETC

Order for examination of judgment debtor (O 48, R 1)

1 (1) Where a person has obtained a judgment or order for the payment by some other person (hereinafter referred to as “the judgment debtor”) of money, the Court may, on an application made *ex parte* by the person entitled to enforce the judgment or order, order the judgment debtor or, if the judgment debtor is a body corporate, an officer thereof, to attend before the Registrar or such Magistrate as the Court may appoint and be orally examined on the questions—

- (a) whether any and, if so, what debts are owing to the judgment debtor; and
- (b) whether the judgment debtor has any and, if so, what other property or means of satisfying the judgment or order,

and the Court may also order the judgment debtor or officer to produce any books or documents in the possession of the judgment debtor relevant to the questions aforesaid at the time and place appointed for the examination.

(2) An order under this Rule must be served personally on the judgment debtor and on any officer of a body corporate ordered to attend for examination, and appropriate conduct money must be paid or tendered.

Examination of party liable to satisfy other 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 or her examination on such questions as may be specified in the order, and that Rule shall apply accordingly with the necessary modifications.

Examiner to make record of debtor’s statement (O 48, R 3)

3 The Registrar or the Magistrate 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 or her and ask him or her to sign it; and if he or she refuses the Registrar or the Magistrate, as the case may be, shall sign the statement.

[The next page is 792,121]

Service 0

792,022

ORDER 49 — GARNISHEE PROCEEDINGS

Attachment of debt due to judgment debtor (O 49, R 1)

1 (1) Where a person (in this Order referred to as “the judgment creditor”) has obtained a judgment or order for the payment by some other person (in this Order referred to as “the judgment debtor”) of money, not being a judgment or order for the payment of money into court, and any other person within the jurisdiction (in this Order referred to as “the garnishee”) is indebted to the judgment debtor, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.

(2) An order under this Rule shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, and in the meantime attaching such debt as is mentioned in paragraph (1), or so much thereof as may be specified in the order, to answer the judgment or order mentioned in that paragraph and the costs of the garnishee proceedings.

Application for order (O 49, R 2)

2 An application for an order under Rule 1 must be made *ex parte* supported by an affidavit—

- (a) stating the name and last known address of the judgment debtor;
- (b) identifying the judgment or order to be enforced and stating the amount of such judgment or order and the amount remaining unpaid under it at the time of the application;
- (c) stating, that to the best of the information or belief of the deponent the garnishee (naming him or her) 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 or her belief; and
- (d) stating, where the garnishee is a bank having more than one place of business, the name and address of the branch at which the judgment debtor’s account is believed to be held or, if it be the case, that this information is not known to the deponent.

Service and effect of order to show cause (O 49, R 3)

3 (1) Unless the Court otherwise directs, an order under Rule 1 to show cause must be served—

- (a) on the garnishee personally at least 15 days before the time appointed thereby for the further consideration of the matter; and
- (b) on the judgment debtor, at least 7 days after the order has been served on the garnishee and at least 7 days before the time appointed by the order for the further consideration of the matter.

(2) Such an order shall bind in the hands of the garnishee as from the service of the order on him or her 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 or her to the judgment debtor, the Court may make an order absolute under Rule 1 against the garnishee.

(2) An order absolute under Rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.

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 or her to the judgment debtor, the Court may summarily determine the question at issue or order that any question necessary for determining the liability of the garnishee be tried in any manner in which any question or issue in an action may be tried, without, if it orders trial before a master, 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 his or her 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.

Discharge of garnishee (O 49, R 7)

7 Any payment made by a garnishee in compliance with an order absolute under this Order, and any execution levied against him or her in pursuance of such an order, shall be a valid discharge of his or her 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 8)

8 (1) Where money is standing to the credit of the judgment debtor in court, the judgment creditor shall not be entitled to take garnishee proceedings in respect of that money but may apply to the Court by summons for an order that the money or so much thereof as is sufficient to satisfy the judgment or order sought to be enforced and the costs of the application be paid to the judgment creditor.

(2) Unless the Court otherwise directs, the summons must be served on the judgment debtor at least 7 days before the day named therein for the hearing of it.

Costs (O 49, R 9)

9 The costs of any application for an order under Rule 1 or 8, 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 or her under the order and in priority to the judgment debt.

[The next page is 792,221]

ORDER 50 — CHARGING ORDERS, STOP ORDERS ETC

Order imposing charge on land etc (O 50, R 1)

1 (1) This Rule shall apply to any order which by virtue of any enactment the Court is empowered to make imposing a charge on any land or interest in land of a judgment debtor or levying execution thereon.

(2) Any such order shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge until that time in any event.

(3) An application for an order to which this Rule applies may be made *ex parte*.

(4) There may be joined with an application for an order to which this Rule applies in an application for the appointment of a receiver to enforce the charge imposed by the order.

(5) The application must be supported by an affidavit—

- (a) identifying the judgment or order to be enforced, and stating the name of the judgment debtor on whose land or interest it is sought to impose a charge and the amount remaining unpaid under the judgment or order at the time of the application;
- (b) specifying the land on which, or an interest in which, it is sought to impose a charge; and
- (c) stating that to the best of the information or belief of the deponent the land or interest in question is the judgment debtor's and stating the sources of the deponent's information or the grounds for his or her belief.

(6) Unless the Court otherwise directs, a copy of the order must at least 7 days before the time appointed for the further consideration of the matter be served on the judgment debtor and if the judgment debtor does not attend on such consideration proof of service must be given.

(7) On the further consideration of the matter the Court shall, unless it appears (whether on the representation of the judgment debtor or otherwise) that there is sufficient cause to the contrary, make the order absolute with or without modifications.

(8) 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.

(9) This Rule shall have effect subject to the provisions of any enactment where under any such order as aforesaid may be made.

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 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 interest and interest thereon.

(2) Any such order shall in the first instance be an order to show cause, 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 enactment; and
- (b) any dividend or interest payable on such stock.

(4) In this Order “government stock” means any stock issued by the government in Fiji or any funds of or annuity granted by that government, and “stock” includes shares, debentures and debenture stock.

Application for an order under Rule 2 (O 50, R 3)

3 An application for an order under Rule 2 must be made *ex parte* 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;
- (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;
- (c) 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 or her 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 must, at least 7 days before the time appointed thereby for the further consideration of the matter, be served on the judgment debtor, and if he or she does not attend on such consideration, proof of service must be given.

(2) Notice of the making of the order to show cause, with a copy of that order, must as soon as practicable after the making of the order be served—

- (a) where the order relates to government stock, on the Minister responsible for finance; or
- (b) where the order relates to other stock, on the company concerned.

Effect of order to show cause (O 50, R 5)

5 (1) No disposition by the judgment debtor of his or her 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 Minister responsible for finance or, as the case may be, a company 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 notice of the making of such order is served on the Minister responsible for finance or a company, the Minister or company permits any transfer or makes any payment prohibited under paragraph (2), the Minister or the company shall be liable to pay the judgment creditor the value of the stock transferred or, as the case may be, the amount of the payment made 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) No proceedings to enforce a charge imposed by an order made absolute under this Rule shall be taken until after the expiration of 6 months from the date of the order to show cause.

Discharge etc 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 to 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) Notice of the making of an order under this Rule to show cause, with a copy of that order, must as soon as practicable after the making of the order, be served on the Registrar.

(5) Rules 5(1), 6(1) and (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.

Injunctions, ancillary or incidental to charging orders (O 50, R 9)

9 An application for an injunction, ancillary or incidental, to a charging order under Rules 1, 2 or 8 may be joined with the application for such order.

Funds in court, stop order (O 50, R 10)

10 (1) The Court, on the application of any person—
(a) who has a mortgage or charge on the interest of any person in funds in court;
(b) to whom that interest has been assigned; or
(c) who is a judgment creditor of the person entitled to that interest,
may make an order prohibiting the transfer, sale, delivery out, payment or other dealing with such funds, or any part thereof, or the income thereon, without notice to the applicant.

(2) An application for an order under this Rule must be made by summons in the cause or matter relating to the funds in court, or, if there is no such cause or matter, by originating summons.

(3) The summons must be served on every person whose interest may be affected by the order applied for and on the Registrar but shall not be served on any other person.

(4) Without prejudice to the Court's powers and discretion as to costs, the Court may

order the applicant for an order under this Rule to pay the costs of any party to the cause or matter relating to the funds in question, or of any person interested in those funds, occasioned by the application.

Securities not in Court, stop notice (O 50, R 11)

11 (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 or payment of those securities may avail himself or herself of the provisions of this Rule.

- (2) A person claiming to be so entitled must file in the Registry—(a) an affidavit identifying the securities in question and describing his or her interest therein by reference to the document under which it arises; and
- (b) a notice in Form 26 in Appendix 1 (a stop notice), signed by the deponent to the affidavit, and annexed to it, addressed to the Minister responsible for finance or, as the case may be, the company concerned,

[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

and must serve an office copy of the affidavit, and a copy of the notice sealed with the seal of the Court on the Minister or that company.

(3) There must be indorsed on the affidavit filed under this Rule a note stating the address to which any such notice as is referred to in Rule 12 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 or her address for service of the purpose of Rule 12 by serving on the Minister responsible for finance, or, as the case may be, the company concerned, notice to that effect, and as from the 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 12)

12 Where a stop notice has been served in accordance with Rule 11, then, so long as the stop notice is in force, the Minister responsible for finance or company shall not register a transfer of the securities or take any other step restrained by the stop notice until 14 days after sending notice thereof, by ordinary first class post, to the person on whose behalf the stop notice was filed, but shall not by reason only of that notice refuse to register a transfer, or to take any other step, after the expiry of that period.

Amendment of stop notice (O 50, R 13)

13 If any securities are incorrectly described in a stop notice which has been filed and of which a sealed copy has been served in accordance with Rule 11, an amended stop notice may be filed and served in accordance with the same procedure and shall take effect as a stop notice on the day on which the sealed copy of the amended notice is served.

Withdrawal etc of stop notice (O 50, R 14)

14 (1) The person on whose behalf a stop notice was filed may withdraw it by serving a request for its withdrawal on the Minister responsible for finance or the company on whom the notice was served.

(2) Such request must be signed by the person on whose behalf the notice was filed and his or her signature must be witnessed by a practicing solicitor.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a stop notice relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made by originating summons, and the summons must be served on the person on whose behalf a stop notice was filed.

Order prohibiting transfer etc of securities (O 50, R 15)

15 (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 may by order prohibit the Minister responsible for finance, or, as the case may be, that company from registering any transfer of or such part thereof 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 must be made by motion or summons.

(3) The Court, on the application of any person claiming to be entitled to an interest in any securities to which an order under this Rule relates, may vary or discharge the order on such terms (if any) as to costs or otherwise as it thinks fit.

[The next page is 792,321]

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ORDER 52 — COMMITTAL

Committal for contempt of court (O 52, R 1)

1 (1) The power of the High Court to punish for contempt of court may be exercised by an order of committal.

(2) This Order applies to contempt of court—

(a) committed in connection with—

- (i) any proceedings before the Court; or
- (ii) proceedings in an inferior Court;

(b) committed otherwise than in connection with any proceedings.

(3) An order of committal may be made by a single Judge.

(4) Where by virtue of any enactment the High Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the High Court, have been a contempt of that Court, an order of committal may be made by a single Judge.

Application for order of committal (O 52, R 2)

2 (1) No application 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 a Judge in chambers, and must be 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 or her committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for leave not later than the preceding day to the Registry and must at the same time lodge at the Registry copies of the statement and affidavit.

Application for order after leave to apply granted (O 52, R 3)

3 (1) When leave has been granted under Rule 2 to apply for an order of committal, the application for the order must be made by motion and, unless the Court granting leave has otherwise directed, there must be at least 8 clear days between the service of the notice of motion and the day named therein for the hearing.

(2) Unless within 14 days after such leave was granted the motion is entered for hearing the leave shall lapse.

(3) Subject to paragraph (4), the notice of motion, accompanied by a copy of the statement and affidavit in support of the application for leave under Rule 2, must be served personally on the person sought to be committed.

(4) Without prejudice to the powers of the Court or Judge under Order 65, Rule 4, the Court or Judge may dispense with service of the notice of motion under this Rule if it or he or she thinks it just to do so.

Saving for power to commit without application (O 52, R 4)

4 Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the High Court or Court of Appeal 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 5)

5 (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder;
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private,

but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) if he or she 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 2.

The foregoing provision is without prejudice to the powers of the Court under Order 20, Rule 7.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his or her own behalf, he or she shall be entitled to do so.

Power to suspend execution of committal order (O 52, R 6)

6 (1) The Court 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 or her of the making and terms of the order under that paragraph.

Discharge of person committed (O 52, R 7)

7 (1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him or her.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him or her to deliver anything to some other person or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

Saving for other powers (O 52, R 8)

8 Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he or she had been guilty of contempt of the High Court, to pay a fine or to give security for his or her good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

Saving for power summarily to punish contempt (O 52, R 9)

9 Nothing in the foregoing provisions of this Order shall be taken to affect the power of the Court summarily to commit for contempt.

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[The next page is 792,521]

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ORDER 53 — APPLICATIONS FOR JUDICIAL REVIEW

Cases appropriate for application for judicial review (O 53, R 1)

1 (1) An application for an order of mandamus, prohibition or *certiorari* shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or *certiorari*;
- (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
- (c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Joinder of claims for relief (O 53, R 2)

2 On an application for judicial review any relief mentioned in Rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Application for leave to apply for judicial review (O 53, R 3)

3 (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this Rule.

(2) An application for leave must be made upon filing in the Registry—

- (a) a notice in Form 32 in Appendix 1 hereunder containing a statement of—
 - (i) the particulars of the judgment order, decision or other proceeding in respect of which judicial review is being sought;
 - (ii) the relief sought and the grounds upon which it is sought;
 - (iii) the name and description of the applicant;
 - (iv) the name and address of the applicant's solicitors (if any); and
 - (v) the applicant's address for service;
- (b) an affidavit which verifies the facts relied on.

(3) (a) Copies of the application for leave and the affidavit in support must be served on all persons directly affected by the application.

(b) The Court may determine the application without a hearing and where a hearing is considered necessary the Court shall hear and determine the application *inter partes*.

(c) Notice of hearing of the application shall be notified in writing to the parties by the Registrar.

(d) Where the Court determines the application without a hearing, the Registrar shall serve a copy of the order of the Court on the applicant.

(4) Without prejudice to its powers under Order 20, Rule 8, the Court hearing an application for leave may allow the relief sought and the grounds thereof to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(5) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Where leave is sought to apply for an order of *certiorari* to remove for the purpose

of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(7) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(8) Where leave to apply for judicial review is granted, then—

- (a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

(9) Upon granting leave the Court may, if satisfied that such a course is justified, direct that the grant shall operate either forthwith or conditionally as an entry of motion under Rule 5 (4) and may then proceed to judgment on the application for judicial review or may give such further directions as may be warranted in the circumstances.

[para (9) insrt LN 154 of 1998 r 2, opn 30 Dec 1998]

[r 3 subst LN 30 of 1994 r 2, opn 15 Mar 1994]

Delay in applying for relief (O 53, R 4)

4 (1) Subject to the provisions of this Rule, where in any case the Court considers that there has been undue delay in making an application for judicial review or, in a case to which paragraph (2) applies, the application for leave under Rule 3 is made after the relevant period has expired, the Court may refuse to grant—

- (a) leave for the making of the application; or
- (b) any relief sought on the application,

if, in the opinion of the Court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) is 3 months after the date of the proceeding.

(3) Paragraph (1) is without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

Mode of applying for judicial review (O 53, R 5)

5 (1) When leave has been granted to make an application for judicial review, the application shall be made either by originating motion or by originating summons.

(2) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a Court and the object of the application is either to compel the Court or an officer of the Court to do any act in relation to the proceedings or to quash them or any order made therein, the notice or summons must also be served on the Court officer or registrar of the Court and, where any objection to the conduct of the Judge is to be made, on the Judge.

(3) Unless the Judge granting leave has otherwise directed, there must be at least 10 days between the service of the notice of motion or summons and the day named therein for the hearing.

(4) A motion must be entered for hearing within 14 days after the grant of leave.

(5) An affidavit giving the names and addresses of, and the places, and dates of service on, all persons who have been served with the notice of motion or summons must be filed

before the motion or summons is entered for hearing and, if any person who ought to be served under this Rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion or summons.

(6) If on the hearing of the motion or summons the Court is of opinion that any person who ought, whether under this Rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice or summons may be served on that person.

Statements and affidavits (O 53, R 6)

6 (1) Copies of the statement in support of an application for leave under Rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may on the hearing of the motion or summons allow the applicant to amend his or her statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his or her statement or to use further affidavits, he or she shall give notice of his or her intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he or she proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under Rule 3.

Claim for damages (O 53, R 7)

7 (1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

- (a) he or she has included in the statement in support of his or her application for leave under Rule 3 a claim for damages arising from any matter to which the application relates; and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she 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.

Application for discovery, interrogatories, cross-examination etc (O 53, R 8)

8 (1) The Court may hear any interlocutory application in proceedings on an application for judicial review. In this paragraph “interlocutory application” includes an application for an order under Order 24 or 26 or Order 38 Rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) This Rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the State.

Hearing of application for judicial review (O 53, R 9)

9 (1) On the hearing of any motion or summons under Rule 5, any person who desires to be heard in opposition to the motion or summons, and appears to the Court to

be a proper person to be heard, shall be heard, notwithstanding that he or she has not been served with notice of the motion or the summons.

(2) Where the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he or she has lodged in the Principal or District Registry a copy thereof verified by affidavit or accounts for his or her failure to do so to the satisfaction of the Court hearing the motion or summons.

(3) Where an order of *certiorari* is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into Court.

(4) Where the relief sought is an order or *certiorari* and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his or her application, the Court may, instead of refusing the application, order the proceedings to continue as if they had begun by writ; and Order 28, Rule 8, shall apply as if, in the case of an application made by motion, it had been made by summons.

Saving for person acting in obedience to mandamus (O 53, R 10)

10 No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

Meaning of “Court” (O 53, R 11)

11 In relation to the hearing by a Judge of an application for leave under Rule 3 or of an application for judicial review, any reference in this Order to “the Court” shall, unless the context otherwise requires, be construed as a reference to the Judge.

[The next page is 792,621]

ORDER 54 — APPLICATIONS FOR WRIT OF *HABEAS CORPUS***Application for writ of *habeas corpus ad subjiciendum* (O 54, R 1)**

1 (1) Subject to Rule 11, an application for a writ of *habeas corpus ad subjiciendum* shall be made to the Court, except that—

- (a) it may be made to a Judge otherwise than in Court at any time when no Judge is sitting in Court; and
- (b) any application on behalf of a minor must be made in the first instance to a Judge otherwise than in Court.

(2) An application for such writ may be made *ex parte* and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his or her instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his or her behalf and that affidavit must state that the person restrained is unable to make the affidavit himself or herself and for what reason.

Power of court to whom *ex parte* application made (O 54, R 2)

2 (1) The Court or Judge to whom an application under Rule 1 is made *ex parte* may make an order forthwith for the writ to issue, or may—

- (a) where the application is made to a Judge otherwise than in Court, direct that an originating summons for the writ be issued, or that an application therefor be made by originating motion;
- (b) where the application is made to Court, adjourn the application so that notice thereof may be given.

(2) The summons or notice of the motion must be served on the person against whom the issue of the writ is sought and on such other persons as the Court or Judge may direct, and, unless the Court or Judge otherwise directs, there must be at least 8 clear days between the service of the summons or notice and the date named therein for the hearing of the application.

Copies of affidavits to be supplied (O 54, R 3)

3 Every party to an application under Rule 1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he or she proposes to use at the hearing of the application.

Power to order release of person restrained (O 54, R 4)

4 Without prejudice to Rule 2(1), the Court or Judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in its or his or her discretion order that the person restrained be released, and such order shall be a sufficient warrant to the Commissioner of the Fiji Corrections Service, a constable or other person for the release of the person under restraint.

Directions as to return to writ (O 54, R 5)

5 Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the Court or Judge by whom the order is made shall give directions as to the Court or Judge before whom, and the date on which, the writ is returnable.

Service of writ and notice (O 54, R 6)

6 (1) Subject to paragraphs (2) and (3), a writ of *habeas corpus ad subjiciendum* must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such writ personally, or if it is directed to the Commissioner of the Fiji Corrections Service or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in the manner provided by this Rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form 28 in Appendix 1) stating the Court or Judge before whom and the date on which the person restrained is to be brought and that in default of obedience proceedings for committal of the party disobeying will be taken.

[para (4) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Return to the writ (O 54, R 7)

7 (1) The return to a writ of *habeas corpus ad subjiciendum* must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court or Judge before whom the writ is returnable.

Procedure at hearing of writ (O 54, R 8)

8 When a return to a writ of *habeas corpus ad subjiciendum* is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his or her counsel shall be heard first, then the counsel for the State, and then one counsel for the person restrained in reply.

Bringing up prisoner to give evidence etc (O 54, R 9)

9 (1) An application for a writ of *habeas corpus ad testificandum* or of *habeas corpus ad respondendum* must be made on affidavit to a Judge in chambers.

(2) An application for an order to bring up a prisoner, otherwise than by writ of *habeas corpus*, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice, must be made on affidavit to a Judge in chambers.

Form of writ (O 54, R 10)

10 A writ of *habeas corpus ad subjiciendum* must be in Form 28 in Appendix 1.

[r 10 am LN 67 of 1993 r 9, opn 9 Aug 1993]

[The next page is 792,721]

ORDER 55 — APPEALS TO HIGH COURT FROM COURT, TRIBUNAL OR
PERSON: GENERAL

Application (O 55, R 1)

1 (1) Subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the High Court from any court, tribunal or person.

(2) This Order shall not apply to—

(a) any appeal by case stated; or

(b) any appeal under any enactment for which rules governing appeals have been made thereunder, save to the extent that such rules do not provide for any matter dealt with by these Rules.

(3) The following Rules of this Order shall, in relation to appeals to which this Order applies, have effect subject to any provision made specifically in relation to such appeals by these Rules or by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

Bringing of appeal (O 55, R 3)

3 (1) An appeal to which this Order applies shall be by way of rehearing and must be brought by originating motion.

(2) Every notice of the motion by which such an appeal is brought must state the grounds of the appeal and, if the appeal is against a judgment, order or other decision of a court, must state whether the appeal is against the whole or a part of that decision and, if against a part only, must specify the part.

(3) The bringing of such an appeal shall not operate as a stay of proceedings on the judgment, determination or other decision against which the appeal is brought unless the Court by which the appeal is to be heard or the court, tribunal or person by which or by whom the decision was given so orders.

Notice of motion and entry of appeal (O 55, R 4)

4 (1) The persons to be served with notice of the motion by which an appeal to which this Order applies is brought are the following—

(a) if the appeal is against a judgment, order or other decision of a court, the Registrar or clerk of the court and any party to the proceedings in which the decision was given who is directly affected by the appeal;

(b) if the appeal is against an order, determination, award or other decision of a tribunal, Minister of the State, government department or other person, the chairperson of the tribunal, Minister, government department or person, as the case may be, and every party to the proceedings (other than the appellant) in which the decision appealed against was given.

(2) The notice must be served, and the appeal entered, within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a court, the period specified in paragraph (2) shall be calculated from the date of the judgment or order or the date on which the decision was given.

(4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of the decision, or, in a case where a statement of the reasons for a decision was given later than such notice, on

which such a statement was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

Date of hearing of appeal (O 55, R 5)

5 Unless the Court having jurisdiction to determine the appeal otherwise directs, an appeal to which this Order applies shall not be heard sooner than 21 days after service of notice of the motion by which the appeal is brought.

Amendment of grounds of appeal etc (O 55, R 6)

6 (1) The notice of the motion by which an appeal to which this Order applies is brought may be amended by the appellant, without leave, by supplementary notice served not less than 7 days before the day appointed for the hearing of the appeal, on each of the persons on whom the notice to be amended was served.

(2) Within 2 days after service of a supplementary notice under paragraph (1) the appellant must lodge 2 copies of the notice in the Registry.

(3) Except with the leave of the Court hearing any such appeal, no grounds other than those stated in the notice of the motion by which the appeal is brought or any supplementary notice under paragraph (1) may be relied upon by the appellant at the hearing; but that Court may amend the grounds so stated or make any other order, on such terms as it thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(4) The foregoing provisions of this Rule are without prejudice to the powers of the Court under Order 20.

Powers of court hearing appeal (O 55, R 7)

7 (1) In addition to the power conferred by Rule 6(3), the Court hearing an appeal to which this Order applies shall have the powers conferred by the following provisions of this Rule.

(2) The Court shall have power to receive further evidence on questions of fact, and the evidence may be given in such manner as the Court may direct either by oral examination in Court, by affidavit, by deposition taken before an examiner or in some other manner.

(3) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(4) It shall be the duty of the appellant to apply to the Judge or other person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him or her of the proceedings and to furnish that copy for the use of the Court; and in default of production of such a note, or, if such note is incomplete, in addition to such note the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient. Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his or her comments.

(5) The Court may give any judgment or decision or make any order which ought to have been given or made by the Court, tribunal or person and make such further or other order as the case may require or may remit the matter with the opinion of the Court for rehearing and determination by it or him or her.

(6) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(7) The Court shall not be bound to allow the appeal on the ground merely of

misdirection, or of the improper admission or rejection of evidence, unless in the opinion of the Court substantial wrong or miscarriage has been thereby occasioned.

Right of Minister etc to appeal and be heard (O 55, R 8)

8 Where an appeal to which this Order applies is against an order, determination or other decision of a Minister of the State or Government department, the Minister or department, as the case may be, shall be entitled to appear and be heard in the proceedings on the appeal.

792,723

Service 0

[The next page is 792,821]

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792,724

ORDER 56 — APPEALS TO HIGH COURT BY CASE STATED: GENERAL

Application (O 56, R 1)

1 (1) Subject to paragraphs (2) and (3), this Order shall apply to every appeal which by or under any enactment lies to the High Court by case stated from any court, tribunal or person.

(2) This Order shall not apply to any appeal by case stated under any enactment for which rules governing such appeals have been made thereunder save to the extent that such rules do not provide for any matter dealt with by these Rules.

(3) This Order shall, in relation to an appeal to which it applies, have effect subject to any provision made specifically, in relation to such appeals, by or under any enactment.

(4) In this Order references to a tribunal shall be construed as references to any tribunal constituted by or under any enactment other than any of the ordinary courts of law.

Form of case (O 56, R 2)

2 Where the judgment, order or decision of the court, tribunal or person in respect of which a case is to be stated states all the relevant facts found by that court, tribunal or person and the questions of law to be determined by the High Court, a copy of the judgment, order or decision must be annexed to the case and the facts so found and the question of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

Case stated by Magistrates Court, lodging case etc (O 56, R 3)

3 (1) Where a case has been stated by a Magistrates court the appellant must—

- (a) within 10 days after receiving the case, lodge it in the Registry; and
- (b) within 4 days after lodging the case as aforesaid serve on the respondent a notice of the entry of appeal together with a copy of the case.

(2) Unless the Court otherwise directs, the appeal shall not be heard sooner than 8 clear days after service of notice of the entry of the appeal.

Case stated by Ministers, tribunal etc (O 56, R 4)

4 (1) This Rule and the following Rules of this Order shall apply to proceedings for the determination of a case stated by, or a question of law referred to the Court by a Minister of the State, government department, tribunal or other person.

(2) In the following Rules references to a Minister shall be construed as including references to a government department, and in those Rules and this Rule “case” includes a special case.

Application for order to state a case (O 56, R 5)

5 (1) An application to the Court for an order directing a Minister, tribunal or other person to state a case for determination by the Court or to refer a question of law to the Court by way of case stated must be made by originating motion; and the persons to be served with notice thereof are the Minister, secretary of the tribunal or other person, as the case may be, and every party (other than the applicant) to the proceedings to which the application relates.

(2) The notice of such motion must state the grounds of the application, the question of law on which it is sought to have the case stated and any reasons given by the Minister, tribunal or other person for his or her or its refusal to state a case.

(3) The motion must be entered for hearing, and the notice thereof served, within 14 days after receipt by the applicant of notice of the refusal of his or her request to state a case.

Signing and service of case (O 56, R 6)

6 (1) A case stated by a tribunal must be signed by the chairperson or president of the tribunal, and a case stated by any other person must be signed by him or her or by a person authorised in that behalf to do so.

(2) The case must be served on the party at whose request, or as a result of whose application to the Court, the case was stated; and if a Minister, tribunal, arbitrator or other person is entitled by virtue of any enactment to state a case, or to refer a question of law by way of case stated, for determination by the High Court without request being made by any party to the proceedings before that person, the case must be served on such party to those proceedings as the Minister, tribunal, arbitrator or other person, as the case may be, thinks appropriate.

(3) When a case is served on any party under paragraph (2), notice must be given to every other party to the proceedings in question that the case has been served on the party named, and on the date specified, in the notice.

Proceedings for determination of case (O 56, R 7)

7 (1) Proceedings for the determination by the High Court of a case stated, or a question of law referred by way of case stated, by a Minister, tribunal, arbitrator or other person must be begun by originating motion by the person on whom the case was served in accordance with Rule 6(2).

(2) The persons to be served with the notice of such motion are—

- (a) the Minister, secretary of the tribunal, arbitrator or other person by whom the case was stated; and
- (b) any party (other than the applicant) to the proceedings in which the question of law to which the case relates arose,

and a copy of the case stated must be served with the notice on any such party.

(3) The notice of such motion must set out the applicant's contentions on the question of law to which the case stated relates.

(4) The motion must be entered for hearing, and the notice thereof served, within 14 days after the case stated was served on the applicant.

(5) If the applicant fails to enter the motion within the period specified in paragraph (4), then, after obtaining a copy of the case from the Minister, tribunal, arbitrator or other person by whom the case was stated, any other party to the proceedings in which the question of law to which the case relates arose may, within 14 days after the expiration of the period so specified, begin proceedings for the determination of the case, and paragraphs (1) to (4) shall have effect accordingly with the necessary modifications. The references in this paragraph to the period specified in paragraph (4) shall be construed as including references to that period as extended by any order of the Court.

(6) Unless the Court having jurisdiction to determine the case otherwise directs, the motion shall not be heard sooner than 7 days after service of notice of the motion.

Amendment of case (O 56, R 8)

8 The Court hearing a case stated by a Minister, tribunal, arbitrator or other person may amend the case or order it to be returned to that person for amendment, and may draw inferences of fact from the facts stated in the case.

Right of Minister to appear and be heard (O 56, R 9)

9 A Minister shall be entitled to appear and be heard in proceedings for the determination of a case stated, or a question of law referred by way of case stated, by him or her.

DFLRC (RT) - 17/12/24

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[The next page is 792,921]

Service 0

792,824

ORDER 57 — SUPPLEMENTARY PROVISIONS IN RESPECT OF
PROCEEDINGS BEFORE A SINGLE JUDGE

Application (O 57, R 1)

1 This Order shall apply to—

- (a) any proceedings before a single Judge under Order 52 Rule 2, Order 53 or Order 54; and
- (b) any proceedings before a single judge, being proceedings which consist of or relate to an appeal to the High Court from any court, tribunal or person including an appeal by case stated and the reference of a question of law by way of case stated.

Entry of motions (O 57, R 2)

2 (1) Every motion in proceedings to which this Order applies must be entered for hearing in the Registry; and entry shall be made when a copy of the notice of motion, and any other documents required to be lodged before entry, have been lodged in the Registry.

(2) The party entering the motion for hearing must lodge in the Registry copies of the proceedings for the use of the Judges.

Issue etc of originating summons (O 57, R 3)

3 An originating summons by which any proceedings to which this Order applies are begun must be issued in the Registry.

Filing of affidavits and drawing up of orders (O 57, R 4)

4 (1) Every affidavit used in proceedings to which this Order applies must be filed in the Registry.

(2) Every order made in proceedings to which this Order applies shall be drawn up in the Registry, and a copy of any order made by a Judge in chambers in any such proceedings must be filed in the Registry.

Issue of writs (O 57, R 5)

5 (1) Every writ issued in proceedings to which this Order applies shall be issued out of the Registry and must be prepared by the party seeking to issue it.

(2) Every such writ must be filed in the Registry together with the return thereto and a copy of any order made thereon.

[The next page is 793,021]

Service 0

792,922

ORDER 58 — APPEALS FROM REGISTRAR AND DEPUTY REGISTRARS

1 (1) An appeal shall lie to a Judge in chambers from any judgment, order or decision of the Registrar or Deputy Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the Judge on a day specified in the notice, or on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 5 days after the judgment, order or decision appealed against was given or made and an appeal to which this Rule applies shall not be heard sooner than 2 clear days after service of the notice by which the appeal is brought.

(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.

793,021

Service 0

[The next page is 793,121]

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793,022

ORDER 59 — MASTER OF THE HIGH COURT

[O 59 insrt LN 39 of 2006 r 3, opn 16 June 2006]

PART 1 — JURISDICTION OF THE MASTER

Master may exercise powers of the Registrar (O 59, R 1)

1 The jurisdiction conferred on the Registrar under these Rules may be exercised by the Master.

Jurisdiction of the Master (O 59, R 2)

2 The Master shall have and exercise all the power, authority and jurisdiction which may be exercised by a Judge in relation to the following causes and matters—

- (a) chamber applications, except in respect of—
 - (i) injunctions, other than injunctions by consent or in connection with or ancillary to charging orders;
 - (ii) proceedings involving the liberty of the subject;
 - (iii) criminal proceedings;
 - (iv) proceedings under the Family Law Act 2003;
 - (v) appeals from Magistrates Court or any other tribunal;
 - (vi) applications for leave to seek judicial review; or
 - (vii) *[Repealed]*
- (b) applications for summary judgment;
- (c) proceedings under the Land Transfer Act 1971 relating to caveats;
- (d) assessment of damages where liability has been determined;
- (e) entry of any order or judgment by consent;
- (f) costs;
- (g) applications for winding-up of companies;
- (h) mediation;
- (i) applications and proceedings under the Fiji National Provident Fund Act 2011;
- (j) grants of Probate and Letters of Administration, where uncontested;
- (k) possession of land under section 169 of the Land Transfer Act 1971 and Orders 88 and 113, where uncontested; and
- (l) any other matter in respect of which jurisdiction is conferred upon the Master by or under any other written law or by the Chief Justice.

Jurisdiction of Judge not affected (O 59, R 3)

3 The conferring of power, authority and jurisdiction on the Master under this Order shall not prevent a Judge from exercising any such power, authority and jurisdiction.

Reference of matter to Judge (O 59, R 4)

4 The Master may refer to a Judge any matter which the Master thinks should properly be decided by a Judge who may either dispose of the matter or refer it back to the Master with such directions as may be necessary.

Master may adjourn proceedings (O 59, R 5)

5 The Master shall have the power to grant adjournments or issue directions in any proceedings, notwithstanding that the Master would not otherwise have jurisdiction in respect of those proceedings.

Master may act as a referee (O 59, R 6)

6 The Master may act as a special referee or mediator in respect of any proceedings or any question arising in any cause.

References (O 59, R 7)

7 For the purposes of any cause or matter over which power, authority and jurisdiction is conferred upon the Master in relation to such cause or matter reference to a Judge or the Registrar under these Rules shall be deemed to be a reference to the Master.

[The next page is 793,171]

PART 2 — APPEAL FROM THE MASTER

Appeal from Master's decision (O 59, R 8)

8 (1) An appeal shall lie from a final order or judgment of the Master to a single Judge of the High Court.

(2) No appeal shall lie from an interlocutory order or judgment of the Master to a single Judge of the High Court without the leave of a single Judge of the High Court which may be granted or refused upon the papers filed.

Time for appealing (O 59, R 9)

9 An appeal from an order or judgment of the Master shall be filed and served within the following period—

- (a) 21 days from the date of the delivery of an order or judgment; or
- (b) in case of an interlocutory order or judgment, within 7 days from the date of the granting of leave to appeal.

Extension of time (O 59, R 10)

10 (1) An application to enlarge the time period for filing and serving a notice of appeal or cross-appeal may be made to the Master before the expiration of that period and to a single Judge after the expiration of that period.

(2) An application under paragraph (1) shall be made by way of an *inter parte* summons supported by an affidavit.

Application for leave to appeal (O 59, R 11)

11 Any application for leave to appeal an interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served within 14 days of the delivery of the order or judgment.

Notice of appeal (O 59, R 12)

12 An appeal shall be brought by way of a notice of appeal, which may be given in respect of the whole or any specified part of the order or judgment of the Master.

Cross-appeal (O 59, R 13)

13 Where a respondent to an appeal under this part wishes to appeal, the respondent shall file and serve a notice of cross-appeal within 7 days from the service of the notice of appeal.

Contents of notice of appeal and cross-appeal (O 59, R 14)

14 A notice of appeal or cross-appeal filed under Rules 12 or 13 shall state—

- (a) whether the appeal is from the whole or part only and what part of the order or judgment of the Master;
- (b) the grounds of appeal succinctly;
- (c) the precise form of the order which is sought in place of the order or judgment of the Master.

Amendment of notice of appeal and cross-appeal (O 59, R 15)

15 (1) A notice of appeal or cross-appeal may be amended by or with leave of the Court.

(2) An application for amendment under paragraph (1) shall be by way of a summons filed and served upon each of the parties to the appeal not less than 14 days before the date on which the appeal is listed for hearing.

Stay of proceedings or execution (O 59, R 16)

16 (1) The filing of a notice of appeal or an application for leave shall not operate as a stay of execution or proceedings, or any step therein, unless the Court so directs.

(2) An application under paragraph (1) shall be made by way of an *inter parte* summons supported by an affidavit.

Procedure after filing appeal (O 59, R 17)

17 (1) The appellant shall, upon serving the notice of appeal on the party or parties to the appeal, file an affidavit of service within 7 days of such service.

(2) The appellant shall, within 21 days of the filing of notice of appeal, file and serve a summons returnable before a Judge for directions and a date for the hearing of the appeal.

(3) If this Rule is not complied with, the appeal is deemed to have been abandoned.

[The next page is 793,271]

ORDER 60 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

793,271

Service 0

[The next page is 793,371]

Service 0

793,272

ORDER 61 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

793,371

Service 0

[The next page is 793,471]

Service 0

793,372

ORDER 62 — COSTS

[O 62 subst LN 72 of 1998 r 4, opn 15 May 1998]

PART 1 — PRELIMINARY

Interpretation (O 62, R 1)

1 (1) Except where it is otherwise expressly provided, or the context otherwise requires, the following provisions of this Rule shall apply for the interpretation of this Order.

(2) **certificate** includes allocatur;

contentious business means business done as a legal practitioner in or for the purposes of proceedings begun before a court, tribunal or arbitrator;

legal representative means a legal practitioner or a barrister or a solicitor;

non-contentious business means any business done as a legal practitioner, other than contentious business;

party in relation to a cause or matter, includes a party who is treated as being a party to that cause or matter by virtue of Order 1, Rule 2;

patient means a person who, by reason of mental disorder, is incapable of managing and administering his or her property and affairs;

Registrar means the Registrar of the High Court;

solicitor includes a legal practitioner admitted to practise in Fiji;

taxed costs means costs taxed in accordance with this Order;

taxing officer means the Registrar or Master or any officer for the time being authorised by the Chief Justice to act as a taxing officer; and

the standard basis and **the indemnity basis** have the meanings assigned to them by Rule 12(1) and (2) respectively.

(3) References to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property, whether real or personal, held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he or she is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his or her possession or not.

(4) References to costs shall be construed as including references to fees, charges, disbursements, expenses and remuneration and, in relation to proceedings (including taxation proceedings), also include references to costs of or incidental to those proceedings.

Application (O 62, R 2)

2 (1) Where by virtue of any Act 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 Act, not being proceedings in the High Court, are taxable in the High Court, the following provisions of this Order, that is to say, Rule 7(4) and (5), Rule 8(6), Rules 13 to 15, Rule 16(1), Rule 17, Rule 20, Rules 21 to 23 and Rules 31 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court.

(2) This Order shall have effect subject to the provisions of any enactment which limit the costs recoverable.

(3) The powers and discretion of the Court as to costs shall be exercised subject to and in accordance with this Order.

[The next page is 793,521]

Service 0

793,472

PART 2 — ENTITLEMENT TO COSTS

General principles (O 62, R 3)

3 (1) This Rule shall have effect subject only to the following provisions of this Order.

(2) No party to any proceedings shall be entitled to recover any of the costs of those proceedings from any other party to those proceedings except under an order of the Court.

(3) If the Court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(4) The amount of costs which any party shall be entitled to recover is the amount allowed after taxation on the standard basis where—

- (a) an order is made that the costs of one party to proceedings be paid by another party to those proceedings;
- (b) an order is made for the payment of costs out of any fund; or
- (c) no order is required, unless it appears to the Court to be appropriate to order costs to be taxed on the indemnity basis.

(6) Subject to Rule 8, a term mentioned in the first column of the table below, when used in an order for costs, shall have the effect indicated in the second column of that table.

<i>Term</i>	<i>Effect</i>
Costs	<ul style="list-style-type: none"> (a) Where this order is made in interlocutory proceedings, the party in whose favour it is made shall be entitled to the costs in respect of those proceedings whatever the outcome of the cause or matter in which the proceedings arise; and (b) where this order is made at the conclusion of a cause or matter, the party in whose favour it is made shall be entitled to have the costs taxed forthwith;
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 the costs of the proceedings in respect of which this order is made unless the Court orders otherwise;
Costs in any event	This order has the same effect as an order for “costs” made in interlocutory proceedings;
Costs here and below	The party in whose favour this order is made shall be entitled not only to the costs in respect of the proceedings in which it is made but also to the costs of the same proceedings in any lower court;
Costs in the cause or application	The party in whose favour an order is made at a conclusion of the cause or matter in which the proceedings arise shall be entitled to the 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 if	The plaintiff or the defendant, as the case may be shall be entitled to the costs of the proceedings in respect of which such an order is made if judgment is given in his or her favour in the cause or matter in which the proceedings arise but he or she shall not be liable to pay the costs of any other party in respect of those proceedings if judgment is given in favour of any other party or parties in the cause or matter in question;

Costs thrown away

Where proceedings or any part of them have been ineffective or have been subsequently set aside, the party in whose favour this order is made shall be entitled to the costs of those proceedings or that part of the proceedings in respect of which it is made.

Cases where no order for costs is to be made (O 62, R 4)

4 In a probate action where a defendant has given notice with his or her defence to the party setting up the will that he or she merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will, no order for costs shall be made against him or her unless it appears to the Court that there was no reasonable ground for opposing the will.

Cases where order for costs deemed to have been made (O 62, R 5)

5 (1) In each of the circumstances mentioned in this Rule an order for costs shall be deemed to have been made to the effect respectively described and the order shall be deemed to have been entered upon the date on which the event which gave rise to the entitlement to costs occurred.

(2) Where a summons is taken out to set aside any proceedings on the ground of irregularity and the summons is dismissed, the party who issued the summons shall pay the costs of every other party.

(3) Where a party by notice in writing and without leave discontinues an action or counterclaim or withdraws any particular claim made by him or her as against any other party, that other party shall be entitled to his or her costs of the action or counterclaim or his or her costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

(4) Where a plaintiff by notice in writing in accordance with Order 22, Rule 3(1), accepts money paid into Court in satisfaction of the cause of action or of all the causes of action in respect of which he or she claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he or she abandons the others, he or she shall be entitled to his or her costs of the action incurred up to the time of giving notice of acceptance.

(5) Where in an action for libel or slander against several defendants sued jointly a plaintiff, by notice in writing in accordance with Order 22, Rule 3(1), accepts money paid into Court by one of the defendants he or she shall be entitled to his or her costs of the action against that defendant incurred up to the time of giving notice of acceptance.

(6) A defendant who has counterclaimed shall be entitled to the costs of the counterclaim if—

- (a) he or she pays money into Court and his or her notice of payment states that he or she has taken into account and satisfied the cause or causes of action in respect of which he or she counterclaims; and
- (b) the plaintiff accepts the money paid in; but the costs of such counterclaim shall be limited to those incurred up to the time when the defendant receives notice of acceptance by the plaintiff of the money paid into Court.

Cases where costs do not follow the event (O 62, R 6)

6 (1) The provisions of this Rule shall apply in the circumstances mentioned in this Rule unless the Court orders otherwise.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he or she shall be entitled to the costs of those

proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by him or her in that capacity or out of the mortgaged property, as the case may be, and the Court may order otherwise only on the ground that he or she has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his or her own benefit rather than for the benefit of the fund.

(3) Where any person claiming to be a creditor—

- (a) seeks to establish any claim to a debt under any judgment or order in accordance with Order 44; or
- (b) comes in to prove his or her title, debt or claim in relation to a company in pursuance of any such notice,

he or she shall, if his or her claim succeeds, be entitled to his or her costs incurred in establishing it: and, if his or her claim or any part of it fails, he or she may be ordered to pay the costs of any person incurred in opposing it.

(4) Where a claimant (other than a person claiming to be a creditor) has established a claim to be entitled under a judgment or order in accordance with Order 44 and has been served with notice of the judgment or order pursuant to Rule 2 of that Order, he or she shall, if he or she acknowledges service of the notice, be entitled as part of his or her costs of action (if allowed) to costs incurred in establishing his or her claim; and where such a claimant fails to establish his or her claim or any part of it he or she may be ordered to pay the costs of any person incurred in opposing it.

(5) The costs of any amendment made without leave in the writ or any pleadings shall be borne by the party making the amendment.

(6) The costs of any application to extend the time fixed by these Rules or by any direction or order thereunder shall be borne by the party making the application.

(7) If a party on whom a notice to admit facts is served under Order 27, Rule 2, refuses or neglects to admit the facts within 14 days after the service on him or her of the notice or such longer time as may be allowed by the Court, the costs of proving the facts and the costs occasioned by and thrown away as a result of his or her failure to admit the facts shall be borne by him or her.

(8) If a party—

- (a) on whom a list of documents is served in pursuance of Order 24; or
- (b) on whom a notice to admit documents is served under Order 27, Rule 5, gives notice of non-admission of any of the documents in accordance with Order 27, Rule 4(2) or 5(2), as the case may be, the costs of proving that document and the costs occasioned by and thrown away as a result of his or her non-admission shall be borne by him or her.

Special circumstances in which costs shall not or may not be taxed (O 62, R 7)

7 (1) The provisions of this Rule shall apply in the circumstances mentioned in this Rule.

(2) Costs which by or under any direction of the Court are to be paid to a receiver appointed by the High Court, in respect of his or her remuneration, disbursements or expenses, shall be allowed in accordance with Order 30, Rule 3 and shall not be taxed.

(3) Where a writ in an action is indorsed in accordance with Order 6, Rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), the plaintiff is not entitled to tax his or her costs; but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall be entitled to have those costs taxed.

(4) In awarding costs to any person the Court may order that, instead of his or her taxed costs, that person shall be entitled—

- (a) to a proportion (specified in the order) of those costs from or up to a stage of the proceedings so specified; or
- (b) to a gross sum so specified in lieu of those costs; but where the person entitled to such a gross sum is a litigant in person, Rule 18 shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.

(5) Where a claimant is entitled to costs under Rule 6(3) the amount of the costs shall be assessed by the Court unless it thinks fit to order taxation and the amount so assessed or taxed shall be added to the debt due to the claimant.

(6) Subject to paragraph (7), where a party is entitled to costs under Rule 6(7) or (8) the amount of those costs may be assessed by the Court and be ordered to be paid forthwith.

(7) No order may be made under paragraph (6) in a case where the person against whom the order is made is an assisted person within the meaning of the statutory provisions relating to legal aid.

Stage of proceedings at which costs to be taxed (O 62, R 8)

8 (1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

(3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

(4) In the case of any proceedings transferred or removed to the High Court from any other court, the High Court may (subject to any order of the court ordering the transfer or removal) deal with the costs of the whole proceedings (including the costs before the transfer or removal).

(5) Notwithstanding anything in Part 3 of this Order, but subject to paragraph (7) below, where the Court makes an order as to the costs of any proceedings before another court under paragraphs (4) or (5), the order—

- (a) shall specify the amount of the costs to be allowed; or shall direct that the costs be assessed by the court before which the proceedings took place;
- (b) be taxed by an officer of that court; or
- (c) may direct that the costs be taxed by a taxing officer.

(6) Where it appears to a taxing officer on application that there is no likelihood of any further order being made in a cause or matter, he or she may tax forthwith the costs of any interlocutory proceedings which have taken place.

Matters to be taken into account in exercising discretion (O 62, R 9)

9 The Court in exercising its discretion as to costs shall take into account—

- (a) any offer of contribution brought to its attention in accordance with Order 16 Rule 10;
- (b) any payment of money into court and the amount of such payment;
- (c) any written offer made under Order 33, Rule 5(2).

Misconduct or neglect in the conduct of any proceedings (O 62, R 10)

10 (1) Where it appears to the Court in any proceedings that any thing has been done

or that any omission has been made, unreasonably or improperly by or on behalf of any party the Court may order that the costs of that party in respect of the act or omission, as the case may be, shall not be allowed and that any costs occasioned by it to any other party shall be paid by him or her to that other party.

(2) Instead of making an order under paragraph (1) the Court may refer the matter to a taxing officer, in which case the taxing officer shall deal with the matter under Rule 28(1).

Personal liability of legal representative for costs (O 62, R 11)

11 (1) Subject to the following provisions of this Rule, where it appears to the Court that costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, the Court may—

(a) order—

- (i) the legal representative whom it considers to be responsible (whether personally or through a servant or agent) to repay to his or her client costs which the client has been ordered to pay to any other party to the proceedings; or
- (ii) the legal representative personally to indemnify such other parties against costs payable by them; and
- (iii) the costs as between the legal representative and his or her client to be disallowed; or

(b) direct a taxing officer to inquire into the matter and report to the Court, and upon receiving such a report the Court may make such order under subparagraph (a) as it thinks fit.

(2) When conducting an inquiry pursuant to a direction under paragraph (1)(b) the taxing officer shall have all the powers and duties of the Court under paragraphs (4), (5), (6) and (8) of this Rule.

(3) Instead of proceeding under paragraph (1) of this Rule the Court may refer the matter to a taxing officer, in which case the taxing officer shall deal with the matter under Rule 28(2) and (3).

(4) Subject to paragraph (5), before an order may be made under paragraph (1)(a) of this Rule the Court shall give the legal representative a reasonable opportunity to appear and show cause why an order should not be made.

(5) The Court shall not be obliged to give the legal representative a reasonable opportunity to appear and show cause where proceedings fail, cannot conveniently proceed or are adjourned without useful progress being made because the legal representative—

- (a) fails to attend in person or by a proper representative;
- (b) fails to deliver any document for the use of the Court, which ought to have been delivered or to be prepared with any proper evidence or account; or
- (c) otherwise fails to proceed.

(6) The Court may direct the Solicitor-General to attend and take part in any proceedings or inquiry under this Rule and the Court shall make such order as to the payment of the Solicitor-General's costs as it thinks fit.

(7) If in any proceedings a party who is represented by a legal representative fails to pay the fees or any part of the fees prescribed by the Orders as to Court fees then, on the application of the Solicitor-General by summons, the Court may order the legal representative personally to pay that amount in the manner so prescribed and to pay the Solicitor-General's costs of the application.

(8) The Court may direct that notice of any proceedings or order against a legal representative under this Rule be given to his or her client in such a manner as may be specified in the direction.

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PART 3 — TAXATION AND ASSESSMENT OF COSTS

Basis of taxation (O 62, R 12)

12 (1) On a taxation of costs on the standard basis there shall be allowed a reasonable amount in respect of all costs reasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party; and in these Rules the term “the standard basis” in relation to the taxation of costs shall be construed accordingly.

(2) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these Rules the term “the indemnity basis” in relation to the taxation of costs shall be construed accordingly.

(3) Where the Court makes an order for costs without indicating the basis of taxation or an order that costs be taxed on basis other than the standard basis or the indemnity basis, the costs shall be taxed on the standard basis.

Standard Costs (O 62, R 13)

13 (1) In determining the scale of standard costs to be awarded as provided by Order 1, Rule 9(3)(a) the taxing officer shall have regard to the complexity of the proceedings in respect of which costs are taxed and in particular to—

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialised knowledge and responsibility required of, and the time and labour expended by, the solicitor;
- (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 in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

(3) The bill of costs shall consist of such items specified in Appendix 4 as may be appropriate, set out in chronological order, each such item (other than an item relating only to time spent in travelling and waiting) may include an allowance for general care and conduct having regard to such of the circumstances referred to in paragraph (2) above as may be relevant to that item.

Costs payable to a trustee or personal representative out of any fund (O 62, R 14)

14 (1) This Rule applies to every taxation of a trustee’s or personal representative’s costs where—

- (a) he or she is or has been a party to any proceedings in that capacity; and
- (b) he or she is entitled to be paid his or her costs out of any fund which he or she holds in that capacity.

(2) On a taxation to which this Rule applies, costs shall be taxed on the indemnity basis but shall be presumed to have been unreasonably incurred if they were incurred contrary to the duty of the trustee or personal representative as such.

Costs payable to a solicitor by his or her own client (O 62, R 15)

15 (1) This Rule applies to every taxation of a solicitor's bill to his or her own client.

(2) On a taxation to which this Rule applies costs shall be taxed on the indemnity basis but shall be presumed—

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;
- (b) to have been reasonable in amount if their amount was expressly or impliedly approved by the client; and
- (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature unless the solicitor satisfies the taxing officer that prior to their being incurred he or she informed his or her client that they might not be allowed on a taxation of costs *inter partes*.

Costs payable to a solicitor where money claimed by or on behalf of a minor or a patient (O 62, R 16)

16 (1) This Rule applies to any proceedings in which—

- (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a minor or a patient; or
- (b) money paid into court is accepted by or on behalf of a minor or patient.

(2) The costs of proceedings to which this Rule applies which are payable by any plaintiff to his or her barrister and solicitor shall, unless the Court otherwise orders, be taxed under Rule 15(1) and (2).

(3) On a taxation under paragraph (2), the taxing officer shall also tax any costs payable to that plaintiff in those proceedings and shall certify—

- (a) the amount allowed on the taxation of the solicitor's bill to his or her own client;
- (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings;
- (c) the amount (if any) by which the amount mentioned in subparagraph (a) exceeds the amount mentioned in subparagraph (b); and
- (d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.

(4) Nothing in the foregoing provisions of this Rule shall prejudice a solicitor's lien for costs.

(5) This Rule shall apply *mutatis mutandis* to counterclaims.

Provisions for ascertaining costs on a taxation (O 62, R 17)

17 (1) Subject to the following provisions of this Rule, the provisions contained in Order 62, Rule 37 to this Order for ascertaining the amount of costs to be allowed on a taxation of costs shall apply to the taxation of all costs with respect to contentious business.

(2) Where the amount of a barrister and solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated (in the absence of agreement to the contrary) by any enactment or Rules made thereunder for the time being in force, the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same.

(3) Notwithstanding paragraph (1), costs shall be allowed in the cases to which Appendix 4 applies in accordance with the provisions of that Appendix unless the Court otherwise orders.

Litigants in person (O 62, R 18)

18 (1) Subject to the provisions of this Rule, on any taxation of the costs of a litigant in person there may be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf together with any payments reasonably made by him or her for legal advice relating to the conduct of or the issues raised by the proceedings.

(2) The amount allowed in respect of any item shall be such sum as the taxing officer thinks fit but not exceeding, except in the case of a disbursement, two thirds of the sum which in the opinion of the taxing officer would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where it appears to the taxing office that the litigant has not suffered any pecuniary loss in doing any item of work to which the costs relate, he or she shall be allowed in respect of the time reasonably spent by him or her on that item not more than \$4 per hour.

(4) A litigant who is allowed costs in respect of attending Court to conduct his or her case shall not be entitled to a witness allowance in addition.

(5) For the purposes of this Rule a litigant in person does not include a litigant who is a practicing solicitor.

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PART 4 — POWERS OF TAXING OFFICERS

Who may tax costs (O 62, R 19)

- 19 Subject to paragraphs (2) and (3), a taxing officer shall have power to tax—
- (a) the costs of or arising out of any proceedings to which this Order applies;
 - (b) the costs ordered by an award made on a reference to arbitration under any Act or payable pursuant to an arbitration agreement; and
 - (c) any other costs the taxation of which is ordered by the Court.

Supplementary powers of taxing officers (O 62, R 20)

20 A taxing officer may, in the discharge of his or her functions with respect to the taxation of costs—

- (a) take an account of any dealings in money made in connection with the payment of the costs being taxed, if the Court so orders;
- (b) require any party represented jointly with any other party in any proceedings before him or her to be separately represented;
- (c) examine any witness in those proceedings; and
- (d) order the production of any document which may be relevant in connection with those proceedings.

Extensions of time (O 62, R 21)

21 (1) A taxing officer may—

- (a) extend the period with which a party is required by or under this Order or by the Court to begin proceedings for taxation or to do anything in or in connection with those proceedings on such terms (if any) as he or she thinks just; or
- (b) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) A taxing officer may extend any such period as if referred to in paragraph (1) of this Rule although the application for extension is not made until after the expiration of that period.

Certificates (O 62, R 22)

22 (1) A taxing officer—

- (a) shall, at the conclusion of taxation proceedings before him or her, issue a certificate for the costs allowed by him or her;
- (b) may from time to time in the course of the taxation issue an interim certificate for any part of the costs which have been taxed or for any part of the amount of which is not in dispute;
- (c) may amend or cancel an interim certificate issued by him or her;
- (d) may correct any clerical mistake in any certificate issued by him or her or any error arising therein from any accidental slip or omission; and
- (e) may set aside a certificate issued by him or her in order to enable him or her to extend the period provided by Rule 33(2).

(2) If, in the course of the taxation of a solicitor's bill to his or her own client, it appears to the taxing officer that in any event the solicitor will be liable in connection with that bill to pay money to the client, he or she may from time to time issue an interim certificate specifying an amount which in his or her opinion is payable by the solicitor to his or her client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified in it to be paid forthwith to the client or into court.

Power of taxing officer where party liable to be paid and to pay costs (O 62, R 23)

23 Where a party entitled to be paid costs is also liable to pay costs, the taxing officer may—

- (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount he or she is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs the party is entitled to be paid until he or she has paid or tendered the amount he or she is liable to pay.

Taxation of bill of costs comprised in an account (O 62, R 24)

24 (1) Where the Court orders an account to be taken and the account consists in part of costs, the Court may direct a taxing officer to tax those costs and the taxing officer shall after taxation of the bill of costs return it, together with his or her report on it, to the Court.

(2) A taxing officer taxing a bill of costs in accordance with a direction under paragraph (1) shall have the same powers, and the same fee shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

Taxing officer to fix certain fees payable to conveyancing counsel (O 62, R 25)

25 (1) Where the Court refers any matter to the conveyancing counsel of the Court or obtains the assistance of any other person under Order 32, Rule 13, the fees payable to counsel or that other person in respect of the work done by him or her in connection with the reference or, as the case may be, in assisting the Court shall be fixed by a taxing officer.

(2) An appeal from a decision of a taxing officer under paragraph (1) shall lie to the Court and the decision of the Court thereon shall be final.

Powers of taxing officers on taxation of costs out of a fund (O 62, R 26)

26 (1) Where any costs are to be paid out of a fund the taxing officer may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he or she considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund, the taxing officer may direct the party whose bill is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say—

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter has been referred to a taxing officer for taxation;
- (b) the name of the taxing officer and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing officer at which the taxation will be continued; and
- (d) such other information, if any, as the taxing officer may direct.

Powers of taxing officers in relation to costs of taxation proceedings (O 62, R 27)

27 (1) Subject to the provisions of any Act and this Order, the party whose bill is being taxed shall be entitled to his or her costs of the taxation proceedings.

(2) Where it appears to the taxing officer that in the circumstances of the case some

other order should be made as to the whole or any part of the costs, the taxing officer shall have, in relation to the costs of taxation proceedings, the same powers as the Court has in relation to the costs of proceedings.

(3) Subject to paragraph (5), the party liable to pay the costs of the proceedings which gave rise to the taxation proceedings may make a written offer to pay a specific sum in satisfaction of those costs which is expressed to be “without prejudice save as to the costs of taxation” at any time before the expiration of 14 days after the delivery to him or her of a copy of the bill of costs under Rule 30(3) and, where such an offer is made, the fact that it has been made shall not be communicated to the taxing officer until the question of the costs of the taxation proceedings falls to be decided.

(4) The taxing officer may take into account any offer made under paragraph (3) which has been brought to his or her attention.

(5) No offer to pay a specific sum in satisfaction of costs may be made in a case where the person entitled to recover his or her costs is an assisted person within the meaning of the statutory provisions relating to legal aid.

(6) In this Rule any reference to the costs of taxation proceedings shall be construed as including a reference to any fee which is prescribed by the Orders as to Court fees for the taxation of a bill of costs.

Powers of taxing officer in relation to misconduct, neglect etc (O 62, R 28)

28 (1) Where, whether or not on a reference by the Court under Rule 10(2), it appears to the taxing officer that anything has been done, or that any omission has been made, unreasonably or improperly by or on behalf of any party in the taxation proceedings or in the proceedings which gave rise to the taxation proceedings, he or she may exercise the powers conferred on the Court by Rule 10(1).

(2) Where, whether or not on a reference by the Court under Rule 11(3), it appears to the taxing officer that costs have been wasted in the taxation proceedings or in the proceeding which gave rise to the taxation proceedings, he or she may, subject to paragraph (3) of this Rule, disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of Court.

(3) In relation to the exercise by a taxing officer of the powers of the Court under paragraph (2) of this Rule, paragraphs (4) to (6) and (8) of Rule 11 shall apply as if for references to the Court there were substituted references to the taxing officer.

(4) Where a party entitled to costs—

(a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with this Order or any direction; or

(b) delays lodging a bill of costs for taxation, the taxing officer may—

(i) disallow all or part of the costs of taxation that he or she would otherwise have awarded that party; and

(ii) after taking into account all the circumstances (including any prejudice suffered by any other party as a result of such failure or delay, as the case may be, and any additional interest payable because of the failure or delay), allow the party so entitled less than the amount he or she would otherwise have allowed on taxation of the bill or wholly disallow the costs.

(5) An appeal shall lie to a Judge in chambers from the exercise by a taxing officer of the powers conferred by this Rule.

(6) In exercising his or her powers under this Rule the taxing officer shall have all the powers available to the Court in the exercise of its discretion under Rules 10 and 11.

- (7) In paragraph (2) “wasted costs” means any costs incurred by a party—
- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or
 - (b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay.

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PART 5 — PROCEDURE ON TAXATION

Commencement of proceedings (O 62, R 29)

29 (1) Subject to paragraph (2), where a party is entitled to recover taxed costs or to require any costs to be taxed by a taxing officer by virtue of—

- (a) a judgment direction or order given or made in proceedings in the Court;
- (b) Rule 5(3), (4) or (5);
- (c) an award made on an arbitration under any Act or pursuant to an arbitration agreement; or
- (d) an order, award or other determination of a tribunal or other body constituted by or under any Act, he or she must begin proceedings for the taxation of those costs either within 3 months after the judgment, direction, order, award or other determination was entered, signed or otherwise perfected or, in cases to which subparagraph (b) applies, within 3 months after service of the notice given to him or her under Order 21, Rule 2 or Order 22, Rule 3.

(3) Where a party entitled to costs fails to begin proceedings for taxation within the time limit specified in paragraph (1), any other party to the proceedings which gave rise to the taxation proceedings may with the leave of the taxing officer begin taxation proceedings.

(4) Where leave has been granted under paragraph (3), the party to whom it has been granted shall proceed as if he or she were the person entitled to begin taxation proceedings.

(5) Proceedings for the taxation of costs shall be begun by producing the requisite document at the appropriate office.

(6) For the purpose of this Rule—

- (a) the requisite document shall be ascertained by reference to Order 62, R 36; and
- (b) the appropriate office is the Divisional High Court Registry.

(7) A party who begins proceedings for taxation must, at the same time, lodge in the appropriate office—

- (a) a copy of the requisite document produced under paragraph (5); and
- (b) a statement containing the following particulars—
 - (i) the name of every party, and the capacity in which he or she is a party to the proceedings, his or her position on the record of the proceedings which gave rise to the taxation proceedings and, if any costs to which taxation proceedings relate are to be paid out of a fund, the nature of his or her interest in the fund; and
 - (ii) the address of any party to the proceedings who acknowledged service in person or who at the conclusion of the proceedings which gave rise to the taxation proceedings was acting in person and the name or firm and business address, telephone number and office reference of the solicitor of any party who did not so acknowledge service or was not so acting in person and also (if the solicitor is the agent of another) the name or firm and business address of his or her principal; and
- (c) unless the taxing officer otherwise orders, a bill of costs—
 - (i) in which the professional charges and the disbursement are set out in separate columns and each column is cast;
 - (ii) which is endorsed with the name, or firm and business address of the solicitor whose bill it is;
 - (iii) which is signed by that solicitor or, if the costs are due to a firm, by a partner of that firm; and

- (d) unless the taxing officer otherwise orders, the papers and vouchers specified below in the order mentioned—
- (i) a bundle comprising all civil legal aid certificates and amendments thereto, notices of discharge or revocation thereof and specific legal aid authorities;
 - (ii) unless the relevant information is included in the judgment or order or the parties have agreed the times of the hearings, a certificate of times or a copy of the associate's certificate;
 - (iii) a bundle comprising fee notes of counsel and accounts for other disbursements;
 - (iv) one complete set of pleadings arranged in chronological order, with any interlocutory summonses and lists of documents annexed to it;
 - (v) cases to counsel to advise with his or her advice and opinions, and instructions to counsel to settle documents and briefs to counsel with enclosures, arranged in chronological order;
 - (vi) reports and opinions of medical and other experts arranged in chronological order;
 - (vii) the solicitor's correspondence and attendance notes; and
 - (viii) any other relevant papers duly bundled and labelled.

(8) In this Rule and in this Part of this Order, "proper officer" means an officer of the appropriate office within the meaning of paragraph (6)(b), and "party entitled to be heard on the taxation" means—

- (a) a person who has acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings and who is directly liable under an order for costs made against him or her;
- (b) a person who had begun proceedings for taxation in accordance with this Rule;
- (c) a person who had given the party taxing and the proper officer written notice that he or she has a financial interest in the outcome of the taxation; or
- (d) a person in respect of whom a direction has been given under Rule 26.

Subsequent procedure (O 62, R 30)

30 (1) Subject to Rules 31 and 32, where a party has begun proceedings for taxation in accordance with Rule 29, the proper officer shall give to that party and to any other party entitled to be heard on the taxation not less than 14 days' notice of the day, time and place appointed for the taxation.

(2) Subject to Rule 32, where a party has begun proceedings for taxation in accordance with Rule 29, the proper officer shall as soon as practicable give notice to any other party whose costs are to be taxed in the proceedings of the period within which his or her bill of costs (together with all necessary papers and vouchers) are to be sent to the taxing officer by whom the bill is to be taxed.

(3) A party whose costs are to be taxed must within 7 days after beginning the proceedings for taxation or, as the case may be, receiving notice under paragraph (2)—

- (a) send a copy of his or her bill of costs to every other party entitled to be heard on the taxation; and
- (b) notify the proper officer that he or she has done so.

(4) Where, in beginning or purporting to begin any taxation proceedings or at any stage in the course of or in connection with those proceedings, there has been a failure to comply with the requirements of this Order, whether in respect of time or in any other respect the failure shall be treated as an irregularity and shall not nullify the taxation proceedings or any step taken in those proceedings.

(5) The taxing officer may, on the ground that there has been such a failure as is mentioned in paragraph (4), and on such terms as he or she thinks just, set aside either wholly or in part the taxation proceedings or exercise his or her powers under this Order to make such order (if any) dealing with the taxation proceedings generally as he or she thinks fit.

Provisional taxation (O 62, R 31)

31 (1) Where in taxation proceedings duly begun in accordance with Rule 29, only the party who commenced the proceedings is entitled to be heard on the taxation, the proper officer shall, unless the taxing officer otherwise directs, send to that party a notice specifying the amount which the taxing officer proposes to allow in respect of the bill of costs and requiring him or her to inform the proper officer, within 14 days after receipt of the notice, if he or she wishes to be heard on the taxation.

(2) If the party referred to in paragraph (1) informs the proper officer within the time limited that he or she wishes to be heard on the taxation, the proper officer shall fix a day and time for the taxation and give not less than 14 days notice thereof to that party.

(3) Except on the taxation of a solicitor's bill to his or her own client and where paragraph (1) applies, where in taxation proceedings begun in accordance with Rule 29—

- (a) the party lodging the bill so requests and the taxing officer considers it to be appropriate, or
- (b) the taxing officer so decides, the taxing officer may, instead of proceeding under Rule 30(1), proceed under paragraphs (4) to (7) of this Rule.

(4) Where the taxing office decides to proceed under this and the following paragraphs of this Rule, the proper officer shall send to each party entitled to be heard on the taxation (except the party whose bill it is), a notice requiring him or her to inform the proper officer within 14 days after the receipt of the notice if he or she wishes to be heard on the taxation.

(5) If any party to whom notice has been given under paragraph (4) informs the proper officer within the time limited that he or she wished to be heard on the taxation, the proper officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to every party entitled to be heard.

(6) If no party to whom notice has been given under paragraph (4) informs the proper officer within the time limited that he or she wishes to be heard on the taxation, the proper officer shall, unless the taxing officer otherwise directs, send to the party lodging the bill a notice specifying the amount which the taxing officer proposes to allow in respect of the bill and requiring that party to inform the proper officer within 14 days after receipt of the notice if he or she wishes to be heard on the taxation.

(7) If the party lodging the bill informs the proper officer within the time limited under paragraph (6) that he or she wishes to be heard on the taxation, the proper officer shall fix an appointment for the taxation and give not less than 14 days' notice of the appointment to that party.

Short and urgent taxations (O 62, R 32)

32 (1) Where a party entitled to require the taxation of any costs of or arising out of proceedings to which this Order applies begins proceedings for the taxation of those costs in accordance with Rule 29 then if, when he or she begins such proceedings, he or she satisfies the proper officer—

- (a) that, in view of the amount of any bill of costs to be taxed, the time required for taxation is likely to be short; and
- (b) that the speedy completion of the taxation is necessary in the interests of any

person concerned in the taxation, the proper officer shall enter the proceedings for taxation in a list kept for the purposes of this Rule and shall forthwith give notice of the day and time appointed for the taxation to the party whose costs are to be taxed.

(2) A party whose costs are to be taxed in proceedings entered in the list referred to in paragraph (1) must not less than 4 days before the day appointed for the taxation send a copy of his or her bill of costs to every other party entitled to be heard on the taxation with a notice of the day and time appointed for the taxation.

[The next page is 793,721]

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793,674

PART 6 — REVIEW OF TAXATION

Application to taxing officer for review (O 62, R 33)

33 (1) Any party to any taxation proceedings who is dissatisfied with any decision of a taxing officer (other than a decision on a provisional taxation or a decision under Rule 28) may apply to the taxing officer to review his or her decision.

(2) An application under this Rule for review of a taxing officer's decision must be made within 21 days after that decision or within such other period as may be fixed by the taxing officer.

(3) Every applicant for review under this Rule must at the time of making his or her application deliver to the taxing officer his or her objections in writing specifying what is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to any other party who was entitled to receive notice of the appointment for the taxation pursuant to Rules 30 and 31.

(4) Any party to whom a copy of the objections is delivered under this Rule may, within 21 days after delivery of the copy to him or her or such other period as may be fixed by the taxing officer, deliver to the taxing officer answers in writing to the objections stating concisely the grounds on which he or she will oppose the objections, and must at the same time deliver a copy of the answers to the party applying for review and to any other party who was entitled to receive notice of the appointment for the taxation pursuant to Rules 30 and 31.

Review by taxing officer (O 62, R 34)

34 (1) A review under Rule 33 shall be carried out by the taxing officer who conducted the taxation.

(2) On a review under Rule 33, a taxing officer may receive further evidence and may exercise all the powers which he or she might exercise on an original taxation, including the power to award costs of the proceedings before him or her; and any costs awarded by him or her to any party may be taxed by him or her and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under Rule 33 a party to whom a copy of objections was delivered under paragraph (3) of the Rule shall be entitled to be heard in respect of all or any of the objections notwithstanding that he or she did not deliver written answers to the objections under paragraph (4) of that Rule.

(4) A taxing officer who issues his or her certificate pursuant to Rule 22(1)(a) or (b) after he or she has conducted a review under this Rule, if requested to do so by a party to the proceedings before him or her, shall state in the certificate or otherwise in writing by reference to the objections the reasons for his or her decision on the review, and any special facts or circumstances relevant to it.

(5) A request under paragraph (4) must be made within 14 days after the review or such other period as may be fixed by the taxing officer.

Review by a Judge (O 62, R 35)

35 (1) Any party who is dissatisfied with the decision of a taxing officer on a review under Rule 33 may apply to a Judge for an order to review that decision either in whole or in part, provided that one of the parties to the taxation proceedings has requested that officer to state the reasons for his or her decision in accordance with Rule 34(4).

(2) An application under this Rule may be made at any time within 14 days after the taxing officer has issued a certificate in accordance with Rule 34(4).

(3) An application under this Rule shall be made by summons and shall unless the Judge thinks fit to adjourn it into Court, be heard in chambers.

(4) Unless the Judge otherwise directs, no further evidence shall be received on the hearing of an application under this Rule, and no ground of objection shall be raised which was not raised on the review by the taxing officer but, save as aforesaid, on the hearing of any such application the Judge may exercise all such powers and discretion as are vested in the taxing officer in relation to the subject matter of the application.

(5) On an application under this Rule the Judge may make such order as the circumstances may require and in particular may order the taxing officer's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing officer for taxation.

Requisite document for purposes of Rule 29 (O 62, R 36)

36 (1) Where a party is entitled to require any costs to be taxed by virtue of a judgment or order given or made in any proceedings in the Court, the requisite document for the purposes of Rule 29 is the judgment or order as the case may be.

(2) Where the entitlement arises by virtue of a direction of the Court given under these Rules the requisite document is that direction.

(3) Where a party is entitled by virtue of Rule 5(3), (4) or (5) to require any costs to be taxed the requisite document for the purposes of Rule 29 is—

- (a) where he or she is entitled by virtue of Rule 5(3), the notice given to him or her under Order 21, Rule 2;
- (b) where he or she is so entitled by virtue of Rule 5(4) or (5) a certified copy of the notice given by him or her under Order 22, Rule 3.

(4) Where a party is entitled to require taxation by a taxing officer of the costs directed to be paid by an award made on the arbitration under any Act or pursuant to an arbitration agreement and no order of the Court for the enforcement of the award has been made, the requisite document for the purposes of Rule 29 is the award.

(5) Where apart from any order of the Court a party is entitled to require taxation by a taxing officer of the fees and charges payable to a sheriff or an officer of his or her, the requisite document for the purposes of Rule 29 is the sheriff's bill of fees and charges.

(6) Where a party is entitled to require taxation by a taxing officer of any costs directed to be taxed or paid by an order, award or other determination of a tribunal or other body constituted by or under any Act, the requisite document for the purposes of Rule 29 is the order, award or other determination, as the case may be.

Amount of indemnity costs (O 62, R 37)

37 The amount of costs to be allowed shall (subject to Rule 18 and to any order of the Court) be in the discretion of the taxing officer.

[The next page is 793,821]

GENERAL AND ADMINISTRATIVE PROVISIONS

ORDER 63 — FILING, INSPECTION ETC OF DOCUMENTS IN REGISTRY

Date of filing to be marked etc (O 63, R 1)

1 Any document filed in the Registry, in any proceedings must be sealed with a seal showing the date on which the document was filed, the fees paid and the revenue receipt number.

Right to inspect etc certain documents filed (O 63, R 2)

2 (1) Any person shall, on payment of the prescribed fee, be entitled during office hours to search for, inspect and take a copy of any of the following documents filed in the Registry namely—

- (a) the copy of any writ of summons or other originating, process;
- (b) any judgment or order given or made in court or the copy of any such judgment or order; and
- (c) with the leave of the Court, which may be granted on an application made *ex parte*, any other document.

(2) Nothing in the foregoing provisions shall be taken as preventing any party to a cause or matter searching for, inspecting and taking or bespeaking a copy of any affidavit or other document filed in the Registry in that cause or matter or filed therein before the commencement of that cause or matter but made with a view to its commencement.

Deposit of documents (O 63, R 3)

3 Where the Court orders any documents to be lodged in court, then, unless otherwise directed the documents must be deposited in the Registry.

Restriction on removal of documents (O 63, R 4)

4 No document filed in or in the custody of any office of the High Court shall be taken out of that office without the leave of the Court unless the document is to be sent to another such office or to a Magistrates' Court.

[The next page is 793,921]

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793,822

ORDER 64 — SITTINGS, VACATIONS AND OFFICE HOURS

Sittings of the High Court (O 64, R 1)

1 The Registrar shall give notice in the Gazette of any vacation directed by the Chief Justice to be observed under section 28 of the Act.

Sittings of vacation Judge (O 64, R 2)

2 A Judge shall sit in vacation to hear and deal with such causes, matters and applications as required to be heard or dealt with in vacation by a Judge.

High Court offices, days on which open and office hours (O 64, R 3)

3 (1) The offices of the High Court shall be open on every day of the year except Saturdays, Sundays and public holidays and such other days as the Chief Justice may direct.

(2) On such days as the offices of the High Court are open the Registry shall be open for the filing of documents, the issue of process and the transaction of other public business from 9.00 am to 1.00 pm and from 2.00 pm to 3.00 pm.

[The next page is 794,021]

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ORDER 65 — SERVICE OF DOCUMENTS

When personal service required (O 65, 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.

Personal service, how effected (O 65, R 2)

2 Personal service of a document is effected by leaving a copy of the document with the person to be served.

Service on body corporate (O 65, R 3)

3 (1) Personal service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it in accordance with Rule 2 on the mayor, chairperson or president of the body, or the town clerk, secretary, treasurer or other similar officer thereof.

(2) Where a writ is served on a body corporate in accordance with Order 10, Rule 1(2), that Rule shall have effect as if for the reference to the usual or last known address of the defendant there were substituted a reference to the registered or principal office of the body corporate and as if for the reference to the knowledge of the defendant there were substituted a reference to the knowledge of a person mentioned in paragraph (1).

Substituted service (O 65, R 4)

4 (1) If, in the case of any document which by virtue of any provision of these Rules is required to be served personally or a document to which Order 10, Rule 1, applies, it appears to the Court that it is impracticable for any reason to serve that document in the manner prescribed on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by an affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this Rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served.

Ordinary service, how effected (O 65, R 5)

5 (1) Service of any document, not being a document which by virtue of any provision of these Rules is required to be served personally or a document to which Order 10, Rule 1, applies, may be effected—

- (a) by leaving the document at the proper address of the person to be served;
- (b) by registered post; or
- (c) in such other manner as the Court may direct.

(2) For the purposes of this Rule the proper address of any person on whom a document is to be served in accordance with this Rule shall be the address for service of that person, but if at the time when service is effected that person has no address for service his or her proper address for the purposes aforesaid shall be—

- (a) in any case, the business address of the barrister and solicitor (if any) who is acting for him or her 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 or her usual or last known address;
- (c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business of the firm within the jurisdiction; or
- (d) in the case of a body corporate, the registered or principal office of the body.

(3) Nothing in this Rule shall be taken as prohibiting the personal service of any document or as affecting any enactment which provides for the manner in which documents may be served on bodies corporate.

Service of documents on Government etc (O 65, R 6)

6 Where for the purpose of or in connection with any proceedings in the High Court, not being civil proceedings by or against the State within the meaning of Part 2 of the State Proceedings Act 1951, any document is required by any enactment or these Rules to be served on the Government of the Republic of Fiji, a Minister, a Government department or a public officer within the meaning of the Constitution of the Republic of Fiji, the document must be served on the Attorney-General in accordance with the provisions of Order 77, Rule 3.

Effect of service after certain hours (O 65, R 7)

7 Any document (other than a writ of summons or other originating process) service of which is effected under Rule 2 or under Rule 5(1)(a) between 12 noon on a Saturday and midnight on the following day or after 4 in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Saturday or on the day following that other weekday, as the case may be.

Affidavit of Service (O 65, R 8)

8 Except as provided in Order 10, Rule 1(3)(b) and Order 81, Rule 3(2)(b), an affidavit of service of any document must state by whom the document was served, the day of the week and date on which it was served, where it was served and how.

No service required in certain cases (O 65, R 9)

9 Where by virtue of these Rules any document is required to be served on any person but is not required to be served personally or in accordance with Order 10, Rule 1(2) and at the time when service is to be effected that person is in default as to acknowledgement of service or has no address for service, the document need not be served on that person unless the Court otherwise directs or any of these Rules otherwise provides.

Service of process on Sunday (O 65, R 10)

10 (1) No process shall be served or executed within the jurisdiction on a Sunday except, in case of urgency, with the leave of the Court.

(2) For the purposes of this Rule “process” includes a writ, judgment, notice, order, petition, originating or other summons or warrant.

[The next page is 794,121]

ORDER 66 — PAPER, PRINTING, NOTICES AND COPIES

Quality and size of paper (O 66, R 1)

1 (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the High Court must be on A4 ISO paper of durable quality having a margin not less than one and a half inches wide, to be left blank on the left side of the face of the paper and on the right side of the reverse.

(2) In these Rules the expressions “A3,” “A4” and “A5” followed by the letters “ISO” mean respectively the size of paper so referred to in the specifications of the International Standards Organisation.

Regulations as to printing etc (O 66, R 2)

2 (1) Except where these Rules otherwise provide, every document prepared by a party for use in the High Court must be produced by one of the following means, that is to say, printing, writing (which must be clear and legible) and typewriting otherwise than by means of a carbon, and may be produced partly by one of those means and partly by another or others of them.

(2) For the purpose of these Rules a document shall be deemed to be printed if it is produced by type lithography or stencil duplicating.

(3) Any type used in producing a document for use as aforesaid must be such as to give a clear and legible impression and must be not smaller than 11 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.

(5) Any notice required by these Rules may not be given orally except with the leave of the Court.

Copies of documents for other party (O 66, R 3)

3 (1) Where a document prepared by a party for use in the High Court is printed, the party by whom it was prepared must, on receiving a written request from any other party entitled to a copy of that document and on payment of the proper charges, supply him or her with such number of copies thereof, not exceeding 10, as may be specified in the request.

(2) Where a document prepared by a party for use in the High Court is written or typewritten, the party by whom it was prepared must supply any other party entitled to a copy of it, not being a party on whom it has been served, with one copy of it and, where the document in question is an affidavit, of any document exhibited to it.

The copy must be ready for delivery within 48 hours after a written request for it, together with an undertaking to pay the proper charges, is received and must be supplied thereafter on payment of those charges.

Requirements as to copies (O 66, R 4)

4 Before a copy of a document is supplied to a party under these Rules, it must be indorsed with the name and address of the party or barrister and solicitor by whom it was supplied.

The party by whom a copy is supplied under Rule 3, or, if he or she sues or appears by a barrister and solicitor, his or her barrister and solicitor, shall be answerable for the copy being a true copy of the original or of an office copy, as the case may be.

[The next page is 794,221]

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ORDER 67 — CHANGE OF BARRISTER AND SOLICITOR

Notice of change of barrister and solicitor (O 67, R 1)

1 (1) A party to any cause or matter who sues or defends by a barrister and solicitor may change his or her barrister and solicitor without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this Rule, the former barrister and solicitor shall, subject to Rules 5 and 6, be considered the barrister and solicitor of the party until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.

(2) Notice of change of barrister and solicitor must be filed in the Registry.

(3) The party giving the notice must serve on every other party to the cause or matter (not being a party in default as to acknowledgement of service) and on the former barrister and solicitor a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

(4) The party giving the notice may perform the duties prescribed by this Rule in person or by his or her new barrister and solicitor.

Notice of change of agent barrister and solicitor (O 67, R 2)

2 (1) Where a barrister and solicitor for whom some other barrister and solicitor is acting as agent in a cause or matter changes the barrister and solicitor so acting, notice of the change must be given, and Rule 1(2) shall apply in relation to a notice of change of agent as it applies in relation to a notice of change of barrister and solicitor.

(2) The barrister and solicitor giving the notice must serve on every party to the cause or matter (not being the party for whom he or she is acting or a party in default as to acknowledgement of service) and on the barrister and solicitor formerly acting as agent a copy of the notice indorsed with a memorandum stating that the notice has been duly filed.

Notice of appointment of barrister and solicitor (O 67, R 3)

3. Where a party, after having sued or defended in person, appoints a barrister and solicitor to act in the cause or matter on his or her behalf, the change may be made without an order for that purpose and Rule 1(2), (3) and (4) shall, with the necessary modifications, apply in relation to a notice of appointment of a barrister and solicitor as they apply in relation to a notice of change of barrister and solicitor.

Notice of intention to act in person (O 67, R 4)

4 Where a party, after having sued or defended by a barrister and solicitor, intends and is entitled to act in person, the change may be made without an order for that purpose and Rule 1 shall, with the necessary modifications, apply in relation to a notice of intention to act in person as it applies in relation to a notice of change of barrister and solicitor except that the notice of intention to act in person must contain an address for service of the party giving it.

Removal of barrister and solicitor from record at instance of another party (O 67, R 5)

5 (1) Where—

- (a) a barrister and 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 practicing certificate or has been struck off the roll of barristers and solicitors or has been suspended from practicing or has for any other reason ceased to practice; and

- (b) the party has not given notice of change of barrister and solicitor or notice of intention to act in person in accordance with the foregoing provisions of this Order,

any other party to the cause or matter may apply to the Court for an order declaring that the barrister and solicitor has ceased to be the barrister and solicitor acting for the first mentioned party in the cause or matter, and the Court may make an order accordingly.

(2) An application for an order under this Rule must be made by summons and the summons must unless the Court otherwise directs, be served on the party to whose barrister and solicitor the application relates. The application must be supported by an affidavit stating the grounds of the application.

(3) Where an order is made under this Rule the party on whose application it was made must—

- (a) serve on every other party to the cause or matter (not being a party in default as to acknowledgement of service) a copy of the order;
- (b) procure the order to be entered in the Registry; and
- (c) leave at the Registry a copy of the order and a certificate signed by him or her or his or her barrister and solicitor that the order has been duly served as aforesaid.

(4) An order made under this Rule shall not affect the rights of the barrister and solicitor and the party for whom he or she acted as between themselves.

Withdrawal of barrister and solicitor who has ceased to act for party (O 67, R 6)

6 (1) Where a barrister and solicitor who has acted for a party in a cause or matter has ceased so to act and the party has not given notice of change in accordance with Rule 1, or notice of intention to act in person in accordance with Rule 4, the barrister and solicitor may apply to the Court for an order declaring that the barrister and solicitor has ceased to be the barrister and solicitor acting for the party in the cause or matter, and the Court may make an order accordingly, but unless and until the barrister and solicitor—

- (a) serves on every party to the cause or matter (not being a party in default as to acknowledgement of service) a copy of the order;
- (b) procures the order to be entered in the Registry; and
- (c) leaves at that office a copy of the order and a certificate signed by him or her that the order has been duly served as aforesaid,

he or she shall, subject to the foregoing provisions of this Order, be considered the barrister and solicitor of the party until the final conclusion of the cause or matter.

(2) An application for an order under this Rule must be made by summons and the summons must, unless the Court otherwise directs, be served on the party for whom the barrister and solicitor acted. The application must be supported by an affidavit stating the grounds of the application.

(3) An order made under this Rule shall not affect the rights of the barrister and solicitor and the party for whom he or she acted as between themselves.

(4) Notwithstanding anything in paragraph (1), where the appointment of barrister and solicitor to represent an assisted person is revoked or discharged, or the assisted person ceases to be an assisted person, such barrister and solicitor shall cease to be the barrister and solicitor acting in the cause or matter; and if the assisted person desires to proceed with the cause or matter without legal aid and appoints either that barrister and solicitor or another barrister and solicitor to act on his or her behalf the provisions of Rule 3 shall apply as if that party had previously sued or defended in person.

Address for service of party whose barrister and solicitor is removed etc (O 67, R 7)

7 Where—

- (a) an order is made under Rule 5;
- (b) an order is made under Rule 6, and the applicant for that order has complied with Rule 6(1); or
- (c) a barrister and solicitor ceases to be the barrister and solicitor acting in the cause or matter by virtue of Rule 6(4),

then, unless and until the party to whose barrister and solicitor or to whom, as the case may be, the order relates, either appoints another barrister and solicitor and complies with Rule 3 or, being entitled to act in person, gives notice of his or her intention so to do and complies with Rule 4, his or her 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 or her of any document not required to be served personally, be deemed to be his or her address for service.

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[The next page is 794,321]

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ORDER 68 — OFFICIAL SHORTHAND NOTE

1 (1) An official shorthand note may be directed to be taken of any proceedings in the High Court or before the Registrar or a special referee.

(2) When an official shorthand note is taken the transcription thereof shall be the official record of such proceedings provided however that, where the Judge, Registrar or special referee, as the case may be, has taken a note of the proceedings or a part thereof, and such note conflicts with or is not included in the official record, such note shall prevail and the official record shall be amended or supplemented accordingly.

(3) Any party to the proceedings and any other person who is so authorised by the Registrar, shall upon payment of the prescribed fee be entitled to be supplied with a copy of the official record.

(4) Where the Registrar is satisfied that it is reasonably necessary for a party to the proceedings to be supplied with a copy of the official record and that it would be an excessive burden on that party, on account of poverty, to pay the prescribed fee therefor, he or she may authorise the supply of a copy of the record to such party at no fee or at such reduced fee as he or she thinks fit in the circumstances.

Evidence when not to be transcribed (O 68, R 2)

2 (1) If the Judge intimates that in the event of an appeal his or her note will be sufficient, the shorthand note of the evidence need not be transcribed for the purposes of an appeal.

(2) If the parties agree or the Judge is of opinion that the evidence or some part of the evidence of any witness would, in the event of an appeal, be of no assistance to the Court of Appeal, the shorthand note of such evidence need not be transcribed for the purposes of an appeal.

(3) If any party requires a transcript of any such evidence as aforesaid the charge therefor shall be borne by that party in any event.

Mechanical recording (O 68, R 3)

3 In this Order any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means.

[The next page is 794,421]

Service 0

794,322

PROVISIONS AS TO FOREIGN PROCEEDINGS

ORDER 69 — SERVICE OF FOREIGN PROCESS

Definitions (O 69, R 1)

1 In this Order—

a convention country means a foreign country in relation to which there subsists a civil procedure convention providing for service in that country of process of the High Court, and includes a country which is a party to the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at the Hague on 15 November 1965;

process includes a citation; and

process server means the process server appointed under Rule 4 or his or her authorised agent.

Applications (O 69, R 2)

2 This Order applies to the service on a person in Fiji of any process in connection with civil or commercial proceedings in a foreign court or tribunal where the Registrar receives a written request for service—

- (a) from the Minister responsible for foreign affairs, with a recommendation by him or her that service should be effected; or
- (b) where the foreign court or tribunal is in a convention country, from a consular or other authority of that country.

Service of process (O 69, R 3)

3 (1) The request shall be accompanied by translation thereof in English, 2 copies of the process and, unless the foreign court or tribunal certifies that the person to be served understands the language of the process, 2 copies of a translation thereof.

(2) Subject to paragraphs (3) and (5) and to any enactment providing for the manner of service of documents on corporate bodies, the process shall be served by the process server's leaving a copy of the process and a copy of the translation or certificate, as the case may be, with the person to be served.

(3) The provisions of Order 10, Rule 1(2)(b) regarding service by insertion through a letter-box shall apply to the service of foreign process as they apply to the service of writs, except that service may be proved by an affidavit or by a certificate or report in such form as the Registrar may direct.

(4) The process server shall send to the Registrar a copy of the process and an affidavit, certificate or report proving due service of process or stating the reason why service could not be effected, as the case may be, and shall, if the Court so directs, specify the costs incurred in effecting or attempting to effect service.

(5) Order 65, Rule 4 (substituted service) shall apply to the service of foreign process as it applies to the service of writs, except that the Registrar may make an order for substituted service of foreign process on the basis of the process server's affidavit, certificate or report, without an application being made to him or her in that behalf.

(6) The Registrar shall send a certificate, together with a copy of the process, to the consular or other authority or the Minister as the case may be stating—

- (i) when and how service was effected or the reason why service could not be effected, as the case may be;

- (ii) where appropriate, the amount certified by the Registrar to be the costs of effecting or attempting to effect service.

Appointment of process server (O 69, R 4)

4 The Registrar may appoint a process server for the purposes of this Order.

[The next page is 794,521]

Service 0

794,422

ORDER 70 — OBTAINING EVIDENCE FOR FOREIGN COURTS ETC

Application (O 70, R 1)

1 (1) This Order applies to the powers of the High Court under any enactment to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, an order for the examination of witnesses and for their attendance and for the production of documents, and to give directions therein.

(2) All such powers shall be exercised by a judge.

Application for order (O 70, R 2)

2 (1) Subject to Rule 3 an application for an order referred to in Rule 1 must be made *ex parte* and must be supported by affidavit.

(2) There shall be exhibited to the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation thereof in that language.

Application by Attorney-General in certain cases (O 70, R 3)

3 Where a request—

- (a) is received by the Minister responsible for foreign affairs, and sent by him or her 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 Fiji of any party to the matter pending or contemplated before the foreign court or tribunal; or
- (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in Fiji 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 who may make an application for an order referred to in Rule 1 and take such other steps as may be necessary, to give effect to the request.

Person to take and manner of taking examination (O 70, 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 an examiner of the Court or before such other qualified person as to the Court seems fit.

(2) Subject to Rule 6 and to any special directions contained in any order made in pursuance of this Order for the examination of any witness, the examination shall be taken in 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 deposition (O 70, 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 must send the deposition of that witness to the Registrar and the Registrar shall—

- (a) give a certificate sealed with the seal of the High Court identifying the documents annexed thereto, that is to say, the request, the order of the Court for examination and the deposition taken in pursuance of the order; and

- (b) send the certificate with the documents annexed thereto to the Minister responsible for foreign affairs, or, where the request was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

[The next page is 794,621]

Service 0

794,522

ORDER 71 — RECIPROCAL ENFORCEMENT OF JUDGMENTS

1 The Reciprocal Enforcement of Judgments Rules 1922 made under the Reciprocal Enforcement of Judgments Act 1922 shall apply, with necessary modifications, to proceedings under the Foreign Judgments (Reciprocal Enforcement) Act 1935.

DFLRC (RT) - 17/12/24

794,621

Service 0

[The next page is 794,721]

Service 0

794,622

ORDER 72 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

794,721

Service 0

[The next page is 794,821]

Service 0

794,722

ORDER 73 — ARBITRATION PROCEEDINGS

Matters for a Judge (O 73, R 1)

1 (1) Every application to the Court—

- (a) to remit an award under section 11(1) of the Arbitration Act 1965;
- (b) to remove an arbitrator or umpire under section 12(1) of that Act; or
- (c) to set aside an award under section 12(2) thereof, must be made by originating motion to a Judge in Court.

(2) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by originating motion to a Judge in Court, but the foregoing provision shall not be taken as affecting the Judge's power to refuse to make such a declaration in proceedings begun by motion.

Proceedings in chambers (O 73, R 2)

2 (1) The jurisdiction of the High Court or a Judge thereof under the Arbitration Act 1965 may be exercised by a Judge in chambers.

(2) An application for an order section 15 of the Arbitration Act 1965 directing an arbitrator or umpire to state a case must be made by originating summons and the summons must be served on the arbitrator or umpire and on any other party to the reference.

Special provisions as to applications to remit or set aside an award (O 73, R 3)

3 (1) An application to the Court—

- (a) to remit an award under section 11(1) of the Arbitration Act 1965; or
- (b) to set aside an award under section 12(2) of that Act or otherwise,

must be made, and the summons or notice must be served within 21 days after the award has been made and published to the parties.

(2) In the case of every such application the notice of originating motion or, as the case may be, the originating summons, must state the ground of application; and, where the motion or summons is founded on evidence by affidavit, a copy of every affidavit to be used must be served with that notice.

Service out of the jurisdiction of summons, notice etc (O 73, R 4)

4 (1) Service out of the jurisdiction—

- (a) of an originating summons for the appointment of an arbitrator or umpire or for leave to enforce an award;
- (b) of notice of an originating motion to remove an arbitrator or umpire or to remit or set aside an award; or
- (c) of any order made on such a summons or motion as aforesaid,

is permissible with the leave of the Court provided that the arbitration to which the summons, motion or order relates has been, is being, or is to be held, within the jurisdiction.

(2) An application for the grant of leave under this Rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for the service out of the jurisdiction under this Rule.

(3) Order 11, Rules 3, 4 and 5 shall apply in relation to any such summons, notice or order as is referred to in paragraph (1) as they apply in relation to a writ.

(4) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by the law of Fiji.

Registration of foreign awards (O 73, R 5)

5 Where an award is made in proceedings on an arbitration in any part of the Commonwealth Countries or other territory to which Part 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1935 extends, being a part extended thereto, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as to judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject to necessary modifications.

[The next page is 794,871]

ORDER 74 — INTERNATIONAL ARBITRATION PROCEEDINGS

[O 74 insrt LN 85 of 2018 r 2, opn 9 Nov 2018]

Definitions (O 74, R 1)

1 Words and phrases used in this Order have the same meaning as under the Act and the International Arbitration Act 2017 unless the context or express provision otherwise requires.

Application of Order (O 74, R 2)

2 This Order applies to the powers of the Court under the International Arbitration Act 2017 in relation to proceedings for international arbitration.

Applications to the Court (O 74, R 3)

- 3 (1) Every application to the Court—
- (a) to appoint an arbitrator under section 16(3) or (4) of the International Arbitration Act 2017;
 - (b) to decide on the challenge of an arbitrator under section 18 of the International Arbitration Act 2017;
 - (c) to decide on the termination of the mandate of an arbitrator under section 19 of the International Arbitration Act 2017;
 - (d) to appeal against the ruling of the arbitral tribunal under section 22 of the International Arbitration Act 2017; or
 - (e) to set aside an award under section 52 of the International Arbitration Act 2017, must be made by originating summons and supported by an affidavit.
- (2) An application under paragraph (1)(a) must be made in accordance with the time frames, where applicable, as prescribed under section 16(3)(a) of the International Arbitration Act 2017.
- (3) An application under paragraph (1)(b), (c) or (d) shall be made within 30 days from the date of receipt by the plaintiff of the arbitral tribunal's decision or ruling.
- (4) An application under paragraph (1)(e) may not be made more than 3 months after the later of the following dates—
- (a) the date on which the plaintiff received the award; or
 - (b) if a request is made under section 51 of the International Arbitration Act 2017, the date on which that request is disposed of by the arbitral tribunal.
- (5) The affidavit in support must—
- (a) state the grounds in support of the application;
 - (b) have exhibited to it a copy of the arbitration agreement or any record of the content of the arbitration agreement, the award and any other document relied on by the plaintiff; and
 - (c) set out any evidence relied on by the plaintiff.
- (6) Within 28 days after being served with the originating summons and supporting affidavit, the defendant, if the defendant wishes to oppose the application, must file an affidavit stating the grounds on which the defendant opposes the application.
- (7) In considering an application under paragraph (1)(e) the Court may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.
- (8) The period of time determined by the Court under paragraph (7) shall not be more than 6 weeks.

(9) For the purpose of this Rule, the date of receipt of any decision, ruling, award or corrected award shall be determined in accordance with section 6 of the International Arbitration Act 2017.

Application for stay of legal proceedings for arbitration (O 74, R 4)

4 (1) A party seeking an order to stay legal proceedings under section 12 of the International Arbitration Act 2017 must file an interlocutory application by notice of motion in that proceeding.

(2) An application under paragraph (1) must be accompanied by an affidavit—

- (a) stating the material facts on which the claim for relief is based; and
- (b) have exhibited to it a copy of the arbitration agreement or any record of the content of the arbitration agreement and any other document relied on by the plaintiff.

(3) An application under paragraph (1) must be made not later than when submitting the party's first statement on the substance of the dispute.

Enforcement of interim measures (O 74, R 5)

5 (1) A party seeking to enforce an interim measure given by an arbitral tribunal must make an application to the Court by originating summons supported by an affidavit—

- (a) exhibiting a copy of the arbitration agreement or any record of the content of the arbitration agreement and the original award or other interim measure made by the arbitral tribunal sought to be enforced; and
- (b) stating the provisions in the Act or the applicable rules adopted in the arbitration on which the applicant relies.

(2) An application under paragraph (1) may be made *ex parte*.

(3) Where the interim measure sought to be enforced is in the nature of an interim injunction under section 23(2)(d) of the International Arbitration Act 2017, leave shall be granted only if the applicant undertakes to abide by any order the Court or the arbitral tribunal may make as to damages.

Enforcement of awards (O 74, R 6)

6 (1) In this Rule—

creditor means an applicant seeking to enforce an award; and

debtor means the person against whom an applicant seeks to enforce an award.

(2) An application to enforce an award under section 53 of the International Arbitration Act 2017 may be made *ex parte* and must be made by originating summons supported by an affidavit—

- (a) exhibiting—
 - (i) the arbitration agreement or any record of the content of the arbitration agreement; and
 - (ii) the duly authenticated original award; or
 - (iii) a duly certified copy of the arbitration agreement, record of its contents and the authenticated original award,

and where the award, agreement or record is in a language other than English, a translation of it in the English language, duly certified in English 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;

- (b) stating the name and the usual or last known place of abode or business of the creditor and the debtor, respectively; and
- (c) as the case may require, stating 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) Within 14 days after service of the order or, if the order is to be served out of the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(4) The copy of that order served on the debtor must state the effect of paragraph (3).

(5) In relation to a body corporate, this Rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this Rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

Applications for interim measures or other orders in relation to arbitral proceedings outside Fiji (O 74, R 7)

7 If an application for an interim measure under section 33 of the International Arbitration Act 2017 or for an order under section 44 of the International Arbitration Act 2017 is in relation to any arbitral proceedings outside Fiji, rules 1, 2, 3, 4, 6, 8, 9–18 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

Proceedings to be heard in private (O 74, R 8)

8 (1) Subject to paragraph (2), proceedings under the International Arbitration Act 2017 in Court are to be heard in private.

(2) The Court may order proceedings to be heard in open Court—

- (a) on the application of any party; or
- (b) if, in any particular case, the Court is satisfied that those proceedings ought to be heard in open Court.

(3) An order of the Court under paragraph (2) is not subject to appeal.

Restrictions on reporting of proceedings heard in private (O 74, R 9)

9 (1) This rule applies to Court proceedings heard in private under the International Arbitration Act 2017.

(2) A Court in which proceedings are being heard in private must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.

(3) A Court must not make a direction permitting information to be published unless—

- (a) all parties agree that the information may be published; or
- (b) the Court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.

(4) Notwithstanding paragraph (3), if—

- (a) a Court gives a judgment in respect of closed Court proceedings; and
- (b) the Court considers that judgment to be of major legal interest,

the Court must direct that reports of the judgment may be published in law reports and professional publications.

(5) If a Court directs under paragraph (4) that reports of a judgment may be published, but any party reasonably wishes to conceal any matter in those reports (including the fact that the party was such a party), the Court must, on the application of the party—

- (a) make a direction as to the action to be taken to conceal that matter in those reports; and
 - (b) if the Court considers that a report published in accordance with the direction made under paragraph (a) would still be likely to reveal that matter, direct that the report may not be published until after the end of a period, not exceeding 10 years, that the Court may direct.
- (6) A direction of the Court under this rule is not subject to appeal.

[The next page is 795,021]

ORDER 75 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

795,021

Service 0

[The next page is 795,021]

Service 0

795,022

SPECIAL PROVISIONS TO PARTICULAR PROCEEDINGS

ORDER 76 — PROBATE PROCEEDINGS

Application and interpretation (O 76, 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 including applications for the rectification of a will subject to the provisions of this Order.

(2) In these Rules “probate action” means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order, “will” includes a codicil.

Requirements in connection with issue of writ (O 76, R 2)

2 (1) A probate action must be begun by writ, and the writ must be issued out of the Registry.

(2) Before a writ beginning a probate action is issued it must be indorsed with—

- (a) a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates; and
- (b) a memorandum signed by the Registrar showing that the writ has been produced to him or her for examination.

Parties to action for revocation of grant (O 76, R 3)

3 Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his or her will or letters of administration of his or her grant shall be made a party to any action for revocation of the grant.

Lodgement of grant in action for revocation (O 76, R 4)

4 (1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the probate or letters of administration as the case may be, have not been lodged in Court, then—

- (a) if the action is commenced by a person to whom the grant was made, he or she shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his or her possession or under his or her control, he or she shall lodge it or them in the Registry within 14 days after the service of the writ upon him or her.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the office of the Registrar within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he or she has complied with the order.

Affidavit of testamentary scripts (O 76, R 5)

5 (1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit—

- (a) describing any testamentary script of the deceased person, whose estate is the

subject of the action, of which he or she has any knowledge or, if such be the case, stating that he or she knows of no such script; and

- (b) if any such script of which he or she has knowledge is not in his or her possession or under his or her 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 or she does not know the name or address of that person.

(2) Any affidavit required by this Rule must be filed, and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Registry within 14 days after the acknowledgement of service by a defendant to the action or, if no defendant acknowledges service and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this Rule to be lodged or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this Rule, unless and until an affidavit sworn by him or her containing the information referred to in paragraph (1) has been filed.

(5) In this Rule "testamentary script" means a will or draft thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

Failure to acknowledge service (O 76, R 6)

6 (1) Order 13 shall not apply in relation to a probate action.

(2) Where any of several defendants to a probate action fails to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant proceed with the action as if that defendant had acknowledged service.

(3) Where the defendant, or all the defendants, to a probate action, fails or fail to acknowledge service of the writ, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.

(4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit providing due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he or she must lodge a statement of claim in the Registry.

(5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

Service of statement of claim (O 76, R 7)

7 The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of 6 weeks after acknowledgement of service by that defendant or of 8 days after the filing by that defendant of an affidavit under Rule 5, whichever is the later.

Counterclaim (O 76, R 8)

8 (1) Notwithstanding anything in Order 15, Rule 2(1), a defendant to a probate action who alleges that he or she has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his or her defence a counterclaim in respect of that matter.

(2) If the plaintiff fails to serve a statement of claim, any such defendant may, with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

Contents of pleadings (O 76, R 9)

9 (1) Where the plaintiff in a probate action disputes the interest of a defendant he or she must allege in his or her statement of claim that he or she 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 or her pleading that if the allegations made therein are proved he or she would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, Rule 6, 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 or she intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say—

- (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.

Default of pleadings (O 76, R 10)

10 (1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he or she is required by these Rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these Rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

Discontinuance and dismissal (O 76, R 11)

11 (1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has entered acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person entitled thereto.

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

Compromise of action: trial on affidavit evidence (O 76, R 12)

12 Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

Application for order to bring will etc (O 76, R 13)

13 (1) Any application in a probate action for an order under section 26 of the Court of Probate Act 1857 (UK) shall be for an order requiring a person to bring a will or other testamentary paper into the office of the Registrar or to attend in Court for examination.

(2) An application under paragraph (1) shall be made by summons in the action, which must be served on the person against whom the order is sought.

(3) Any application in a probate action for the issue of a subpoena under section 23 of the Court of Probate Act 1858 (UK) shall be for the issue of a subpoena requiring a person to bring into the office of the Registrar a will or other testamentary paper.

(4) An application under paragraph (3) may be made *ex parte* and must be supported by an affidavit setting out the grounds of the application.

(5) An application under paragraph (3) shall be made to the Registrar who may, if the application is granted, authorise the issue of a subpoena accordingly.

(6) Any person against whom a subpoena is issued under the said section 23 and who denies that the will or other testamentary paper referred to in the subpoena is in his or her possession or under his or her control may file an affidavit to that effect.

Administration pendente lite (O 76, R 14)

14 (1) An application for the grant of administration *pendente lite* shall be made by summons.

(2) An administrator to whom a grant of administration *pendente lite* is made must at the time when he or she begins proceedings for taxation of his or her 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 or her in his or her capacity as such an administrator.

(3) Unless the Court otherwise directs, the account shall be referred to the Registrar for examination and Order 62, Rules 21, 22 and 23 shall with the necessary modifications apply in relation to proceedings for the examination of the account as they apply in relation to proceedings for taxation 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 or her costs, assess and provide for the administrator's remuneration.

Probate counterclaim in other proceedings (O 76, R 15)

15 (1) In this Rule "probate counterclaim" means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in Rule 1(2).

(2) Subject to the following paragraphs, this order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.

(4) Before it is served a probate counterclaim must be indorsed with a memorandum

signed by the Registrar showing that the counterclaim has been produced to him or her for examination and that 3 copies of it have been lodged with him or her.

Rectification of wills (O 76, R 16)

16 (1) Where an application is made for rectification of a will, and the grant has not been lodged in Court, Rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.

(2) A memorandum of every order made for the rectification of a will shall be endorsed, or permanently annexed to, the grant under which the estate is administered.

795,025

Service 0

[The next page is 795,121]

Service 0

795,026

ORDER 77 — PROCEEDINGS BY AND AGAINST THE STATE

Application and interpretation (O 77, R 1)

1 (1) These Rules apply to civil proceedings to which the State is a party subject to the following Rules of this Order.

(2) In this Order—

civil proceedings by the State, civil proceedings against the State and civil proceedings by or against the State have the same respective meanings as in Part 2 of the State Proceedings Act 1951, and do not include any of the proceedings specified in section 18(3) of that Act;

civil proceedings to which the State is a party has the same meaning as it has for the purposes of Part 4 of the State Proceedings Act 1951, by virtue of section 32(3) of that Act;

order includes a judgment, decree, rule, award or declaration; and

order against the State means any order (including an order for costs) made in any civil proceedings by or against the State or in connection with any arbitration to which the State is a party, in favour of any person against the State or against a Government department or against an officer of the State as such.

Particulars to be included in indorsement of claim (O 77, R 2)

2 (1) In the case of a writ which begins civil proceedings against the State the indorsement of claim required by Order 6, Rule 2, shall include a statement of the circumstances in which the State's liability is alleged to have arisen and as to the Government department and officers of the State concerned.

(2) If in civil proceedings against the State a defendant considers that the writ does not contain a sufficient statement as required by this Rule, he or she may, before the expiration of the time limited for acknowledging service of the writ, 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 acknowledging service of the writ shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7 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 State (O 77, R 3)

3 (1) Orders 10 and 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 State are begun.

(2) Personal service of any document required to be served on the State or on the Attorney-General on behalf of the State is not requisite and may be effected by—

- (a) leaving the document at the chambers of the Attorney-General in Suva with a responsible member of his or her staff; or
- (b) posting it by registered post in an envelope addressed to the Attorney-General at his or her chambers in Suva.

(3) In relation to the service of any document required to be served on the State for the purpose of or in connection with any civil proceedings by or against the State, Order 65, Rules 5 and 9, shall not apply, and Order 65, Rule 7, shall apply as if the reference therein to Rules 2 and 5(1)(a) of that Order were a reference to paragraph (2)(a) of this Rule.

Counterclaim and set off (O 77, R 4)

4 (1) Notwithstanding Order 15, Rule 2, and Order 18, Rules 16 and 17, a person may not in any proceedings by the State 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 16 and 17, no counterclaim may be made, or set off pleaded, without the leave of the Court, by the State in proceedings against the State, or by any person in proceedings by the State—

(a) if the State 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 State is sued or sues in the name of the Attorney-General.

(3) Any application for leave under this Rule must be made by summons.

Summary judgment (O 77, R 5)

5 (1) No application against the State shall be made under Order 14, Rule 1 or Order 86, Rule 1 in any proceedings against the State nor under Order 14, Rule 5, in any proceedings by the State.

(2) Where an application is made by the State under Order 14, Rule 1, Order 14, Rule 5, or Order 86, Rule 1, the affidavit required in support of the application must be made by—

(a) the solicitor acting for the State;

(b) a person duly authorised by the solicitor so acting or by the department concerned; or

(c) a member of the State Law Office,

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.

Judgment in default (O 77, R 6)

6 (1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the State in civil proceedings against the State or in third party proceedings against the State.

(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 State.

(3) An application for leave under this Rule may be made by summons or, except in the case of an application relating to Order 16, Rule 5, by motion; and the summons or, as the case may be, notice of the motion must be served not less than 7 days before the return day.

Third party notices (O 77, R 7)

7 (1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, Rule 9) for service on the State shall not be issued without

the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the State.

(2) Leave to issue such a notice for service on the State shall not be granted unless the Court is satisfied that the State 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 State has arisen and as to the departments and officers of the State concerned.

Interpleader, application for order against State (O 77, R 8)

8 No order shall be made against the State under Order 17, Rule 4(3), except upon an application by summons served not less than 7 days before the return day.

Discovery and interrogatories (O 77, R 9)

9 (1) Order 24, Rules 1 and 2, shall not apply in civil proceedings to which the State is a party.

(2) In any civil proceedings to which the State is a party any order of the Court made under the powers conferred by section 23(1) of the State Proceedings Act 1951, shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the State, 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 State shall be verified by affidavit, the affidavit shall be made by such officer of the State as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 23 for interrogatories to be answered by the State, the Court shall direct by what officer of the State the interrogatories are to be answered.

Evidence (O 77, R 10)

10 (1) Civil proceedings against the State may be instituted under Order 39, Rule 15, in any case in which the State is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings by or against the State as they are exercisable in proceedings between subjects.

Execution and satisfaction of orders (O 77, R 11)

11 (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the State.

(2) An application under the proviso to section 20(1) of the State Proceedings Act 1951, 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* without summons.

Attachment of debts etc (O 77, R 12)

12 (1) No order—
(a) for the attachment of debts under Order 49;
(b) for the appointment of a sequestrator under Order 45; or
(c) for the appointment of a receiver under Order 30,
shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the State.

(2) Every application to the Court for an order under section 22(1) of the State Proceedings Act 1951, restraining any person from receiving money payable to him or her by the State and directing payment of the money to the applicant or some other person must be made by summons served at least 4 days before the return day on the State and, unless the Court otherwise orders, on the person to be restrained or his or her barrister and 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 State 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 or her by the State as those Rules apply to an application under Order 49, Rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the State.

Proceedings relating to postal packets (O 77, R 13)

13 (1) An application by any person under section 6(3) of the State Proceedings Act 1951, for leave to bring proceedings in the name of the sender or addressee of a postal packet or his or her personal representatives must be made by originating summons.

(2) The State and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this Rule.

Applications under s 24(2) of State Proceedings Act 1951 (O 77, R 14)

14 An application such as is referred to in section 24(2) of the State Proceedings Act 1951, may be made to the Court at any time before trial by motion or summons, or may be made at the trial of the proceedings.

[The next page is 795,221]

ORDER 78 — PROCEEDINGS TRANSFERRED OR REMOVED TO HIGH COURT

Application and interpretation (O 78, R 1)

1 (1) This Order applies where an order has been made under any enactment for the transfer or removal of any proceedings from a Magistrates Court to the High Court.

(2) An application for leave under this Rule must be made by summons which must, notwithstanding anything in Order 65, Rule 9, be served on the defendant, and the address for service of the defendant shall be his or her address for service in the proceedings in the Magistrates Court.

(3) References in the following provisions of this Order to the plaintiff and the defendant shall, in relation to proceedings begun in the Magistrates Court otherwise than by writ of summons, be construed as references to the applicant and the respondent respectively.

Duties of the Registrar (O 78, R 2)

2 On receipt by the Registrar of the relevant documents from the Magistrates Court, he or she shall—

- (a) file the said documents and make the appropriate entries in the cause book; and
- (b) give notice in writing to all parties to the proceedings that the action has been transferred to the High Court and that the defendant is required to acknowledge service of the notice.

Acknowledgement of Service (O 78, R 3)

3 The defendant must, within 7 days after receipt of the notice referred to in Rule 2, acknowledge service thereof in accordance with Order 12, Rules 1 to 3, and Order 12, Rules 1 and 3, shall apply as if the proceedings transferred or removed were an action begun by writ.

Judgment on failure to give notice of intention to defend (O 78, R 4)

4 (1) If the defendant fails, or all the defendants (if more than one) fail, to give notice of intention to defend within the period prescribed by Rule 3, the plaintiff, after having caused an address for service to be entered in the cause book, may, with the leave of the Court, enter judgment against the defendant or defendants, as the case may be, with costs.

(2) An application for leave under this Rule must be made by summons which must, notwithstanding anything in Order 65, Rule 9, be served on the defendant, and the address for service of the defendant shall be his or her address for service in the proceedings in the Magistrates Court.

Summons for directions or summary judgment (O 78, R 5)

5 (1) Where a defendant gives notice of intention to defend in the action the plaintiff must, within 7 days after such notice is given, cause an address for service to be entered in the cause book and either—

- (a) take out and serve on the defendant a summons for directions returnable in not less than 21 days; or
- (b) except where the defendant is the State, make an application under Order 14, Rule 1, for judgment against the defendant,

and where a summons is served on the defendant under subparagraph (a), Order 25 Rules 2 to 7, shall, with any necessary modifications, apply as if that summons were a summons for directions under that Order.

(2) If the plaintiff fails either to take out such a summons, or make such an application, as is referred to in paragraph (1) within the period prescribed thereby the defendant or any defendant may take out such a summons or may apply for an order dismissing the action.

(3) On the hearing of an application to dismiss the action the Court may either dismiss the action on such terms as may be just or may deal with the application as if it were a summons for directions.

[The next page is 795,321]

Service 0

795,222

ORDER 79 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

795,321

Service 0

[The next page is 795,421]

Service 0

795,322

ORDER 80 — DISABILITY

Interpretation (O 80, R 1)

1 In this Order—

patient means a person who, by reason of mental disorder is incapable of managing and administering his or her property and affairs; and

person under disability means a person who is an infant or a patient.

Person under disability must sue etc by next friend or guardian ad litem (O 80, R 2)

2 (1) A person under disability may not bring, or make a claim in, any proceedings except by his or her next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him or her, except by his or her guardian *ad litem*.

(2) Subject to the provisions of these Rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these Rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his or her next friend or guardian *ad litem*.

Appointment of next friend or guardian ad litem (O 80, R 3)

3 (1) Except as provided by paragraph (3) or (4) or by Rule 6, an order appointing a person next friend or guardian *ad litem* of a person under disability is not necessary.

(2) Where a person is authorised under any enactment to conduct legal proceedings in the name of a patient or on his or her behalf, that person shall be entitled to be next friend or guardian *ad litem*, as the case may be, of the patient in any proceedings to which his or her authority extends unless, in a case to which paragraph (3) or (4) or Rule 6 applies, some other person is appointed by the Court under that paragraph or Rule to be next friend or guardian *ad litem*, as the case may be, of the patient in those proceedings.

(3) Where a person has been or is next friend or guardian *ad litem* of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him or her such friend or guardian in substitution for the person previously acting in that capacity.

(4) Where, after any proceedings have been begun, a party to the proceedings becomes a patient, an application must be made to the Court for the appointment of a person to be next friend or guardian *ad litem*, as the case may be, of that party.

(5) Except where the next friend or guardian *ad litem*, as the case may be, of a person under disability has been appointed by the Court—

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability;
- (b) service shall not be acknowledged in a cause or matter for a person under disability; and
- (c) a person under disability shall not be entitled to appear by his or her guardian *ad litem* on the hearing of a petition, summons or motion which, or notice of which, has been served on him or her,

unless and until the documents listed in paragraph (6) have been filed in the appropriate office.

(6) The documents referred to in paragraph (5) are the following—

- (a) a written consent to be next friend or guardian *ad litem*, as the case may be, of

- the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian;
- (b) where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised under any enactment to conduct the proceedings in the cause or matter in question in the name of the patient or on his or her behalf, an office copy, sealed with the seal of the Court of the order or other authorisation made or given under any enactment by virtue of which he or she is so authorised; and
 - (c) except where the person proposing to be such friend or guardian of the person under disability, being a patient, is authorised as mentioned in subparagraph (b), a certificate made by the barrister and solicitor for the person under disability certifying—
 - (i) that he or she knows or believes, as the case may be, that the person to whom the certificate relates is an infant or a patient, giving (in the case of a patient) the grounds of his or her knowledge or belief;
 - (ii) where the person under disability is a patient, that there is no person authorised as aforesaid; and
 - (iii) where the person named in the certificate as next friend or guardian *ad litem*, as the case may be, is the Fiji Public Trustee Corporation Limited, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability.

Appointment of guardian where person under disability does not acknowledge service (O 80, R 4)

4 (1) Where—

- (a) in an action against a person under disability begun by writ, or by originating summons no acknowledgement of service is given in the action for that person, or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgement of service is given for that person,

an application for the appointment by the Court of a guardian *ad litem* of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgement of service is given for that person to the notice, an application for the appointment by the Court of a guardian *ad litem* of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian *ad litem* at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(4) At any stage in the proceedings under any judgment or order, notice of which has been served on a person under disability, the Court may, if no acknowledgement of service is given for that person, appoint a guardian *ad litem* of that person in the proceedings or direct that an application be made for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving—

- (a) that the person to whom the application relates is a person under disability;
- (b) that the person proposed as guardian *ad litem* is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability;
- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability; and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him or her.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian *ad litem* made in compliance with a direction of the Court given under paragraph (3) or (4) must be supported by evidence proving the matters referred to in paragraph (5)(b).

Application to discharge or vary certain orders (O 80, R 5)

5 An application to the Court on behalf of a person under disability served with an order made *ex parte* under Order 15, Rule 8, for the discharge or variation of the order must be made—

- (a) if a next friend or guardian *ad litem* is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian *ad litem* acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him or her.

Admission not to be implied from pleading of person under disability (O 80, R 6)

6 Notwithstanding anything in Order 18, Rule 12(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 or she has not traversed it in his or her pleadings.

Discovery and interrogatories (O 80, R 7)

7 Orders 24 and 26 shall apply to a person under disability and to his or her next friend or guardian *ad litem*.

Compromise etc by person under disability (O 80, R 8)

8 Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into Court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

Approval of settlement (O 80, R 9)

9 (1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, notwithstanding anything in Order 5, Rule 2, the claim may be made in proceedings begun by originating summons and in the summons an application may also be made for—

- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient;
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this Rule a claim is made under the Compensation to Relatives Act 1920, the originating summons must contain full particulars of the person or persons to 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.

(3) An originating summons under this Rule shall be in Form 4 in Appendix 1.

[para (3) am LN 67 of 1993 r 9, opn 9 Aug 1993]

(4) In this Rule “settlement” includes a compromise.

Control of money recovered by person under disability (O 80, R 10)

10 (1) Where in any proceedings—

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or
- (b) money paid into Court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court and not otherwise.

(2) Directions given under this Rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this Rule, directions given under this Rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a Magistrates Court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his or her maintenance or otherwise for his or her benefit or to the plaintiff's barrister and solicitor in respect of costs.

(4) Where in pursuance of directions given under this Rule money is paid into the Court to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court.

(5) The foregoing provisions of this Rule shall apply in relation to a counterclaim by or on behalf of a person under disability, and a claim made by or on behalf of such 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 84 of the Maritime Transport Act 2013, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian *ad litem* respectively.

Application of Rule 10 to money recovered by certain widows (O 80, R 11)

11 Rule 10 shall apply, with the necessary modifications, to all moneys which are, by any enactment, subject to the control of the Court, and directions under Rule 10 may include directions as to any payment to be made to a widow or any other person on whose behalf the claim in question was made.

Proceedings under Compensation to Relatives Act 1920, apportionment by Court (O 80, R 12)

12 (1) Where a single sum of money is paid into Court under Order 22, Rule 1, in

satisfaction of causes of action arising under the Compensation to Relatives Act 1920 or the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935, and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under Rule 10 (if that Rule applies) or when authorising its payment out of Court.

(2) Where, in an action in which a claim under the Compensation to Relatives Act 1920 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 22, Rule 1, is accepted in satisfaction of the cause of action under the said Act, then it shall be apportioned between those persons by the Court. The reference in this paragraph to a sum of money paid into Court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Act.

Service of certain documents on person under disability (O 80, R 13)

13 (1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, Rule 1(2), on any person and that person is a person under disability this Rule shall apply.

(2) Subject to the following provisions of this Rule and to Order 24, Rule 16(3), and Order 26, Rule 6(3), the document must be served—

- (a) in the case of an infant who is not also a patient, on his or her father or guardian or, if he or she has no father or guardian, on the person with whom he or she resides or in whose care he or she is;
- (b) in the case of a patient, on the person (if any) who is authorised under any enactment to conduct in the name of the patient or on his or her 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 or she resides or in whose care he or she is,

and must be served in the manner required by these Rules with respect to the document in question.

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him or her unless the Court otherwise orders.

This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

[The next page is 795,521]

Service 13

795,426

ORDER 81 — PARTNERS

Actions by and against firms within jurisdiction (O 81, R 1)

1 Subject to the provisions of any enactment, any 2 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 81, 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 or her forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their 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 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 ensured if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words "or may order" to the end.

Service of writ (O 81, R 3)

3 (1) Where by virtue of Rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (3) be served—

- (a) on any one or more of the partners;
- (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; or
- (c) by sending a copy of the writ by ordinary first class post (as defined in Order 10, Rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction, and subject to paragraph (2) 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 writ is served on a firm in accordance with subparagraph (1)(c)—

- (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, Rule 2(5)) after the date on which the copy was sent to the firm; and
- (b) any affidavit proving due service of the writ must contain a statement to the effect that—
 - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's barrister and solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to the firm at the address in question, will have

- come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter; and
- (ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he or she is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

Acknowledgement of service in action against firm (O 81, R 4)

4 (1) Where persons are sued as partners in the name of their firm, service may not be acknowledged in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he or she denies that he or she was a partner or liable as such at any material time, may acknowledge service of the writ and state in his or her acknowledgement that he or she does so as a person served as a partner in the defendant firm but who denies that he or she was a partner at any material time.

An acknowledgement of service given in accordance with this paragraph shall, unless and until it is set aside, be treated as an acknowledgement by the defendant firm.

(3) Where an acknowledgement of service has been given by a defendant in accordance with paragraph (2), then—

- (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the writ on him or her on the ground that he or she 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 or her liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has acknowledged service in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not acknowledge service in the action unless he or she is a member of the firm sued.

Enforcing judgment or order against firm (O 81, R 5)

5 (1) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to Rule 6, issue against any property of the firm within the jurisdiction.

(2) Where a judgment is given or order made against a firm, execution to enforce the judgment or order may, subject to Rule 6 and to the next following paragraph, issue against any person who—

- (a) acknowledged service of the writ in the action as a partner;
- (b) having been served as a partner with the writ of summons, failed to acknowledge service of it in the action;
- (c) admitted in his or her pleading that he or she is a partner; or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he or she—

- (a) acknowledged service of the writ 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 writ, as a partner,

and, except as provided by paragraph (1) and by the foregoing provisions of this paragraph, a judgment or order given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(4) Where a party who has obtained a judgment or order against a firm claims that a person is liable to satisfy the judgment or order as being a member of the firm, and the foregoing provisions of this Rule do not apply in relation to that person, that party may apply to the Court for leave to issue execution against that person, the application to be made by summons which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his or her 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 or her 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 actions between partners etc (O 81, R 6)

6 (1) Execution to enforce a judgment or order given or made in—

- (a) an action by or against a firm in the name of the firm against or by a member of the firm; or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common,

shall not issue except with the leave of the Court.

(2) The Court hearing an application under this Rule may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

Attachment of debts owed by firm (O 81, 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 the said Rule 1 relating to such debts as aforesaid must be served on a member of the firm within the jurisdiction or on some other person having the control or management of the partnership business.

(3) Where an order made under the said Rule 1 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

Actions begun by originating summons (O 81, 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 an action begun by writ.

Application to person carrying on business in another name (O 81, R 9)

9 An individual carrying on business within the jurisdiction in a name or style other than his or her own name, may, whether or not he or she is within the jurisdiction, be sued in that name or style as if it were the name of a firm, and Rules 2 to 8 shall, so far as applicable, apply as if he or she were a partner and the name in which he or she carries on business were the name of his or her firm.

Applications for orders charging partner's interest in partnership property etc (O 81, R 10)

10 (1) Every application to the Court by a judgment creditor of a partner for an order under section 24 of the Partnership Act 1910 (which authorises the High Court or a Judge thereof to make certain orders on the application of a judgment creditor of a partner, including an order charging the partner's interest in the partnership property) and every application to the Court by a partner of the judgment debtor made in consequence of the first mentioned application must be made by summons.

(2) Every summons issued by a judgment creditor under this Rule, and every order made on such a summons, must be served on the judgment debtor and on such of his or her partners as are within the jurisdiction or, if the partnership is a cost book company, on the judgment debtor and the purser of the company.

(3) Every summons issued by a partner of a judgment debtor under this Rule, and every order made on such a summons, must be served—

- (a) on the judgment creditor;
- (b) on the judgment debtor; and
- (c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(4) A summons or order served in accordance with this Rule on the purser of a cost book company or, in the case of a partnership not being such a company, on some only of the partners thereof, shall be deemed to have been served on that company or on all the partners of that partnership, as the case may be.

[The next page is 795,621]

DFLRC (RT) - 17/12/24

795,621

Service 0

[The next page is 795,721]

Service 0

795,622

ORDER 83 — MONEYLENDERS' ACTIONS

Application and interpretation (O 83, R 1)

1 (1) These Rules apply to a moneylender's action subject to the following Rules of this Order.

(2) In these Rules—

moneylender has the meaning assigned to it by section 2 of the Money Lenders Act 1938; and

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.

Indorsement of writ (O 83, R 2)

2 Before a writ beginning a moneylender's action is issued it must be indorsed 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 83, R 3)

3 Every statement of claim in a moneylender's action (whether indorsed on the writ or not) must 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) whether the note or memorandum consists of a promissory note and, if so, full particulars thereof;
- (g) the date when a copy of the note or memorandum was delivered to the borrower;
- (h) the amount repaid;
- (i) the amount due but unpaid;
- (j) the date upon which such unpaid sum or sums became due; and
- (k) the amount of interest accrued due and unpaid on every such sum.

Judgment in default (O 83, R 4)

4 (1) Notwithstanding anything in Order 13 or Order 19, in a moneylender's action judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this Rule must be made by summons, and the summons must, notwithstanding anything in Order 65, Rule 9, be served on the defendant.

(3) If the application is for leave to enter judgment in default, as referred to in paragraph (1), the summons shall not be issued until after the time limited for the giving of the notice of intention to defend.

(4) On the hearing of such an application, whether the defendant gives notice of intention to defend or not, the Court—

- (a) may exercise the powers of the Court under sections 21 and 22 of the Money Lenders Act 1938;
- (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 directions 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 83, R 5)

5 Where a moneylender's action is begun by originating summons, the summons must contain a statement of the matters specified in Rules 2 and 3.

[The next page is 795,821]

Service 0

795,722

ORDER 84 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

795,821

Service 0

[The next page is 795,921]

Service 0

795,822

ORDER 85 — ADMINISTRATION AND SIMILAR ACTIONS

Interpretation (O 85, 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 etc without administration (O 85, 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—

- (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 or her capacity as executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his or her capacity as executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his or her 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 85, 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 action or such an action as is referred to in Rule 2 relates must be parties to the action, and where the action is brought by executors, administrators or trustees, any of them who does not consent to being joined as a plaintiff must be made a defendant.

(2) Notwithstanding anything in Order 15, Rule 4(2), and without prejudice to the powers of the Court under that Order, all the persons having a beneficial interest in or claim against the estate or having a beneficial interest under the trust, as the case may be, to which such an action as is mentioned in paragraph (1) relates need not be parties to the

action; but the plaintiff may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he or she thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall be entitled to appear in any proceedings relating to that claim without the leave of the Court, and the Court may direct or allow any other 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 85, 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 notwithstanding that the action was begun by originating summons, but the foregoing provision is without prejudice to the power of the Court to make an order under Order 28, Rule 9, in relation to the action.

Judgments and orders in administration actions (O 85, 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 trustees, as the case may be, shall within that period furnish the plaintiff with proper accounts;
- (b) if necessary to prevent proceedings by other creditors or by other persons claiming to be entitled as aforesaid, give judgment or make an order for the administration of the estate to which the action relates and include therein an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed, without the leave of the Judge in person.

Conduct of sale of trust property (O 85, 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 the conduct of the sale unless the Court otherwise directs.

[The next page is 796,021]

ORDER 86 — ACTIONS FOR SPECIFIC PERFORMANCE ETC: SUMMARY
JUDGMENT

Application by plaintiff for summary judgment (O 86, R 1)

- 1 (1) In any action begun by writ indorsed with a claim—
- (a) for specific performance of an agreement (whether in writing or not) for the sale, purchase, exchange, mortgage or charge 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,
- 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 or she has acknowledged service of the writ.

Manner in which application under Rule 1 must be made (O 86, R 2)

- 2 (1) An application under Rule 1 shall be made by summons supported by an affidavit verifying the facts on which the cause of action is based and stating that in the deponent's belief there is no defence to the action. Unless the Court otherwise directs, an affidavit for the purposes of this paragraph may contain statements of information or belief with the sources and grounds thereof.
- (2) The summons must set out or have attached thereto minutes of the judgment sought by the plaintiff.
- (3) The summons, a copy of the affidavit in support and of any exhibit referred to therein must be served on the defendant not less than 4 clear days before the return day.

Judgment for plaintiff (O 86, 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 86, 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.
- (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 or she should do so, to attend and be examined on oath.

Directions (O 86, R 5)

5 Where the Court orders that a defendant has leave to defend the action, the Court shall give directions as to the further conduct of the action, and Order 25, Rules 2 to 7,

shall, with the omission of so much of Rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under Rule 1 were a summons for directions.

Costs (O 86, 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 or her to unconditional leave to defend, then, without prejudice to Order 62, and, in particular, to Rule 4(1) thereof, the Court may dismiss the application with costs and may, if the plaintiff is not an assisted person, require the costs to be paid by him or her forthwith.

Setting aside judgment (O 86, 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.

[The next page is 796,121]

ORDER 87 — DEBENTURE HOLDERS' ACTIONS: RECEIVER'S REGISTER

Receiver's register (O 87, R 1)

1 Every receiver appointed by the Court in an action to enforce registered debentures or registered debenture stock shall, if so directed by the Court, keep a register of transfers of, and other transmissions of title to, such debentures or stock (in this Order referred to as "the receiver's register").

Registration of transfers etc (O 87, 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 by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this Rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his or her 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 or she objects to the registration,

and no transfer shall be registered until the period so specified has elapsed.

The period to be specified in the notice shall in no case be less than 7 days after a reply from the registered holder would in the ordinary course of post reach the receiver if the holder had replied to the notice on the day following the day when in the ordinary course of post the notice would have been delivered at the place to which it was addressed.

(3) On registering a transfer or other transmission of title under this Rule the receiver must indorse a memorandum thereof on the debenture or certificate of debenture stock, as the case may be, transferred or transmitted, containing a reference to the action and to the order appointing him or her receiver.

Application for rectification of receiver's register (O 87, 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 summons in the action in which the receiver was appointed.

(2) The summons shall in the first instance be served only on the plaintiff or other party having the conduct of the action but the Court may direct the summons or notice of the application to be served on any other person appearing to be interested.

(3) The Court hearing an application under this Rule may decide any question relating to the title of any person who is party to the application to have his or her 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 etc (O 87, 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 purposes 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.

Proof of title of holder of bearer debenture etc (O 87, 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 certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his or her 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 barrister and solicitor of the plaintiff in the action must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in 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 or her title in accordance with paragraph (2); and
- (c) that if a new holder neglects to prove his or her title as aforesaid he or she may incur additional delay, trouble and expense in obtaining payment.

(4) The barrister and solicitor of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by affidavit.

Requirements in connection with payments (O 87, R 6)

6 (1) Where in an action to enforce any debentures or debenture stock an order is made for payment in respect of the debentures or stock, no person shall make a payment in respect of any such debenture or stock unless either there is produced to him or her 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 must 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 must indorse thereon a memorandum of payment and must make and sign a certificate certifying that the statement set out in the certificate has been indorsed on the debenture or debenture stock certificate, as the case may be.

[The next page is 796,221]

ORDER 88 — MORTGAGE ACTIONS

Application and interpretation (O 88, R 1)

1 (1) This Order applies to any action (whether begun by writ or originating summons) by a mortgagee or mortgagor or by any person having the right to foreclose or redeem any mortgage, being an action in which there is a claim for any of the following reliefs, namely—

- (a) payment of moneys secured by the mortgage;
- (b) sale of the mortgaged property;
- (c) foreclosure;
- (d) delivery of possession (whether before or after foreclosure or without foreclosure) to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property;
- (e) redemption;
- (f) reconveyance of the property or its release from the security;
- (g) delivery of possession by the mortgagee.

(2) In this Order, “mortgage” includes a legal and an equitable mortgage and a legal and an equitable charge, and references to a mortgagor, a mortgagee and mortgaged property shall be construed accordingly.

(3) An action to which this Order applies is referred to in this Order as a mortgage action.

(4) These Rules apply to mortgage actions subject to the following provisions by this Order.

Claim for possession, failure by a defendant to acknowledge service (O 88, R 2)

2 (1) Where in a mortgage action begun by originating summons, being an action in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both, any defendant fails to acknowledge service of the originating summons, the following provisions of this Rule shall apply, and references in those provisions to the defendant shall be construed as references to any such defendant. This Rule shall not be taken as affecting Order 28, Rule 4, in so far as it requires any document to be served on, or notice given to, a defendant who has acknowledged service of the originating summons in the action.

(2) Not less than 4 clear days before the day fixed for the first hearing of the originating summons the plaintiff must serve on the defendant a copy of the notice of appointment for the hearing and a copy of the affidavit in support of the summons.

(3) Where the plaintiff claims delivery of possession there must be indorsed on the outside fold of the copy of the affidavit served on the defendant a notice informing the defendant that the plaintiff intends at the hearing to apply for an order to the defendant to deliver up to the plaintiff possession of the mortgaged property and for such other relief (if any) claimed by the originating summons as the plaintiff intends to apply for at the hearing.

(4) Where the hearing is adjourned, then, subject to any directions given by the Court, the plaintiff must serve notice of the appointment for the adjourned hearing, together with a copy of any further affidavit intended to be used at that hearing, on the defendant not less than 2 clear days before the day fixed for the hearing.

A copy of any affidavit served under this paragraph must be indorsed in accordance with paragraph (3).

(5) Service under paragraph (2) or (4), and the manner in which it was effected, may

be proved by a certificate signed by the plaintiff, if he or she sues in person, and otherwise by his or her barrister and solicitor. The certificate may be indorsed on the affidavit in support of the summons or, as the case may be, on any further affidavit intended to be used at an adjourned hearing.

(6) A copy of any exhibit to an affidavit need not accompany the copy of the affidavit served under paragraph (2) or (4).

(7) Where the plaintiff gives notice to the defendant under Order 3, Rule 5, of his or her intention to proceed, service of the notice, and the manner in which it was effected, may be proved by a certificate signed as mentioned in paragraph (5).

Action for possession or payment (O 88, R 3)

3 (1) The affidavit in support of the originating summons by which an action to which this Rule applies is begun must comply with the following provisions of this Rule. This Rule applies to a mortgage action begun by originating summons in which the plaintiff is the mortgagee and claims delivery of possession or payment of moneys secured by the mortgage or both.

(2) The affidavit must exhibit a true copy of the mortgage and the original mortgage or, in the case of a registered charge, the charge certificate must be produced at the hearing of the summons.

(3) Where the plaintiff claims delivery of possession the affidavit must show the circumstances under which the right to possession arises and, except where the Court in any case or class otherwise directs, the state of the account between the mortgagor and mortgagee with particulars of—

- (a) the amount of the advance;
- (b) the amount of the periodic payments required to be made;
- (c) the amount of any interest or instalments in arrear at the date of issue of the originating summons and at the date of the affidavit; and
- (d) the amount remaining due under the mortgage.

(4) Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

(5) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and mortgagee, the affidavit must show how and when the tenancy was determined and if by service of notice when the notice was duly served.

(6) Where the plaintiff claims payment of moneys secured by the mortgage, the affidavit must prove that the money is due and payable and give the particulars mentioned in paragraph (3).

(7) Where the plaintiff's claim includes a claim for interest to judgment, the affidavit must state the amount of a day's interest.

Action by writ, judgment in default (O 88, R 4)

4 (1) Notwithstanding anything in Order 13 or Order 19, in a mortgage action begun by writ, judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.

(2) An application for the grant of leave under this Rule must be made by summons and the summons must, notwithstanding anything in Order 65, Rule 9, be served on the defendant.

(3) Where a summons for leave under this Rule is issued, Rule 2(2) to (7) shall apply in relation to the action subject to the modification that for references therein to the

originating summons, and for the reference in paragraph (2) to the notice of appointment, there shall be substituted references to the summons.

(4) Where a summons for leave under this Rule is issued in an action to which Rule 3 would apply had the action been begun by originating summons, the affidavit in support of the summons must contain the information required by that Rule.

Foreclosure in redemption action (O 88, R 5)

5 Where foreclosure has taken place by reason of the failure of the plaintiff in a mortgage action for redemption to redeem, the defendant in whose favour that foreclosure has taken place may apply by motion or summons for an order for delivery to him or her of possession of the mortgaged property, and the Court may make such order thereon as it thinks fit.

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[The next page is 796,321]

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ORDER 89 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

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[The next page is 796,421]

Service 0

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ORDER 90 — PROCEEDINGS RELATING TO MINORS

Application to make minor a ward of court (O 90, R 1)

1 (1) An application to make a minor a ward of Court must be made by originating summons.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made *ex parte* to the Registrar for leave to issue either an *ex parte* originating summons or an originating summons with the minor as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an originating summons under this Rule in the first instance.

Applications for guardianship (O 90, R 2)

2 Where there is pending any proceeding by reason of which a minor is a ward of Court, any application with respect the guardianship or custody of that minor may be made by summons in that proceeding, but except in that case any such application must be made by originating summons.

Defendants to summons (O 90, R 3)

3 (1) Where the minor with respect to whose guardianship or custody an application is made is not the plaintiff, he or she shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, 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 (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Interim order for custody and maintenance (O 90, R 4)

4 After entry of an appeal from any order of a Magistrates Court with respect to the custody or maintenance of a minor under any enactment, the Judge may, on an application made *ex parte* or otherwise, make such an order with respect to the custody or maintenance of the minor in question pending the appeal or otherwise as he or she thinks proper.

Application under the Infant Settlements Act 1855 (UK) (O 90, R 5)

5 (1) Every application under the Infants Settlements Act 1855 (UK), to obtain the sanction of the Court for a settlement, or contract for a settlement, of the property of an infant must be made to a Judge in chambers and must—

- (a) if the infant is a ward of Court and a party to a pending cause or matter, be made by summons in that cause or matter;
- (b) in any other case, be made by originating summons.

(2) A summons under this Rule must be supported by evidence showing—

- (a) the age of the infant;
- (b) whether the infant has any parent living or any guardian and, if not, what near relation the infant has;
- (c) with whom the infant is living or under whose care he or she is;
- (d) the rank and position in life of the infant and his or her parents;
- (e) the nature and the amount of the infant's property and income;
- (f) the age, rank and position in life of the person to whom the infant is about to be married and the nature and the amount of that person's property and income;

(g) the names of the proposed trustees, and that they are fit and willing to act as such.

Applications as to guardianship, maintenance etc (O 90, R 6)

6 (1) Applications as to the guardianship, maintenance or advancement of minors may be disposed of in chambers.

(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.

[The next page is 796,521]

ORDERS 91 TO 98 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

796,521

Service 0

[The next page is 796,621]

Service 0

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ORDER 99 — THE INHERITANCE (FAMILY PROVISION) ACT 2004

Application (O 99, R 1)

1 This Order applies to proceedings under the Inheritance (Family Provision) Act 2004, in this Order referred to as “the Act”.

Powers of Court as to parties (O 99, R 2)

2 (1) Without prejudice to its powers under Order 15, the Court may at any stage of proceedings under the Act 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 15, shall apply to proceedings under the Act as it applies to the proceedings mentioned in paragraph (1) of that Rule.

Affidavit in support to be filed (O 99, R 3)

3 An affidavit in support of an originating summons by which an application under section 3 of the Act is made must be filed before the first hearing of the summons.

Disposal of application in chambers etc (O 99, 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 to direct, be disposed of in chambers.

Application in proceedings under section 3 of the Act (O 99, 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 section 6(2) of the Act, must be made by summons in those proceedings.

Indorsement of memorandum on probate etc (O 99, R 6)

6 (1) The personal representatives of the deceased to whose estate an application under the Act relates must produce in Court at the hearing of the application the probate or letters of administration under which the estate is being administered; and if the Court makes an order under the Act or an order dismissing the application, the probate or letters of administration shall remain in the custody of the Court until section 5(3) of the Act has been complied with.

(2) Immediately after any such order has been drawn up and entered the Registrar shall cause a memorandum of the order to be endorsed on or annexed to the probate or the letters of administration and cause an office copy of the order to be placed on the probate file in the Registry relating to the estate.

(3) The memorandum of the order required by section 5(3) of the Act to be indorsed or annexed as therein mentioned must set out the title of the proceedings in question and the operative part of the order in full.

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ORDER 100 — THE TRADE-MARKS ACT 1933

Application (O 100, R 1)

1 This Order applies to proceedings in the High Court under the Trade-Marks Act 1933.

Appeals and applications (O 100, R 2)

2 (1) Every appeal or application to the High Court under the Trade-Marks Act 1933, must be begun by originating motion.

(2) Notice of the motion must be served on the Administrator General.

(3) An appeal must be entered within 28 days after the date of the decision, order or other determination against which the appeal is brought.

(4) An application under section 34 of the Trade-Marks Act 1933 must be made within 28 days after the date of the decision of the Administrator-General in respect of which the application is made.

(5) An application under section 62 of the Trade-Marks Act 1933 must be made within 28 days after the date of the certificate of registration issued under section 58 of the Act.

Proceedings for infringement of registered trade mark, validity of registration disputed (O 100, R 3)

3 (1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his or her 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 or her pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered trade mark, must serve with the pleading particulars of the objections to the validity of the registration on which he or she relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Administrator-General a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Administrator-General shall be entitled to take such part in the proceedings as he or she may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

[The next page is 796,821]

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DFLRC (RT) - 17/12/24

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ORDER 103 — THE PATENTS ACT 1879: THE UNITED KINGDOM DESIGNS
(PROTECTION) ACT 1936

Application (O 103, R 1)

1 This Order applies to proceedings in the High Court under the Patents Act 1879 and the United Kingdom Designs (Protection) Act 1936.

Application for leave to amend specification under section 30 of the Act (O 103, R 2)

2 (1) A patentee intending to apply for leave to amend his or her specification must give notice of his or her intention to the Administrator-General accompanied by a copy of an advertisement—

- (a) identifying the proceedings pending before the Court in which it is intended to apply for such leave;
- (b) giving particulars of the amendment sought;
- (c) stating the applicant's address for service within Fiji; and
- (d) stating that any person intending to oppose the amendment who is not a party to the proceedings must within 28 days after the appearance of the advertisement give written notice of his or her intention to the applicant,

and the Administrator-General shall insert the advertisement once in the Gazette.

A person who gives notice in accordance with the advertisement shall be entitled to be heard on the application subject to any direction of the Court as to costs.

(2) As soon as may be after the expiration of 35 days from the appearance of the advertisement the applicant must make his or her application by motion in the proceedings pending before the Court; and notice of the motion together with a copy of the specification certified by the Administrator-General and showing in coloured ink the amendment sought, must be served on the Administrator-General, the parties to the proceedings and any person who has given notice of his or her intention to oppose the amendment.

(3) On the hearing of the motion the Court shall give such directions for the further conduct of the proceedings on the motion as it thinks necessary or expedient and, in particular, directions—

- (a) requiring the applicant and any party or person opposing the amendment sought to exchange statements of the grounds for allowing the amendment and of objections to the amendment;
- (b) determining whether the motion shall be heard with the other proceedings relating to the patent in question or separately and, if separately, fixing the date of hearing thereof;
- (c) as to the manner in which the evidence shall be given and, if the evidence is to be given by affidavit, fixing the times within which the affidavits must be filed.

(4) Where the Court allows a specification to be amended, the applicant must forthwith lodge with the Administrator-General an office copy of the order made by the Court and, if so required by the Court or Administrator-General, leave at his or her office a new specification and drawings as amended, prepared in compliance with the Act, and the Rules made thereunder.

The Administrator-General shall cause a copy of the order to be inserted at least once in the Gazette.

Revocation of patent etc (O 103, R 3)

3 (1) Every application to the court for—

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Service 0

- (a) the cancellation or revocation of any letters patent under section 5 of the Patents Act 1879;
- (b) a declaration under section 28 of that Act; or
- (c) a declaration under section 4 of the United Kingdom Designs (Protection) Act 1936,

shall be made by petition.

(2) Any person presenting such a petition must state therein particulars of the grounds on which he or she intends to rely.

(3) The respondent to such a petition may serve an answer on the petitioner, within 21 days after service of the petition on him or her.

(4) On the hearing of such a petition the respondent shall be entitled to begin and to adduce evidence in support of the patent; and if the petitioner adduces evidence impeaching the validity of the patent, the respondent shall be entitled to reply.

Actions for infringement, particulars of pleading (O 103, R 4)

4 (1) The plaintiff in an action for infringement of a patent must serve with his or her statement of claim particulars of the infringements relied thereon.

(2) If a defendant in such an action disputes the validity of a patent, he or she must serve with his or her defence particulars of the objections to the validity of the patent on which he or she relies in support of the allegation of invalidity.

(3) If a defendant in such an action alleges, as a defence to the action, that at the time of the infringement there was in force a contract relating to the patent made by or with the consent of the plaintiff and containing a condition void by virtue of any enactment, he or she must serve on the plaintiff particulars of the date of, and parties to, such contract and particulars of each such condition.

(4) A defendant to such an action who applies by counterclaim in the action for revocation of the patent must, with his or her counterclaim, serve particulars of the objections to the validity of the patent on which he or she relies in support of his or her counterclaim.

Particulars of infringement (O 103, R 5)

5 Particulars of infringement of a patent must specify which of the claims in the specification of the patent are alleged to be infringed and must give at least one instance of each type of infringement alleged.

Particulars of objections (O 103, R 6)

6 (1) Particulars of objections to the validity of a patent must state every ground on which the validity of the patent is disputed and must include such particulars as will clearly define every issue which it is intended to raise.

(2) If the grounds stated in the particulars of objections include want of novelty or want of any inventive step, the particulars must state the manner, time and place of every prior publication or user relied upon and, if prior user is alleged, must—

- (a) specify the name of every person alleged to have made such user;
- (b) state whether such user is alleged to have continued until the priority date of the claim in question or of the invention, as may be appropriate, and, if not, the earliest and latest date on which such user is alleged to have taken place;
- (c) contain a description accompanied by drawings, if necessary, sufficient to identify such user; and
- (d) if such user relates to machinery or apparatus, state whether the machinery or apparatus is in existence and where it can be inspected.

(3) If in the case of an existing patent—

- (a) one of the grounds stated in the particulars of objections is that the invention, so far as claimed in any claim of the complete specification, is not useful; and
- (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification,

the particulars must state that fact and identify each such claim and must include particulars of each such example, specifying the respect in which it is alleged that it does not work or does not work as described.

Amendment of particulars (O 103, R 7)

7 Without prejudice to Order 20, Rule 5, the Court may at any stage of the proceedings allow a party to amend any particulars served by him or her under the foregoing provisions of this Order on such terms as to costs or otherwise as may be just.

Further particulars (O 103, R 8)

8 The Court may at any stage of the proceedings order a party to serve on any other party further or better particulars of infringements or of objections.

Restrictions on admissions of evidence (O 103, R 9)

9 (1) Except with the leave of the Judge hearing any action or other proceeding relating to a patent, no evidence shall be admissible in proof of any alleged infringement, or of any objection to the validity, of the patent, if the infringement or objection was not raised in the particulars of infringements or objections, as the case may be.

(2) In any action or other proceeding relating to a patent, evidence which is not in accordance with a statement contained in particulars of objections to the validity of the patent shall not be admissible in support of such an objection unless the Judge hearing the proceeding allows the evidence to be admitted.

(3) If any machinery or apparatus alleged to have been used before the priority date mentioned in Rule 6(2)(b) is in existence at the date of service of the particulars of objections, no evidence of its user before that date shall be admissible unless it is proved that the party relying on such user offered, where the machinery or apparatus is in his or her possession, inspection of it to the other parties to the proceedings or, where it is not, used all reasonable endeavours to obtain inspection of it for those parties.

Proceedings for infringement or revocation: summons for directions (O 103, R 10)

10 (1) In an action for infringement of a patent (whether or not any other relief is claimed) and in proceedings by petition for the cancellation or revocation of any letters patent under section 5 of the Patents Act 1879, or for a declaration under section 28 of that Act, the plaintiff or petitioner must, within one month after service of a reply or answer or after the expiration of the period fixed for service thereof, take out a summons for directions as to the place and mode of trial returnable in not less than 21 days, and if the plaintiff or petitioner does not take out such a summons in accordance with this paragraph, the defendant or respondent, as the case may be, may do so.

The summons may be heard in chambers or in Court as the Court thinks fit.

(2) The Court hearing a summons under this Rule may give such directions—

- (a) for the service of further pleadings or particulars;
- (b) for the discovery of documents;
- (c) for securing the making of admissions;
- (d) for the service of interrogatories and of answers thereto;

- (e) for the taking by affidavit of evidence relating to matters requiring expert knowledge, and for the filing of such affidavits and the service of copies thereof on the other parties;
- (f) for the service on the other parties, by any party desiring to submit experimental proof, of full and precise particulars of the experiments proposed and of the facts which he or she claims to be able to establish thereby;
- (g) for the making of experiments, tests, inspections or reports;
- (h) for the hearing, as a preliminary issue, of any question that may arise (including any question as to the construction of the specification or other documents), and otherwise as the Court thinks necessary or expedient for the purpose of defining and limiting the issues to be tried, restricting the number of witnesses to be called at the trial of any particular issue and otherwise securing that the case shall be disposed of, consistently with adequate hearing, in the most expeditious manner.

Where the evidence is directed to be given by affidavit, the deponents must attend at the trial for cross-examination unless, with the concurrence of the Court, the parties otherwise agree.

(3) On the hearing of a summons under this Rule the Court shall consider, if necessary of its own motion, whether an independent scientific adviser should be appointed under Rule 11 to assist the Court.

(4) Order 24, Rules 1 and 2, shall not apply in an action for infringement of patent.

(5) No action for infringement of a patent or petition for the revocation of a patent shall be set down for trial unless and until a summons under this Rule in the action or proceedings has been taken out and the directions given on the summons have been carried out or the time fixed by the Court for carrying them out has expired.

Appointment of a scientific adviser (O 103, R 11)

11 (1) In any proceedings under the Patents Act 1879 the Court may at any time, and on or without the application of any party, appoint an independent scientific adviser to assist the Court, either—

- (a) by sitting with the Judge at the trial or hearing of the proceedings; or
- (b) by inquiring and reporting on any question of fact or of opinion not involving a question of law or construction,

according as the Court may direct.

(2) The Court may nominate the scientific adviser and, where appropriate, settle any question or instructions to be submitted or given to him or her.

(3) Where the Court appoints a scientific adviser to inquire and report under paragraph (1)(b), Order 40, Rules 2, 3, 4 and 6 shall apply in relation to his or her report as they apply in relation to a report made by a court expert.

Counterclaim for rectification of register of design (O 103, R 12)

12 (1) Where in any proceedings a claim is made for relief for infringement of the copyright in a registered design, the party against whom the claim is made may in his or her defence put in issue the validity of the registration of that design or may counterclaim for an order that the register of designs be rectified by cancelling or varying the registration or may do both those things.

(2) A party to any such proceedings who in his or her pleading (whether a defence or counterclaim) disputes the validity of the registration of a registered design must serve with the pleading particulars of the objections to the validity of the registration on which he or she relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of

designs be rectified must serve on the Administrator-General a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Administrator-General shall be entitled to take such part in the proceedings as he or she thinks fit but need not serve a defence or other pleading unless ordered to do so by the Court.

DFLRC (RT) - 17/12/24

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[The next page is 797,021]

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ORDER 104 — MAINTENANCE (PREVENTION OF DESERTION AND
MISCELLANEOUS PROVISIONS) ACT 1962
ATTACHMENT OF EARNINGS

NOTE: The Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act 1962 has now
been repealed by section 214 of the Family Law Act 2003

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[The next page is 797,121]

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ORDER 108 — PROCEEDINGS RELATING TO CHARITIES: THE CHARITABLE TRUSTS ACT 1945

1 In this Order—

the Act means the Charitable Trusts Act 1945; and

charity proceedings means proceedings in the High Court brought under the Court's jurisdiction with respect to charities or brought under the Court's jurisdiction with respect to trusts in relation to the administration of a trust for charitable purposes.

2 (1) Appeals to the High Court under the Act shall be begun by originating summons and the Registrar of Titles must be made a party to the proceedings.

(2) All other charity proceedings brought in the High Court shall be begun by originating summons, and the Attorney-General must be made a party to the proceedings.

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[The next page is 797,321]

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ORDER 109 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

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[The next page is 797,421]

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ORDER 110 — ASSISTED PERSONS

Leave to appear in *forma pauperis* (O 110, R 1)

1 Any poor person, being a party or intending party to any cause or matter in his or her own right, may apply to the Court by petition for leave to sue or defend in *forma pauperis*.

Application for leave (O 110, R 2)

2 A petition for leave to sue or defend in *forma pauperis* shall be supported by an affidavit by the petitioner, and by such further evidence as the Court may require, that the petitioner is not possessed of property to the amount of \$200 in value, excepting wearing apparel, and the matter or thing claimed by him or her if he or she be the plaintiff in the cause or matter, and thereupon the application shall be referred to a barrister and solicitor to consider the case.

When Court may grant leave (O 110, R 3)

3 Upon the petitioner producing a certificate signed by the barrister and solicitor to whom the application was referred under Rule 2 that he or she has considered the case and believes the petitioner to have a good cause of action or defence, as the case may be, the Court may, subject to Rule 4, admit the petitioner to sue or defend, as the case may be, in *forma pauperis*, and may appoint a barrister and solicitor to appear for him or her.

All facts to be disclosed (O 110, R 4)

4 No person shall be admitted to sue or defend in *forma pauperis* unless he or she shall have filed in the Court an affidavit containing a full statement of all the material facts of the case to the best of his or her belief.

Duty of barrister and solicitor (O 110, R 5)

5 A barrister and solicitor to whom an application under Rule 2 has been referred or who, under Rule 3, has been appointed to appear for a person admitted to sue or defend in *forma pauperis*, may not refuse, or discontinue, his or her assistance, unless he or she satisfies the Court that he or she has some good reason for refusing or discontinuing.

No fee or fees payable (O 110, R 6)

6 (1) No fee shall be taken by any barrister and solicitor assigned to assist or to appear for a person applying or admitted to sue or defend in *forma pauperis*.

(2) No fees of Court shall be demanded by any officer from any person applying or admitted to sue or defend in *forma pauperis*, provided that if a person admitted to sue or defend in *forma pauperis* shall succeed in the cause or matter and costs should be awarded to be paid by the other party, then, out of any costs subsequently recovered from the other party, the barrister and solicitor so assigned shall be entitled to and shall receive all such costs as may be allowed to him or her on taxation, and such fees of Court as would have been chargeable, shall be charged and paid to the Registry.

Removal of assisted person privileges (O 110, R 7)

- 7 Any person having been admitted to sue or defend in *forma pauperis*, who—
- (a) becomes of means during the progress of the cause or matter;
 - (b) misbehaves himself or herself in the proceedings by any vexatious or improper conduct; or
 - (c) wilfully delays the cause or matter,

shall on the same being shown to the Court be deprived of all the privileges of an assisted person.

Legal aid may be made available (O 110, R 8)

8 In special circumstances, and subject to the availability of public funds for the purpose, legal aid may be granted to any party or intending party to any proceedings in the High Court but only upon the specific authority of the Chief Justice to be obtained in each case.

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ORDER 111 — ABSCONDING DEBTORS

Application for warrant (O 111, R 1)

1 An application under section 6 of the Debtors Act 1886 for an order for a warrant to issue for the arrest of a defendant who is about to abscond may be made by the plaintiff in the action *ex parte*, supported by an affidavit, to a Judge in chambers.

Orders for warrant of arrest (O 111, R 2)

2 The Court may make the order upon such terms as it shall think fit and may make it subject to—

- (a) the giving by the plaintiff of an undertaking as to damages in like manner as in the case of an interlocutory injunction;
- (b) the payment by the plaintiff of a deposit in advance to cover the cost of the defendant's subsistence whilst in prison;
- (c) the giving of such recognisance or otherwise to secure the prosecution of the action by the plaintiff without delay; and
- (d) the release of the absconding defendant after his or her arrest upon him or her giving such security as may be ordered.

Subsistence costs etc (O 111, R 3)

3 (1) If the warrant or order shall have been made conditional upon the payment of money to cover the cost of the defendant's subsistence, the amount expended for that purpose shall be added to the sum recoverable under the warrant or in the action, as the case may be, without further order unless the Court shall otherwise direct.

(2) The costs of and incidental to the order of arrest and its execution shall be costs in the cause unless otherwise ordered.

Release from custody (O 111, R 4)

4 When the Court orders that a warrant be issued it shall order that the absconding defendant shall be released from custody upon—

- (a) depositing in Court or with the sheriff the amount mentioned in the order;
 - (b) executing a bond in the sum mentioned in the order with such sureties for such sums as may be specified therein with or without surrendering his or her passport; or
 - (c) providing some other security satisfactory to the plaintiff,
- and the warrant shall be endorsed accordingly upon its issue.

Variation of security (O 111, R 5)

5 The plaintiff may at any time apply to a Judge in chambers by summons supported by affidavit to vary the security ordered or given and the Judge may make such order as he or she thinks fit.

Duty of sheriff etc (O 111, R 6)

6 (1) The sheriff or other officer named in a warrant of arrest shall within 2 days after the arrest, indorse on the warrant the true date of such arrest and make a return accordingly to the Court.

(2) Upon payment to the sheriff or into Court of the amount stated in the warrant or upon the security ordered being given, the sheriff or other officer executing the warrant shall release the defendant from custody and shall make a return to the Court accordingly.

Form (O 111, R 7)

7 A warrant to arrest an absconding defendant shall be in Form 30 in Appendix 1.
[r 7 am LN 67 of 1993 r 9, opn 9 Aug 1993]

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ORDER 112 — (UNALLOCATED)

DFLRC (RT) - 17/12/24

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Service 0

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ORDER 113 — SUMMARY PROCEEDINGS FOR POSSESSION OF LAND

Proceedings to be brought by originating summons (O 113, R 1)

1 Where a person claims possession of land which he or she 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 or her licence or consent or that of any predecessor in title of his or her, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

Forms of originating summons (O 113, R 2)

2 The originating summons shall be in Form 3 in Appendix 1 and no acknowledgement of service shall be required.

[r 2 am LN 67 of 1993 r 9, opn 9 Aug 1993]

Affidavit in support (O 113, R 3)

- 3 The plaintiff shall file in support of the originating summons an affidavit stating—
- his or her interest in the land;
 - the circumstances in which the land has been occupied without licence or consent and in which his or her claim to possession arises; and
 - that he or she does not know the name of any person occupying the land who is not named in the summons.

Service of originating summons (O 113, 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 or her—

- personally or in accordance with Order 10, Rule 5;
- by leaving a copy of the summons and of the affidavit or sending them to him or her, at the premises; or
- in such other manner as the court may direct.

(2) The 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—

- affixing a copy of the summons and a copy of the affidavit to the main door or other conspicuous part of the premises; and
- if practicable, inserting through the letter box at the premises a copy of the summons and a copy of the affidavit enclosed in a sealed 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 High Court out of which the summons was issued.

(4) Order 28, Rule 4 shall not apply to proceedings under this Order.

Application by occupier to be made a party (O 113, R 5)

5 Without prejudice to Order 15, Rules 6 and 11, 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 113, 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 5 clear days after the date of service.

797,721

Service 0

(2) 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 113, R 7)

7 (1) Order 45, Rule 2(2), shall not apply in relation to an order for possession under this Order but no writ of possession to enforce such an order shall be issued after the expiry of 3 months from the date of the order without the leave of the Court. An application for leave may be made *ex parte* unless the Court otherwise directs.

(2) The writ of possession shall be in Form 24 in Appendix 1
[para (2) am LN 67 of 1993 r 9, opn 9 Aug 1993]

Setting aside order (O 113, R 8)

8 The Judge may, on such terms as he or she thinks just, set aside or vary any order made in proceedings under this Order.

[The next page is 797,821]

APPENDIX 1 — FORMS

[App 1 am LN 67 of 1993 r 10, opn 9 Aug 1993]

FORM 1

WRIT OF SUMMONS (O 6, R 1)

[Form 1 subst LN 67 of 1993 r 10, opn 9 Apr 1993]



IN THE HIGH COURT OF FIJI

NO

OF 20

BETWEEN

Plaintiff

to THE DEFENDANT [Name]

of [address]

THIS WRIT OF SUMMONS has been issued against you by the above named Plaintiff in respect of the claim set out overleaf.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the registry mentioned below the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest the proceedings.

If you fail to satisfy the claim or return the ACKNOWLEDGMENT within 14 days or if you return the ACKNOWLEDGMENT without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued from the High Court registry at [places]

this

day of

20

.....
Solicitor for the Plaintiff

NOTE — This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

DIRECTIONS FOR ACKNOWLEDGING SERVICE

The Defendant must acknowledge service in person or by a solicitor by handing in the accompanying form, duly completed, at the High Court registry at [place].

Note — Where the writ is indorsed with or served with a statement of claim, if the Defendant acknowledges service, then unless a summons for judgment is served on him or her in the meantime, he or she must also serve a defense on the solicitor for the plaintiff within 14 days after the last day of the time limited for acknowledging service otherwise judgment may be entered against him or her without notice.

797,821

Service 0

INDORSEMENT OF CLAIM (1)

STATEMENT OF CLAIM (1)

And, where the claim is for a debt or liquidated demand the sum of \$50 (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 \$25 (or such sum as may be allowed on taxation). If the amount claimed and costs be paid to the plaintiff, (he or she being resident within the jurisdiction), or his or her solicitor or agent within 8 days after service hereof (inclusive of the day of service), further proceedings will be stayed.

(1) Delete where not applicable

AFFIDAVIT OF SERVICE

I

make oath and say as follows—

1. I did on the _____ day of _____ 20____
at _____
personally serve
the within named defendant with a true copy of the within writ of summons which appeared to me to have been regularly issued out of High Court against the abovenamed defendant at the suit of the abovenamed plaintiff and which was dated the
_____ day of _____ 20____

2. At the time of the said service the said writ and the copy thereof were subscribed in the manner and form prescribed by the Rules of the High Court.

3. I did also at the time of the said service, serve at the within-named Defendant a copy of Summons of the Acknowledgement of Service of the aforementioned Writ.

Sworn at

this _____ day of _____ 20____

Before me

A Commissioner of the High Court of Fiji

Service 0

797,822

FORM 2

ACKNOWLEDGMENT OF SERVICE (O 6, R 6)

[Heading as in action, to be completed by plaintiff]

Acknowledgement of Service or Writ of Summons

1. Service of the Writ is hereby acknowledged by (here insert full name and residential address¹ of each defendant who acknowledges service)

2. The defendant does* intend to contest the proceedings.
does not*

3. The defendant does* intend to apply for a stay of execution
does not*

against any judgment entered by the plaintiff².

4. The defendant does* intend to apply for the transfer of the
does not*

action to the High Court at (here insert where transfer is to be applied for if applicable).

Dated the _____ day of _____ 20____ .

Signed.....

Defendant or

.....

Barrister and Solicitor for Defendant

* Delete whichever is inapplicable.

¹ If this acknowledgement is given by a barrister and solicitor, his or her full name and address for service should be stated as well.

² This is appropriate, if—
(a) the claim on the writ is for a debt or liquidated demand; and
(b) the defendant does not intend to contest the claim.

ORIGINATING SUMMONS — GENERAL FORM (O 7, R 2)

[Heading as in Form 1]

To C.D. of

Let the defendant, within _____ days after service of this summons on him or her, counting the day of service, return the accompanying Acknowledgement of Service to the appropriate Court Office.

By this summons, which is issued on the application of the plaintiff A.B. of _____, the plaintiff claims against the defendant _____ [or seeks the determination of the Court on the following questions, namely,

or as may be]

If the defendant does not acknowledge service, such judgment may be given or order made against or in relation to him or her as the Court may think just and expedient.

Dated the _____ day of _____ 20____

Note — This summons may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

This summons was taken out by _____ of _____ barrister and solicitor for the said plaintiff whose address is as stated above [or where the plaintiff sues in person. This summons was taken out by the said plaintiff who resides at the abovenamed address or as may be and (if the plaintiff does not reside within the jurisdiction) whose address for service is _____].

Service 0

797,824

FORM 4

ORIGINATING SUMMONS — EXPEDITED FORM (O 7, R 2; O 80, R 9)

[Heading as in Form 1]

Let C.D. of _____ attend before the Judge in chambers, at _____,
on _____ day, the _____ day of _____ 20____, at _____ o'clock, [*or, if no
application has yet been made for a day to be fixed, on a day to be fixed*] on the hearing of an
application by the plaintiff A.B. of _____ that

And let the defendant within [_____ days] after service of this summons on him or her counting
the day of service, return the accompanying Acknowledgement of Service to the appropriate Court
Office.

Dated the _____ day of _____ 20____

Note— This summons may not be served later than 12 calendar months beginning with the above
date unless renewed by order of the Court.

This summons was taken out by _____ of _____ solicitor and barrister for the said
plaintiff whose address is as stated above [*or where the plaintiff sues in person. This summons was
taken out by the said plaintiff who resides at the abovenamed address or as may be and (if the
plaintiff does not reside within the jurisdiction) whose address for service is*
_____].

Note—If a defendant does not attend personally or by his or her solicitor and barrister at the time
and place abovementioned such order will be made as the Court may think just and expedient.

797,825

Service 0

ORIGINATING SUMMONS — EX PARTE (O 7, R 2)

[Heading as in Form 1]

Let all parties concerned attend before a Judge in chambers at the High Court ,
on day, the day of 20 , at o'clock, on the
hearing of an application by A.B. that

Dated the day of

This summons was taken out by of barrister and solicitor for the applicant
whose address is

[The next page is 797,841]

Service 0

797,826

FORM 6

NOTICE OF ORIGINATING MOTION (O 8, R 3)

[Heading as in Form 1]

In the matter of

Take notice that the High Court at , will be moved a the expiration of days from the service upon you of this notice [or on day, the day of 20 , at the sitting of the Court] or so soon thereafter as counsel can be heard, by counsel on behalf of A.B. for an order that [or for the following relief, namely]

And that the costs of and incidental to this [application] [appeal] may be paid by

And further take notice that the grounds of this [application] [appeal] are:

Dated the day of 20 (Signed)

C.D. of [agent for of] barrister and solicitor for the abovenamed [applicant] [appellant] A.B. whose address is or A.B. whose address for service is [applicant] [appellant] in person

To of

DFLRC (RT) - 17/12/24

797,841

Service 0

FORM 7

NOTICE OF MOTION (O 8, R 3)

[Heading as in action]

Take notice that [pursuant to the leave of given on the day of 20] the Court [or Mr Justice] will be moved on the day of 20 , at o'clock, or so soon thereafter as counsel can be heard, by [Mr of] counsel for the abovenamed plaintiff [or defendant] that and that the costs of the application be

Dated the day of 20

(Signed)

of [agent for of

barrister and solicitor for the

To

Barrister and Solicitor for the

Service 0

797,842

DELRC (RT) - 17/12/24

FORM 8

COUNTERCLAIM INDORSEMENT NOTICE (O 15, R 3(5))

[Heading as in action]

To X.Y.

Take notice that, within [14 days] after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgement whether you intend to contest the proceedings. If you fail to do so or if your acknowledgement does not state your intention to contest the proceedings, judgment may be given against you without further notice.

DFLRC (RT) - 17/12/24

797,843

Service 0

FORM 9

THIRD PARTY NOTICE (O 16, R 1)

[Heading as in action]

Between:	A.B.	Plaintiff
And:	C.D.	Defendant
	T.P.	Third Party

Third Party Notice

[Issued pursuant to the order of _____ dated the
 day of _____].
 To T.P. _____ of _____ in the _____ of _____

Take notice that this action has been brought by the plaintiff against the defendant. In it the plaintiff claims against the defendant [*here state the nature of the plaintiff's claim*] as appears from the writ of summons [*or originating summons*] a copy whereof is served herewith [*together with a copy of the statement of claim*].

The defendant claims against you [*here state the nature of the claim against the third party as for instance to be indemnified against the 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 within [14 days] after service of this notice on you, counting the day of service, you must acknowledge service and state in your acknowledgement whether you intend to contest the proceedings. If you fail to do so, or if your acknowledgement does not state your intention to contest the proceedings, you will be deemed to admit the plaintiff's claim against the defendant and the defendant's claim against you and your liability [*indemnify the defendant or 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.

Dated the _____ day of _____ 20____

(Signed).....

Barrister and Solicitor for the defendant

Note — Where the third party notice is issued merely for the determination of a question or issue, the form should be amended as follows—

(1) For paragraph 2 substitute the following—

The defendant requires that the following question or issue, viz., [*here state the question or issue required to be determined*] should be determined not only as between the plaintiff and the defendant but also as between either or both of them and yourself,
and

(2) In the last paragraph, substitute the following for the words after “intention to contest the proceedings” —

“you will be bound by any judgment or decision in the action so far as it is relevant to the said question or issue, and the judgment may be enforced against you.”.

[The next page is 797,861]

Service 0 797,844

FORM 11

NOTICE OF PAYMENT INTO COURT (O 22, R 1)

[Heading as in action]

Take notice that—

The defendant has paid \$ into court.

The said \$ is in satisfaction of [the cause of action] [all the causes of action] in respect of which the plaintiff claims [and after taking into account and satisfying the abovenamed defendant's cause of action for in respect of which he or she counter claims].

or

The said \$ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, [and after taking into account *as above*.]

or

Of the said \$, \$ is in satisfaction of the plaintiff's cause[s] of action for [and after taking into account *as above*] and \$ is in satisfaction of the plaintiff's cause[s] of action for [and after taking into account *as above*].

Dated the day of 20

797,861

Service 0

FORM 12

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT (O 22, R 3)

[Heading as in action]

Take notice that the plaintiff accepts the sum of \$ _____ paid in by the defendant C.D. in satisfaction of the cause[s] of action in respect of which it was paid in and in respect of which the plaintiff claims [against that defendant] [and abandons the other causes of action in respect of which he or she claims in this action].

Dated the _____ day of _____ 20____

Service 0

797,862

FORM 13

LIST OF DOCUMENTS (O 24, R 5)

[Heading as in action]

List of documents

The following is a list of the documents relating to the matters in question in this action which are or have been in the possession, custody or power of the abovenamed plaintiff [or defendant] A.B. 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 or her 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 or her possession, custody or power the documents relating to the matters in question in this action enumerated in schedule 2 hereto.
4. Of the documents in the said schedule 2, those numbered in that schedule were last in the plaintiff's [or defendant's] possession, custody or power on [stating when] and the remainder on [stating when].
[Here state what has become of the said documents and in whose possession they now are].
5. Neither the plaintiff [or defendant], nor his or her barrister and solicitor nor any other person on his or her behalf, has now, or ever had, in his or her possession, custody or power any document of any description whatever relating to any matter in question in this action, other than the documents enumerated in schedules 1 and 2 hereto.

Schedule 1**Part 1**

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or power of the party in question which he or she does not object to produce, with a short description of each document or bundle sufficient to identify it].

Part 2

[Here enumerate as aforesaid the documents in the possession, custody or power of the party in question which he or she objects to produce].

797,863

Service 0

Schedule 2

[Here enumerate as aforesaid the documents which have been, but at the date of service of the list are not, in the possession, custody or power of the party in question].

Dated the _____ day of _____ 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 as [the office of the barrister and solicitor of the abovenamed [plaintiff] [defendant] (insert address) or as may be] on the _____ day of _____ 20____, between the hours of _____ and _____

To the defendant [or plaintiff] C.D. and his or her barrister and solicitor.

Served the _____ day of _____ 20____, by _____ of _____ barrister and solicitor for [plaintiff] [defendant].

Service 0

797,864

DFLRC (RT) - 17/12/24

FORM 14

AFFIDAVIT VERIFYING LIST OF DOCUMENTS (O 24, R 5)

[Heading as in action]

I, the abovenamed plaintiff [*or* defendant] A.B., make oath and say as follows—

1. The statements made by me in paragraphs 1, 3 and 4 of the list of documents now produced and shown to me marked are true.
2. The statements of fact made by me in paragraph 2 of the said list are true.
3. The statements made by me in paragraph 5 of the said list are true to the best of my knowledge, information and belief.

Sworn etc

This affidavit is filed on behalf of the plaintiff [*or* defendant].

797,865

Service 0

FORM 15

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS (O 28, R 3)

[Heading as in action]

To [name of defendant] of

Take notice that the originating summons issued herein on the _____ day of _____, 20____, will be heard by a Judge at the High Court _____, on _____ day, the _____ day of _____ 20____ at _____ o'clock. You may attend in person or by your barrister and solicitor. If you fail to attend, such order will be made as the Court may think just and expedient.

Dated the _____ day of _____ 20____

(Signed).....

Plaintiff or barrister and solicitor for the plaintiff

[The next page is 797,881]

Service 0

797,866

FORM 16

WRIT OF SUBPOENA (O 38, R 14)

[Heading as in action]

To *[names of witnesses]*

We command you to attend at the sittings* of the High Court at _____ on the day fixed for the trial of the above named cause, notice of which will be given to you, and from day to day thereafter until the end of the trial, to give evidence on behalf of the [plaintiff] or [defendant]**.

Issued by the High Court of Fiji the _____ day of _____ 20 _____ .

Issued on the _____ day of _____ 20 _____ by _____ [agent for] barrister and solicitor for the etc.

NOTE: If this subpoena is served less than 7 clear days before the hearing you are not obliged to attend if, as a result of short notice, it is inconvenient for you to do so. In this event you should so inform the Court.

If the subpoena is to attend at chambers, amend accordingly. If the subpoena is to attend before a tribunal or other body pursuant to the provisions of an Act, amend accordingly.

***If duces tecum add:* And we also command you to bring with you and produce at the place aforesaid on the day notified to you *[here describe the documents or things to be produced]*.

797,881

Service 0

FORM 17

ORDER FOR EXAMINATION BEFORE A JUDGE (O 39, R 1)

[Heading as in action]

On hearing [the barristers and solicitors on both sides] and on reading the affidavit of filed herein the day of 20 .

It is ordered that a witness on behalf of the be examined viva voce on oath or affirmation before one of the examiners of the Court [or Esq., the examiner agreed upon or an examiner to be agreed upon, the plaintiff's [or defendant's] barrister and solicitor giving to the defendant's [or plaintiff's] barrister and solicitor days' notice in writing of the time and place where the examination is to take place [or state the time and place if fixed by the order]. And it is ordered that the depositions taken at the examination be filed in the High Court and that office copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the barrister and solicitor or agent of the party using the same, as to his or her belief, and that the costs of this application [and of the examination] be [costs in the cause].

Dated the day of 20

Service 0

797,882

DELRC (RT) - 17/12/24

FORM 18

ORDER FOR ISSUE OF LETTER OF REQUEST TO JUDICIAL AUTHORITY OUT OF
JURISDICTION (O 39, R 2)

[Heading as in action]

On hearing [*as in Form 17*]

It is ordered that a letter of request do issue directed to the proper judicial authority for the examination of the following witnesses, namely:

E.F. of

G.H. of

And it is ordered that the depositions taken pursuant thereto when received be filed in the High Court and that office copies thereof may be read and given in evidence on the trial of this action, saving all just exceptions, without any further proof of the absence of the said witnesses than the affidavit of the barrister and solicitor or agent of the party using the same as to his or her 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 .

797,883

Service 0

FORM 19

ORDER FOR APPOINTMENT OF EXAMINER TO TAKE EVIDENCE OF WITNESS OUT
OF JURISDICTION (O 39, R 2)

[Heading as in action]

On hearing the barristers and solicitors on both sides and on reading the affidavit of filed
the day of 20 ,

It is ordered that the Fiji Consul or his or her deputy at

[or Esq.] be appointed as special examiner for the purpose of taking the examination,
cross-examination and re-examination *viva voce*, on oath or affirmation, of witnesses
on the part of at in [name of country]. The examiner shall be
at liberty to invite the attendance of the witnesses and the production of documents, but shall not
exercise any compulsory powers. Otherwise such examination shall be taken in accordance with Fiji
procedure. The barristers and solicitors to give to the barristers and
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
barristers and 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 Chief Registrar of
the High Court, on or before the day of next, or such further or other day
as may be ordered, there to be filed in the proper office. And that either party be at liberty to read
and give such depositions in evidence on the trial of this action, saving all just exceptions. And that
the trial of this action be stayed until the filing of such depositions. And that the costs of and
incidental to the application for this order and such examination be costs in the cause.

Dated the day of 20 .

Service 0

797,884

FORM 20

LETTER OF REQUEST FOR OVERSEAS EXAMINATION (O 39, R 3)

[Heading as in action]

To the Competent Judicial Authority of _____ in the _____ of _____

Whereas an action is now pending in the High Court of Fiji 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 _____ a Judge of the High Court of Fiji 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 or her *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 Fiji Consul from whom the same was received for transmission to the High Court of Fiji.

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____

797,885

Service 0

[The next page is 797,901]

Service 0

797,886

FORM 21

NOTICE OF JUDGMENT OR ORDER (O 44, R 2)

[Heading as in action]

Take notice that a judgment [or order] of 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 or she] would have been if you [or he] had originally been made a party.

And also take notice that you [or the said infant or patient] may within one month after the service of this notice apply to the Court to discharge, vary or add to the said judgment [or order] and that after acknowledging service of this notice at the 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____
To _____ (Signed)

797,901

Service 0

FORM 22

WRIT OF *FIERI FACIAS* (O 45, R 11)

[Heading as in action]

To the sheriff of _____ greeting:

Whereas in the above named action it was on the _____ day of _____ 20____ adjudged [*or* ordered] that the defendant C.D. do pay the plaintiff A.B. \$ _____ [and \$ _____ costs *or* costs to be taxed, which costs have been taxed and allowed at \$ _____ as appears by the certificate of the taxing officer dated the _____ day of _____ 20____].

We command you that of the goods, chattels and other property of C.D. authorised by law to be seized in execution you cause to be made the sum [s] of \$ _____ [and \$ _____ for costs of execution] and also interest on \$ _____ at the rate of \$ _____ [*insert the appropriate rate of interest at date of entry of judgment*] per annum from the _____ day of _____ 20____ until payment [together with sheriff's poundage, officers' fees, costs of levying and all other legal, incidental expenses] and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [*or* order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse on this writ immediately after execution thereof a statement of the manner in which you have executed it and send a copy of the statement of A.B.

Issued by the High Court of Fiji, the _____ day of _____ 20____ .

This writ was issued by _____ [agent for _____ of _____] barrister and solicitor for the _____ [or this writ was issued by A.B. [the plaintiff] in person] who resides at _____

The defendant resides (*or as the case may be*) at _____ .

Service 0

797,902

FORM 23

WRIT OF DELIVERY (O 45, R 11)

[Heading as in action]

To the sheriff of _____ greeting:

Whereas in the above named action it was on the _____ day of _____ 20____ adjudged [or ordered] that the defendant C.D. do deliver to the plaintiff A.B. the following goods, namely [*describe the goods delivery of which has been adjudged or ordered*] or* do pay him or her \$ _____ being the assessed value of the said goods, [and \$ _____ damages] and \$ _____ costs [or costs to be taxed, which costs have been taxed and allowed at \$ _____ as appears by the certificate of the taxing officer dated the _____ day of _____ 20____]:

We command you that you cause the said goods to be delivered to A.B. and* that if possession of the said goods cannot be obtained by you you cause to be made of the goods, chattels and other property of C.D. in your country authorised by law to be seized in execution \$ _____ the assessed value of the said goods to pay it to A.B.

And we also command you that of the said property of C.D. in your country you cause to be made the sum of \$ _____ for [damages and] _____ costs and \$ _____ for costs of execution and also interest on \$ _____ at the rate of \$ _____ [*insert the appropriate rate of interest at date of entry of judgment*] per annum from the _____ day of _____ 20____ until payment together with sheriff's poundage, officers' fees, costs of levying and all other legal incidental expenses and that immediately after execution of this writ you pay A.B. in pursuance of the said judgment [or order] the amount levied in respect of the said sums and interest.

And we also command you that you indorse [*remainder as in Form 22*]

* Delete this alternative if order is for delivery of goods alone without the alternative of recovery of their value.

797,903

Service 0

FORM 24

WRIT OF POSSESSION (O 45, R 11)

[Heading as in action]

To the sheriff of greeting:

Whereas in the above named action it was on the day of
20 adjudged [*or ordered*] that the defendant C.D. do give the plaintiff A.B. possession of
[*describe the land delivery of which has been adjudged or ordered*] and do pay him or her
[\$ and] \$ costs [or costs to be taxed, which costs have been taxed and
allowed at \$ as appears by the taxing officer's certificate dated the day
of 20]:

We command you that you enter the said land and cause A.B. to have possession of it.

And we also command you that of the goods, chattels and other property [*remainder as in Form
22*].

[The next page is 797,921]

Service 0

797,904

FORM 25

WRIT OF SEQUESTRATION (O 45, R 11)

[Heading as in action]

To [names of not less than four commissioners] greeting:

Whereas in the above named action it was on the day of
20 adjudged [or ordered] that C.D. should [pay into Court the sum of \$ or as may be]:

Know ye, therefore, that we, in confidence of your prudence and fidelity, do by this writ authorise and command you, or any two or three of you, to enter upon and take possession of all the real and personal estate of the said C.D. and to collect, receive and get into your hands the rents and profits of his or her real estate and all his or her personal estate and keep the same under sequestration in your hands until the said C.D. shall [pay into Court to the credit of the said action or matter the sum of \$ or as may be] and clear his or her contempt and our said Court make other order to the contrary.

Issued [as in Form 22]

This writ was issued [as in Form 22].

797,921

Service 0

FORM 26

STOP NOTICE AND AFFIDAVIT (O 50, R 11)

[Heading as in action]

In the High Court

In the matter of *[state the settlement or other 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 11 of the Rules of the High Court.

I, A.B. [or C.D. barrister and solicitor of A.B.] of _____ make oath and say that according to the best of my knowledge, information and belief I am [or the said A.B. is] beneficially entitled under the abovementioned settlement *[or as may be]* to an interest in the securities specified in the notice hereto annexed.

Sworn etc

This affidavit is filed on behalf of A.B. whose address is

Notice to be annexed to affidavit.

To the
Minister responsible for Finance
[or as the case may be, the company concerned]

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]*.

(Signed)

A.B.*[or C.D. if affidavit sworn by him or her]*

FORM 27

ORDER 53 FORM

NOTE — Form for “Application for leave to apply for judicial review” is Form 32 in Appendix 1.

DFLRC (RT) - 17/12/24

797,923

Service 0

FORM 28

WRIT OF *HABEAS CORPUS AD SUBJICIENDUM* (O 54, R 10)

[Heading as in action]

To the Commissioner of the Fiji Corrections Service at greeting:

We command you that you have in the High Court [or before a Judge in chambers] at _____, on the day and at the time specified in the notice served with this writ, the body of A.B. being taken and detained under your custody as is said, together with the day and cause of his or her being taken and detained by whatsoever name he or she may be called therein, that our Court [or Judge] may then and there examine and determine whether such cause is legal, and have you there then this writ.

Issued by the High Court of Fiji the _____ day of _____ 20 _____.

Indorsement

By order of Court [or of Mr. Justice _____].

This writ was issued by _____ of _____ barrister and solicitor for _____.

NOTICE TO BE SERVED WITH WRIT OF
HABEAS CORPUS AD SUBJICIENDUM (O 54, r 6)

In the High Court

[If in a cause already begun, here insert the title, not otherwise]

Whereas this Court [or the Honourable Mr. Justice _____] has granted a writ of *habeas corpus* directed to _____ [or other person having the custody of _____ if so] commanding him or her to have the body of A.B. before the said Court [or before a Judge in chambers] at _____, on the day and at the time specified in the notice together with the day and cause of his or her being taken and detained.

Take notice that you are required by the said writ to have the body of the said A.B. before this Court [or before the Judge aforesaid] on the _____ day of _____ 20 _____ at _____ o'clock and to make a return to the said writ. In default thereof the said Court will then, or so soon thereafter as counsel can be heard, be moved to commit you to prison for your contempt in not obeying the said writ [or if in vacation application will then be made to one of the Judges of the said Court for a warrant for your arrest in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated the _____ day of _____ 20 _____.

(Signed)

of _____
barrister and solicitor for _____

To _____

Service 0

797,924

FORM 29

ATTACHMENT OF EARNINGS ORDER (O 104, R 3)

NOTE: Form 29 Attachment of Earnings Order (O 104, R 3) is deleted pursuant to section 214 of the Family Law Act 2003 which has repealed the Maintenance (Prevention of Desertion and Miscellaneous Provisions) Act 1962.

DFLRC (RT) - 17/12/24

797,925

Service 0

[The next page is 797,941]

Service 0

797,926

FORM 30

WARRANT TO ARREST ABSCONDING DEFENDANT (O 111, R 7)

[Heading as in action]

To the Sheriff of Fiji:

Whereas by an Order of the Court made this day it was ordered that the abovenamed defendant be arrested and committed to prison there to be kept until he or she shall have given bail or security for his or her appearance at any time when called upon while the above action is pending and until execution or satisfaction of any judgment that may be made against him or her in the action.

These are therefore to command you in the President's name to arrest the said and convey him or her to the prison and deliver him or her to the officer in charge thereof who is hereby directed safely to keep him or her unless and until he or she shall—

- (a) deposit the sum of \$, or
- (b) surrender his or her passport and give to the plaintiff a bond executed by him or her and sufficient sureties each in the penalty of \$ or some other security satisfactory to the plaintiff that he or she will not go out of Fiji without the leave of the Court.

Dated this day of , 20 .

Chief Registrar

The Plaintiff's address for service is

DFLRC (RT) - 17/11/24

FORM 31

ORIGINATING SUMMONS FOR SUMMARY POSSESSION OF LAND (O 113, R 2)

[Heading as in Form 1]

In the High Court of Fiji 20 No

In the matter of

[A.B. Plaintiff C.D.
Defendant (if any) whose name is known to the plaintiff]

To [C.D. and] every [other] person in occupation of

Let all persons concerned attend before the High Court, at , on day,
the day of 20 , at o'clock, on the hearing of an application by
AB. for an order that he or she do recover possession of on the ground that he or she
is entitled to possession and that the person(s) in occupation is(are) in occupation without license or
consent.

Dated the day of 20 .

This summons was taken out by of barrister and solicitor for the said
plaintiff whose address is [or This summons was taken out by
of agent for of barrister and solicitor for the said plaintiff
whose address is] [*or when the plaintiff acts 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 barrister and solicitor to be joined as a defendant. If a person
occupying the premises does not attend personally or by barrister and solicitor at the time and place
abovementioned, such order will be made as the Court may think just and expedient.

Service 0

797,942

FORM 32

[Form 32 insrt LN 30 of 1994, opn 15 Mar 1994]

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW (O 53, R 3(2))

In the High Court of Fiji

No _____ of 20 ____ .

Between _____

Plaintiff/Applicant

and _____

Defendant/Respondent

To (name of Defendant/Respondent)

Take notice that the plaintiff/applicant seeks leave of the Court pursuant to Order 53, Rule 3(2) of the High Court Rules 1988 to apply for judicial review of (set out particulars of the judgment, order, decision or other proceeding in respect of which judicial review is being sought) and (set out relief sought and the grounds up on which it is sought) et cetera.

Dated the _____ day of _____ 20 ____ .

(signed)

Plaintiff/applicant or Barrister and Solicitor

for plaintiff/applicant

viz: _____

Action No _____ of 20 ____ .

IMPORTANT

NOTE: If you oppose this application detach and return the bottom portion to the High Court registry within 2 days of receipt.

The defendant/respondent opposes this application on the following ground(s):

(set out the grounds on which leave is opposed)

Dated the _____ day of _____ 20 ____ .

(Signed)

Defendant/Respondent or Legal

Barrister and Solicitor for Defendant/Respondent

[The next page is 798,041]

Service 0

797,944

APPENDIX 2 — GENERAL REGISTRY FEES

[App 2 subst LN 72 of 1998 r 5, opn 15 May 1998]

NOTE — The fees prescribed in this Part shall be taken in all causes and matters save where different fees are prescribed for the same item in any other part of this Appendix or any Act or rule.

PROVIDING THAT — all or part of the fees prescribed may upon good cause being shown be waived in whole or in part by the Court or by the Chief Registrar.

	\$
1. On filing a writ, petition, summons or motion for the commencement of any action	100
2. On filing an acknowledgement of service	10
3. On filing a Defence, Defence and Counterclaim, reply and Defence to Counterclaim or affidavit filed under Order 28, Rule 2 (4) or in answer to an affidavit filed under Order 53, Rule 3(2)(b)	50
4. On filing of any application for summary judgment under Order 14, leave to issue third party proceedings, relief by way of interpleader, entry of judgment in default of pleadings, amendment of pleadings with leave, security for costs, order for discovery, interrogatories and summons for directions	50
5. On filing any application, summons or notice of motion before a Judge other than 4 above	50
6. On filing from the Magistrates Court in the High Court a notice of appeal	100
7. On filing a notice of appeal from the Chief Registrar or a Deputy Registrar to a Judge in chambers	50
8. On filing summons to set down for trial in Court before a Judge for Court hearing per day or part thereof	100
9. On the examination of a witness before an officer of the Court or a special examiner (including the examination of a judgment debtor) or before trial by a Judge—	
In any action, cause, matter of proceedings pending in the High Court	50
In any other matter	20
10. On issuing a summon under the Reciprocal Enforcement of Judgments Act 1922 or the Foreign Judgments (Reciprocal Enforcement) Act 1935 for leave to have a judgment registered	20
11. On entering or sealing a judgment, decree or order of the Court	10
12. On sealing a writ of execution (including a writ of attachment)	10
13. On sealing a garnishee order nisi or a charging order nisi	10
(a) On filing any document unless otherwise provided for	20
(This fee is not payable on filing a document already stamped with a fee prescribed in this Appendix or on filing a legal submission, skeleton argument or list of authorities or on filing a notice withdrawing a cause or an appeal)	
(b) Late filing fee (provision to Order 3 Rule 4(3))	20
14. On any one search	10
15. (a) For supplying a typed, carbon or duplicated copy of any judgment, order decree, document or proceedings — per page (with a minimum fee of \$0.50)	0.50

798,041

Service 0

(b) For a copy, other than a photocopy, in a foreign language or for a copy of a plan, map, section, drawing, photograph or diagram	The reasonable costs thereof as certified by the Chief Registrar
16. For supplying a transcript of notes of proceedings per typed page (with a minimum fee of \$5.00).....	5
17. For supplying a photocopy of any document, per page	1
18. Upon an application for the production of records or document to be given in evidence—	
(a) where the records or documents are sent by post	5
(b) where an officer is required to attend whether on subpoena or not his or her reasonable expenses and in addition for each day or part of a day he or she is necessarily absent from his or her office.....	20
19. On filing a bill of costs and obtaining an appointment to tax:	
For a bill not exceeding \$100.....	20
For a bill exceeding \$100 but not exceeding \$200	30
For a bill exceeding \$200	40
(This fee is to be paid on the amount claimed in the bill. No additional fee is payable for the taxation)	
20. For the supply of a certificate	10
21. For preparation by the Chief Registrar of an apostile in pursuance of the Hague Convention 1961	25
22. Wasted hearing fee—	
(a) in Court not exceeding	200
(b) in chambers not exceeding	100

[The next page is 798,141]

APPENDIX 3 — SHERIFFS' FEES SERVICE

[App 3 subst LN 67 of 1993 r 11, opn 9 Aug 1993]

	\$
1. For receiving and entering process for service	5
2. For service of any process—	
(a) within 3 km from the nearest Deputy Sheriff's office.....	5
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional km, in addition to (a).....	5
FIERI FACIAS	
3. Receiving and entering Writ of Execution.....	5
4. Receiving and entering order of suspension of execution.....	5
5. On every enlargement of return.....	3
6. Poundage for every \$20 or part thereof.....	2
7. Precept to bailiff.....	5
8. Seizure or collection of the sum endorsed on the Writ of Execution without seizure—	
(a) within 3 km of nearest Deputy Sheriff's office.....	8
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional km, in addition to (a).....	0.50
9. For per person:	
(a) in actual physical possession, <i>per diem</i>	20
(b) in walking possession, <i>per diem</i>	5
10. In the event of a <i>nulla bona</i> return being rendered after due inquiries: for time spent making inquiries.....	10
11. Commission on sale (for every \$20 or part thereof).....	2
12. Delivery of goods in replevin—	
(a) within 3 km of the nearest Deputy Sheriff's office.....	4
(b) exceeding 3 km from the nearest Deputy Sheriff's office, for every additional 3 km in addition to (a).....	0.50
13. For taking a replevin bond.....	6
14. For assignment of replevin bond.....	4
15. For taking a bond of indemnity.....	6
16. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals) \$2 for each \$40 or part thereof of the value of the goods or animal removed or of the sum endorsed on the writ of execution, whichever is the less. No fee for keeping possession of the goods or animals is to be charged after they have been removed.	
17. For work done by Sheriff's officer in inquiring into any claim for rent or claim to the goods.....	10
18. Preparing notice to execution creditor to admit or dispute claim and sending same by post.....	5
19. For taking and handing over possession of property specified in writ of possession—	
(a) per person, <i>per diem</i> and.....	20
(b) travelling expenses, <i>per km</i>	0.50

ARREST

798,141

Service 0

\$

20. Preparing notice to execution creditor to admit or dispute claim and sending same by post.....5

21. Precept to bailiff.....5

22. For every arrest or collection of the amount endorsed on the warrant by way of payment or deposit without arrest:

(a) within 3 km of Deputy Sheriff’s office.....10

(b) exceeding 3 km from the nearest Deputy Sheriff’s office for every additional km, in addition to (a)..... 0.50

23. For conveying to court or to prison from place of arrest, not exceeding per diem, in addition to reasonable travelling expenses actually incurred..... 15

24. On a release on bail or a bond, where authorised and filing bail bond. 5

25. For assignment of bail bond..... 5

GENERAL

26. Receiving and entering any process not otherwise provided for.....5

27. For executing a search warrant in bankruptcy or process for possession, attachment or committal or for collecting any sum entered on any process without execution:

(a) within 3 km from the nearest Deputy Sheriff’s office.....8

(b) exceeding 3 km from the nearest Deputy Sheriff’s office per 3 km, in addition to (a)..... 0.50

28. For any duty not herein provided for

29. Reasonable expenses, additional or otherwise, necessarily incurred in all matters, including subsistence allowance payable to bailiff

30. For Sheriff or his or her Deputy attending court on the hearing of interpleader proceedings: per hour or part thereof.....5

[The next page is 798,241]

APPENDIX 4 — SCALE OF COSTS — STANDARD BASIS — (O 62, R 13)

[App 4 subst LN 76 of 2006 reg 2, opn 7 July 2006]

(DISCRETION OF TAXING OFFICER)

	<i>Lower Scale \$</i>	<i>Higher Scale \$</i>
1. Instructions to sue inclusive of writing letters preparation, issue, service on one party and affidavit of service of a writ of summons.	\$75	\$125
2. On judgment in default of appearance or defence where no application to the Court or a Judge is required including entry of a consent judgment or a judgment after discontinuance.	\$25	\$50
3. On any judgment whether in default of appearance or defence or under 0.14 application to the Court where a Judge is required.	\$100	\$300
4. (a) Instructions to defend inclusive of preparation, filing and service of appearance in respect of one defendant.	\$75	\$125
(b) For each additional defendant represented.	same	same
5. In addition to Item 4 for each defendant for whom a guardian <i>ad litem</i> is appointed.	\$15	\$20
6. Instructions for Statement of Claim inclusive of preparation, filing and service.	\$125	\$300
7. Instructions for Statement of Defence or Counterclaim or Defence and Counter-Claim inclusive of preparation, filing and service.	\$75	\$250
8. Instructions for Reply or subsequent pleadings or Defence to Counterclaim or Reply and Defence to Counter-Claim inclusive of preparation filing and service.	\$40	\$100
9. Instructions for Summons for Directions inclusive of preparation filing, service, appearance and order, and also subsequent incidental notices such as a notice requiring discovery of documents: but not including a notice for further directions which if certified for it to be treated as a fresh summons for directions.	\$50	\$50
10. (a) Instructions for and preparation of list of documents and service thereof.	\$75	\$150
(b) Affidavit verifying list if required.	\$20	\$30
11. (a) Instructions for interrogatories inclusive of preparation of application and proposed interrogatories, filing and service of same, attendance in support, preparing, filing and serving order and perusing answers.	\$75	\$150
(b) Instructions to oppose application for interrogatories and attendance in chambers.	\$50	\$75
12. If the interrogatories settled by the order exceed 2 pages then for each additional page or part thereof.	\$10	\$15
13. Instructions for answers to interrogatories inclusive of preparation, swearing, filing and service of affidavit.	\$50	\$100
14. If foregoing answers exceed 2 pages then for each additional page or part thereof.	\$10	\$15
15. Instructions for notice to produce documents or admit facts or documents or any similar notice not otherwise provided for inclusive of preparation, filing and service.	\$25	\$50
16. If any such notice shall exceed 2 pages then for each additional page or part thereof.	\$10	\$15

798,241

Service 0

	<i>Lower Scale</i>	<i>Higher Scale</i>
17. Production or inspection of documents pursuant to notice inclusive of all services incidental thereto.	\$25	\$50
18. (a) Application for entry of action for trial and attendance thereat	\$50	\$100
(b) If pleadings exceed 5 pages for each page of pleadings in excess.	\$1	\$3
19. Instructions for and preparing for trial inclusive of instructions for and preparation of brief.	\$150	\$300
20. Attendance at trial of an action or proceeding per day.	\$300	\$600
21. Brief fee to extra barrister and solicitor in respect of any proceeding if certified for per day.	\$300	\$600
22. (a) Originating summonses or petitions inclusive of all services and inclusive of barrister and solicitor's fee for first day of hearing.	\$500	\$1,000
(b) In addition for each adjourned hearing (unless a refresher fee is allowed)		
(c) In addition if necessary affidavit exceed 3 pages then for each additional page or part thereof		
23. Instructions to defend originating summons inclusive of all services inclusive of barrister and solicitor's fee thereon for first day of hearing.	\$400	\$800
24. (a) Instructions for and attendance on summonses, motions and other application inclusive of all services from instructions to completion not otherwise provided for	\$150	\$300
(b) In addition for each adjourned hearing (unless a refresher fee is allowed)	\$50	\$75
(c) In addition if necessary affidavit exceed 3 pages then for each additional page or part thereof.	\$4	\$10
25. Preparing and settling a special case.	\$100	\$200
26. Arguments on special case or question of law as certified for.	\$250	\$500
27. Taking accounts, making inquiries and other similar proceedings before the Chief Registrar or in chambers per hour	\$40	\$80
28. Matrimonial suits. In accordance with each step in action of this scale, <i>mutatis mutandis</i> .		
29. Appeals from inferior courts or from Chief Registrar or Deputy Registrar or other persons or bodies not otherwise provided for inclusive of all services from instructions to completion (but excluding special applications such as for a stay of execution in an appeal).	\$400	\$800
30. Payment into or out of Court.	\$10	\$20
31. Instructions for taxation of costs as between party and party inclusive of all services from instructions to completion.	\$100	\$200
32. Instructions for any form of execution authorised by any rule of Orders 45,46 and 47 where no application to the Court or a Judge is required inclusive of all services from instructions to completion.	\$50	\$75
33. Instructions for execution where an application to the Court or a Judge is required inclusive of all services from instructions to completion.	\$75	\$100

	<i>Lower Scale</i>	<i>Higher Scale</i>
34. Instructions for attachment of debts under Order 49 inclusive of all services from instructions to completion but exclusive of execution under Rule 4 or of any trial under Rule 5 or 6 the costs of which execution or trial may be separately allowed.	\$40	\$80
35. <i>Subpoena ad testificandum</i> and <i>duces tecum</i> including issue and service for each witness.	\$20	\$40
36. For preparing and entering a caveat or preparing and issuing a warning thereto.	\$25	\$50
37. Service fees: in addition to the above fees the following fees for service may be added in appropriate cases and where service by post is not authorised:		
(a) for service at a distance of more than 3km from the nearest place of business of the serving barrister and solicitor, per km in excess of 3km	\$0.50	
(b) if a bailiff is employed — all necessary and reasonable charges properly incurred and paid		
(c) where in consequence of the distance involved it is necessary to instruct another barrister and solicitor to arrange for service to be effected.	\$15	\$30
38. In any case a Judge of the High Court either at the trial or on notice if made within 14 days after judgment is pronounced may certify an increase in any of the above charges to such amount as he or she thinks having regard to all the circumstances of the case.		
39. Fees which may be taken by Commissioner for Oaths shall be as in Item 30 of Appendix 2.		
40. For any business not covered by the above scales such as instructions, letters, telephone calls, attendances, air fares etc the charges in respect thereof shall be as the Chief Registrar may determine.		
41. Where a Judge, Chief Registrar or Deputy Registrar is required to perform any duties away from his or her office for travelling, lodging and subsistence		

FOURTEEN DAY COSTS

	\$
1. The amount of costs indorsed on a writ of summons claiming a liquidated demand only, under Order 6, Rule 2(1)(b), whether indorsed with a statement of claim or not shall be—	
If one defendant.....	250
For each extra defendant.....	50
2. In addition to the above the following may be added to provide for the contingency of substituted service.....	100
3. Where service out of the jurisdiction is ordered the following additional allowances shall be added.....	150

[The next page is 800,241]

Service 0

798,244

High Court (Constitutional Redress) Rules 2015

TABLE OF PROVISIONS

<i>Rule</i>	<i>Title</i>	<i>Paragraph</i>
1	Short title and commencement	[HC 11,120]
2	Exercise of jurisdiction	[HC 11,125]
3	Application for redress	[HC 11,130]
4	Notification of motion	[HC 11,135]
5	Service on Attorney-General	[HC 11,140]
6	Reference by way of case stated	[HC 11,145]
7	Practice and procedure	[HC 11,150]
8	Existing Rules revoked	[HC 11,155]

800,241

Service 0

[The next page is 800,341]

Service 0

800,242

High Court (Constitutional Redress) Rules 2015

TABLE OF AMENDMENTS

High Court (Constitutional Redress) Rules 2015 (LN 41 of 2015) commenced on 13 March 2015, as amended by:

<u>Amending Legislation</u>	<u>Date of Commencement</u>
-----------------------------	-----------------------------

800,341

Service 0

[The next page is 800,441]

Service 0

800,342

[HC 11,120] Short title and commencement

1 (1) These Rules may be cited as the High Court (Constitutional Redress) Rules 2015.

(2) These Rules shall come into force on the date of their publication in the Gazette.

[HC 11,125] Exercise of jurisdiction

2 The jurisdiction and powers conferred on the High Court by section 44(3) of the Constitution of the Republic of Fiji shall be exercisable by a single Judge.

[HC 11,130] Application for redress

3 (1) An application to the High Court for redress under section 44(1) of the Constitution of the Republic of Fiji may be made by a motion supported by affidavit—

- (a) claiming a declaration;
- (b) praying for an injunction;
- (c) claiming or praying for such other order as may be appropriate.

(2) An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a Judge finds there are exceptional circumstances and that it is just to hear the application outside of that period.

[HC 11,135] Notification of motion

4 (1) Subject to paragraph (2), a motion under Rule 3(1) shall not be made without at least 3 clear days' previous notice to the parties affected by it, unless the High Court gives leave to the contrary.

(2) A Judge, if satisfied that the delay involved in giving notice as required by paragraph (1) would or might entail irreparable or serious mischief, may make an order *ex parte* on such terms as to costs or otherwise, and subject to such undertaking, if any, as he or she thinks just, but any party affected by such order may apply to the High Court within 7 days of the making of the order to set it aside.

(3) A notice of motion under Rule 3(1) must state—

- (a) concisely the nature of the claim; and
- (b) the relief or remedy required.

[HC 11,140] Service on Attorney-General

5 If an application is made to the High Court for redress under section 44(1) of the Constitution of the Republic of Fiji in accordance with Rule 3 and irrespective of whether the Attorney-General is to be a party to the proceedings, the applicant or plaintiff must serve a copy of the motion and affidavit in support on the Attorney-General.

[HC 11,145] Reference by way of case stated

6 (1) A question referred to the High Court pursuant to section 44(5) of the Constitution of the Republic of Fiji by a person presiding in any subordinate court must be by way of case stated.

(2) The case shall be stated within 14 days of the decision of the person presiding in the subordinate court to refer the question.

(3) The case must—

- (a) set out the facts which have been proved or admitted and the question which is referred to the High Court for its decision;
 - (b) be signed by the person referring the question;
 - (c) be transmitted, by the person referring the question, to the Chief Registrar.
- (4) The person referring a question under paragraph (1) must cause copies of the case to be served upon—
- (a) the party, if any, at whose request the case was stated;
 - (b) any other parties to the proceedings affected by the question;
 - (c) the Attorney-General in all matters; and
 - (d) in the case of a criminal matter, the Director of Public Prosecutions.
- (5) Upon receipt of a case transmitted pursuant to paragraph (3), the Chief Registrar must set down the case for hearing and notify—
- (a) the party, if any, at whose request the case was stated;
 - (b) any other parties to the proceedings affected by the question;
 - (c) the Attorney-General in all matters; and
 - (d) in the case of a criminal matter, the Director of Public Prosecutions.
- (6) The High Court hearing a case referred to it under this Rule may—
- (a) amend the case or order it to be returned to the court by which it was stated for amendment; and
 - (b) draw inferences of fact from the facts stated in the case.
- (7) The Attorney-General and, in the case of a criminal matter, in addition the Director of Public Prosecutions, is entitled to appear and be heard in proceedings for the determination of a question referred to the High Court pursuant to section 44(5) of the Constitution of the Republic of Fiji.
- (8) The Chief Registrar must notify the court by which the question was referred of the decision of the High Court upon the question.

[HC 11,150] Practice and procedure

7 Except as otherwise provided in these Rules, the jurisdiction and powers conferred on the High Court in respect of applications made by any person in pursuance of either section 44(1) or 44(5) of the Constitution of the Republic of Fiji are to be exercised in accordance with the practice and procedure, including any rules of Court, for the time being in force in relation to civil proceedings in the High Court, with any variations the circumstances require.

[HC 11,155] Existing Rules revoked

- 8 (1) The High Court (Constitutional Redress) Rules 1998 is hereby revoked.
- (2) Any application for redress made under the High Court (Constitutional Redress) Rules 1998 continues as if these Rules had not been made.

[The next page is 802,441]

High Court (Admiralty) Rules 1893

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802,441

Service 0

<i>Rule</i>	<i>Title</i>	<i>Paragraph</i>
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802,442

<i>Rule</i>	<i>Title</i>	<i>Paragraph</i>
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1	Forms (O 15, R 1)	[HC 12,485]
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High Court (Admiralty) Rules 1893

TABLE OF AMENDMENTS

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Amending Legislation	Date of Commencement
High Court (Admiralty) (Amendment) Rules 1993	1 July 1993

802,541

Service 0

[The next page is 802,641]

Service 0

802,542

[HC 12,155] Short title

These Orders and Rules may be cited as the High Court (Admiralty) Rules 1893.

DFLRC (RT) - 17/12/24

802,641

Service 0

[The next page is 802,741]

Service 0

802,642

ORDER 1 — COMMENCEMENT OF ADMIRALTY ACTION

[HC 12,160] Commencement of action (O 1, R 1)

1 All actions which prior to the commencement in Fiji of the Colonial Courts of Admiralty 1890, were commenced by a cause *in rem* or *in personam* in the Vice-Admiralty Court of Fiji, shall be instituted in the High Court by a proceeding to be called an "Action".

802,741

Service 0

[The next page is 802,841]

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802,742

ORDER 2 — ARREST WARRANT

[HC 12,165] Admiralty affidavit etc required to lead warrant (O 2, R 1)

1 In admiralty actions *in rem* a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his or her agent has been filed, and the following provisions complied with—

- (a) the affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counterclaim, the name and nature of the property to be arrested, and that the claim or counterclaim has not been satisfied;
- (b) in an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and, if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs if there be one resident in Fiji, and a copy of the notice shall be annexed to the affidavit;
- (c) in any action of bottomry the bottomry-bond, and, if in a foreign language, also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

[HC 12,170] Except by leave (O 2, R 2)

2 The Court or a Judge may in any case allow the warrant to issue although the affidavit in Rule 1 mentioned may not contain all the required particulars; and in any action of wages the Court or Judge may also waive the service of the notice and in an action for bottomry the production of the bond.

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Service 0

802,842

ORDER 3 — SERVICE OF WRIT OF SUMMONS AND WARRANT

[HC 12,175] Admiralty actions *in rem* (O 3, R 1)

1 In admiralty actions *in rem* no service of writ or warrant shall be required where the barrister and solicitor of the defendant agrees to accept service and to put in bail, or to pay money into Court in lieu of bail.

[HC 12,180] Service of warrant of arrest (O 3, R 2)

2 In admiralty actions *in rem* the warrant of arrest shall be served by the Marshal or his or her substitutes, whether the property to be arrested be situate within the port of Suva or elsewhere within the jurisdiction of the Court, and the barrister and solicitor issuing the warrant shall, within 6 days from the service thereof, file the same in the Admiralty Registry.

[HC 12,185] Service of writ, how effected (O 3, R 3)

3 In admiralty actions *in rem*, service of a writ of summons or warrant against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast of a vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

[HC 12,190] When cargo landed (O 3, R 4)

4 If the cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on taking off the process, by leaving a true copy upon it.

[HC 12,195] Where no access to cargo (O 3, R 5)

5 If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

[The next page is 803,041]

Service 0

802,942

ORDER 4 — APPEARANCE

[HC 12,200] Solicitor not entering appearance (O 4, R 1)

1 A barrister and solicitor not entering appearance or putting in bail or paying money into Court in lieu of bail in an admiralty action *in rem*, in pursuance of his or her written undertaking so to do, shall be liable to an attachment.

[HC 12,205] Bail-bond in admiralty actions (O 4, R 2)

2 In admiralty actions *in rem*, bail may be taken before the Admiralty Registrar, or before any district registrar or commissioner to administer oaths in the High Court, and in every case the sureties shall justify.

[HC 12,210] Time for filing bond (O 4, R 3)

3 A bail-bond shall not, unless by consent, be filed until after the expiration of 24 hours from the time when a notice containing the names and addresses of the sureties and of the commissioner before whom the bail was taken shall have been served upon the adverse barrister and solicitor, and a copy of the notice verified by affidavit shall be filed with the bail-bond.

[HC 12,215] Intervention (O 4, R 4)

4 In an admiralty action *in rem* any person not named in the writ may intervene and appear on filing an affidavit showing that he or she is interested in the *res* under arrest or in the fund in the registry.

803,041

Service 0

[The next page is 803,141]

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803,042

ORDER 5 — DEFAULT OF APPEARANCE

[HC 12,220] Default of appearance (O 5, R 1)

1 In admiralty actions *in rem*, upon default of appearance the plaintiff at the expiration of 18 days from the service of the writ of summons and a warrant may, upon filing his or her statement of claim, together with proof in support thereof, and also the writ of summons, affidavit of service, and warrant, enter the action for trial.

[HC 12,225] Trial by default (O 5, R 2)

2 In admiralty actions *in rem*, upon default of appearance, if, when the action comes before him or her, the Judge is satisfied that the plaintiff's claim is well founded, he or she may pronounce for the claim with or without a reference to the Admiralty Registrar or to the Admiralty Registrar assisted by merchants, and may at the same time order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into Court, or may make such order as he or she shall think just.

[HC 12,230] As to proceeds in Court (O 5, R 3)

3 In an admiralty action *in rem*, where property has been sold by the Court and the proceedings are against proceeds in Court, no warrant of arrest shall be necessary, but the plaintiff shall in lieu thereof enter a caveat payment, and service of the writ of summons upon the Registrar shall be a sufficient service.

[The next page is 803,241]

Service 0

803,142

ORDER 6 — PRELIMINARY ACT

[HC 12,235] Actions for damage by collision (O 6, R 1)

1 In actions for damage by collision between vessels, unless the Court or a Judge shall otherwise order, the barrister and solicitor for the plaintiff shall, within 7 days after the commencement of the action, and the barrister and solicitor for the defendant shall, within 7 days after appearance, and before any pleading is delivered, file with the Registrar or other proper officer, as the case may be, a document to be called a “Preliminary Act”, which shall be sealed up, and shall not be opened until ordered by the Court or a judge, and which shall contain a statement of the following particulars—

- (a) the names of the vessels which came into collision, and the names of their masters;
- (b) the time of the collision;
- (c) the place of the collision;
- (d) the direction and force of the wind;
- (e) the state of the weather;
- (f) the state and force of the tide;
- (g) the course and speed of the vessel when the other was first seen;
- (h) the lights, if any, carried by her;
- (i) the distance and bearing of the other vessel when first seen;
- (k) the lights, if any of the other vessel which were first seen;
- (l) whether any lights of the other vessel, other than those first seen, came into view before the collision;
- (m) what measures were taken, and when, to avoid the collision;
- (n) the parts of each vessel which first came into contact;
- (o) what fault or default, if any, is attributed to the other vessel.

The Court or a Judge may order the Preliminary Act to be opened, and the evidence to be taken thereon without it being necessary to deliver any pleadings; but in such case, if neither party intends to rely on the defence of compulsory pilotage, he or she may do so, and shall give notice thereof in writing to the other party, within 2 days from the opening of the Preliminary Act.

[The next page is 803,341]

Service 0

803,242

ORDER 7 — PLEADINGS

[HC 12,240] Admiralty action *in rem* (O 7, R 1)

1 In admiralty actions *in rem*, the plaintiff shall, within 12 days from the appearance of the defendant, deliver his or her statement of claim.

[HC 12,245] Delivery of defence (O 7, R 2)

2 The defendant shall deliver his or her defence within 10 days after the delivery of the statement of claim.

[HC 12,250] Delivery of reply (O 7, R 3)

3 The plaintiff shall deliver his or her reply, if any, within 6 days after the delivery of the defence.

[HC 12,255] Where default in delivery of defence (O 7, R 4)

4 In admiralty actions, if the defendant makes default in delivering a defence, the plaintiff may, on filing the statement of claim, set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Judge shall consider the plaintiff to be entitled to. If the property proceeded against in action *in rem* remains under arrest the plaintiff shall together with the statement of claim file his or her proofs in support thereof.

[HC 12,260] Evidence by affidavit (O 7, R 5)

5 In default actions *in rem* evidence may be given by affidavit.

803,341

Service 0

[The next page is 803,441]

Service 0

803,342

ORDER 8 — PAYMENT OUT OF COURT

[HC 12,265] Admiralty “Caveat Payment Book” (O 8, R 1)

1 A barrister and solicitor desiring to prevent the payment of money out of Court in an admiralty action shall file a notice, and thereupon a caveat shall be entered in a book, to be kept in the Admiralty Registry, called the “Caveat Payment Book”

[HC 12,270] Payment out of Court (O 8, R 2)

2 Money paid into Court in an admiralty action shall not be paid out of Court except in pursuance of an order of the Judge.

803,441

Service 0

[The next page is 803,541]

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803,442

[HC 12,275] Release (O 9, R 1)

1 Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a “Release”.

[HC 12,280] Withdrawal of warrant Release (O 9, R 2)

2 A barrister and solicitor at whose instance any property has been arrested may, before an appearance has been entered, obtain the release thereof by filing a notice that he or she withdraws the warrant.

[HC 12,285] Payment into registry Release (O 9, R 3)

3 A barrister and solicitor may obtain the release of any property by paying into the registry the sum in respect of which the action has been commenced.

[HC 12,290] Release of cargo (O 9, R 4)

4 Cargo arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry or by satisfying the Judge that it has already been paid.

[HC 12,295] Salvage actions (O 9, R 5)

5 In an action of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Judge shall otherwise order.

[HC 12,300] Release on filing bail-bond etc (O 9, R 6)

6 A barrister and solicitor, who shall have filed a bail-bond in the sum in respect of which the action has been commenced, or paid such sum into the registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the Caveat Release Book.

[HC 12,305] Release to be left at registry (O 9, R 7)

7 The release, when obtained, shall be left with a notice with the Marshal or his or her substitute as the case may be by the barrister and solicitor taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released.

[HC 12,310] Caveat against release (O 9, R 8)

8 A barrister and solicitor in an action, desiring to prevent the release of any property under arrest in that action shall file in the registry a notice, and thereupon a caveat against the release of the property in that action shall be entered in a book to be kept in the principal registry called the “Caveat Release Book”.

[HC 12,315] Delaying release costs (O 9, R 9)

9 A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in costs and damages unless he or she shall show to the satisfaction of the Court or a Judge good and sufficient reason for having so done.

[HC 12,320] Caveat against arrest warrant (O 9, R 10)

10 A party desiring to prevent the arrest of any property may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Admiralty Registry.

[HC 12,325] Caveat Warrant Book (O 9, R 11)

11 For the purpose in Rule 10 mentioned the party shall cause to be filed in the registry a notice, signed by himself or herself or his or her barrister and solicitor, undertaking to enter an appearance in any action that may be commenced against the said property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the registry called the "Caveat Warrant Book".

[HC 12,330] Service of writ on party entering caveat (O 9, R 12)

12 A barrister and solicitor commencing an action against any property in respect of which a caveat has been entered in the Caveat Warrant Book shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his or her barrister and solicitor.

[HC 12,335] Bail (O 9, R 13)

13 Within 3 days from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he or she has undertaken, give bail in such sum or pay the same into the Registry.

[HC 12,340] If bail not given, action may proceed (O 9, R 14)

14 After the expiration of 12 days from the service of a copy of the writ as required by Rule 12, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the registry, the plaintiff's barrister and solicitor may proceed with the action by default, and, on filing his or her proofs in the registry, may have the action placed on the list for hearing.

[HC 12,345] Judgment enforced by attachment (O 9, R 15)

15 If, when the action comes before the Judge, he or she is satisfied that the claim is well founded, he or she may pronounce for the amount which appears to him or her to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

[HC 12,350] Warrant for arrest notwithstanding caveat (O 9, R 16)

16 Nothing in these Rules shall prevent a barrister and solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the Caveat

Warrant Book, but the party at whose instance any property in respect of which a caveat is entered shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he or she shall show, to the satisfaction of the Judge, good and sufficient reasons for having so done.

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803,543

Service 0

[The next page is 803,641]

Service 0

803,544

ORDER 10 — SALES BY THE COURT

[HC 12,355] Appraisal or sale of property (O 10, R 1)

1 Every commission for the appraisal or sale of property under the order of the Court shall, unless the Court or a Judge shall otherwise order, be executed by the Marshal or his or her substitutes.

[HC 12,360] Payment into Court of gross proceeds of sale (O 10, R 2)

2 The Marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him or her, and shall at the same time bring into the registry the account of the sale, with vouchers in support thereof, for taxation by the Registrar.

[HC 12,365] Taxation of Marshal's expenses (O 10, R 3)

3 Any person interested in the proceeds may be heard before the Registrar on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a barrister and solicitor's bill of costs.

803,641

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[The next page is 803,741]

Service 0

803,642

[HC 12,370] Application of order (O 11, R 1)

1 This Order shall apply to references by the Court or a Judge to the Registrar, whether the reference be to the Registrar alone or to the Registrar assisted by one or by 2 merchants.

[HC 12,375] Filing of claim and affidavits (O 11, R 2)

2 Within 12 days from the day when the order for a reference is made, the barrister and solicitor for the claimant shall file the claim and affidavits; and within 12 days from the day when the claim and affidavits are filed, the adverse barrister and solicitor shall file his or her counter affidavits.

[HC 12,380] Filing of further affidavits (O 11, R 3)

3 From the filing of the counter affidavits 6 days only shall be allowed for filing any further affidavits by either barrister and solicitor, save by order of the Court or a Judge, or by permission of the Registrar.

[HC 12,385] Placing reference in list for hearing (O 11, R 4)

4 Within 3 days from the expiration of the time allowed for filing the last affidavits, the barrister and solicitor for the claimant shall file in the registry a notice, with the stamps for the reference placed on the list for hearing, and if he or she shall not do so, the adverse barrister and solicitor may apply to the Court or a Judge to have the claim dismissed with costs.

[HC 12,390] Hearing of reference (O 11, R 5)

5 At the time appointed for the reference, if either barrister and solicitor be present the reference may be proceeded with; but the Registrar may adjourn the reference from time to time as he or she may deem proper.

[HC 12,395] Evidence before registrar, Shorthand-writer (O 11, R 6)

6 Witnesses may be produced before the Registrar for examination, and the evidence shall upon the application of either barrister and solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand-writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence, and a transcript of the shorthand writer's or reporter's notes, certified by him or her to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report. Evidence may be given on affidavit.

[HC 12,400] Attendance of barristers and solicitors before Registrar (O 11, R 7)

7 Barristers and solicitors may attend the hearing of any reference, but the expenses attending the employment of barristers and solicitors shall not be allowed on taxation, unless the Registrar shall be of the opinion that such attendance was necessary.

[HC 12,405] Costs (O 11, R 8)

8 The Registrar may, if he or she think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

[HC 12,410] Filing of report (O 11, R 9)

9 The barrister and solicitor for the claimant shall, within 6 days from the time when he or she has received a notice from the registry that the report is ready, take up and file the same in the registry.

[HC 12,415] Filing report by adverse barrister and solicitor (O 11, R 10)

10 If the barrister and solicitor for the claimant shall not take the steps prescribed in Rule 9, the adverse barrister and solicitor may take up and file the report, or may apply to the Court or a Judge to have the claim dismissed with costs.

[HC 12,420] Notice of objection to report (O 11, R 11)

11 A barrister and solicitor intending to object to the Registrar's report shall, within 6 days from the filing of the report, file in the registry a notice, a copy of which shall have been previously served on the adverse barrister and solicitor; and within a further period of 12 days he or she shall file his or her petition in objection to the report.

[The next page is 803,841]

[HC 12,425] Appointment of early day for trial in admiralty actions (O 12, R 1)

1 In admiralty actions the Court or a Judge shall have power at any stage of the proceedings in any such action upon a motion or summons by either party, for the trial to take place on an early date to be appointed by the Court or a Judge, to appoint that such trial shall take place on any day or within any time which the Court or Judge shall think fit, and for such purpose the Court or Judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times for giving such notice, for the delivery of pleadings or for doing any other act or taking any other proceeding in the action, upon such terms, if any, as the nature of the case may require.

[HC 12,430] Dispensing with delays in taking bail in admiralty actions (O 12, R 2)

2 The delays required by these Rules with respect to the taking of bail in admiralty actions may be dispensed with by consent of the barristers and solicitors in the action.

[HC 12,435] Caveat in admiralty actions in force for 6 months (O 12, R 3)

3 In admiralty actions a caveat whether against the issue of a warrant, the release of property, or the payment of money out of the Admiralty Registry, shall not remain in force for more than 6 months from the date thereof.

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Service 0

803,842

ORDER 13 — SERVICE OF ORDERS

[HC 12,440] Issue and date of instruments (O 13, R 1)

1 Every instrument under the seal of the Court, and prepared in the Admiralty Registry, shall be issued on a notice filed by the barrister and solicitor applying for the same, and shall bear date on the day on which it is issued.

[HC 12,445] Service of instrument (O 13, R 2)

2 Every instrument shall be served within 12 months from the day on which it bears date, otherwise the service thereof shall not be valid.

[HC 12,450] Not to be served on Sunday etc (O 13, R 3)

3 No instrument except a warrant shall be served on a Sunday, Good Friday or Christmas Day.

[HC 12,455] Service of warrants etc by the Marshal (O 13, R 4)

4 Every warrant or other instrument required to be served by the Marshal shall be left by the barrister and solicitor taking out the same with a notice with the Marshal or his or her substitute as the case may be.

[HC 12,460] Verification of service (O 13, R 5)

5 The service of any instrument by the Marshal shall be verified by his or her certificate. Service of any instrument by a barrister and solicitor, his or her clerk, or agent, shall be verified by an affidavit.

803,941

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[The next page is 804,041]

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803,942

[HC 12,465] Damages by collision at sea (O 14, R 1)

1 In any cause or proceeding for damages arising out of a collision between 2 ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Vice Admiralty Court so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

[HC 12,470] Agreement in writing between solicitors in admiralty actions when made order of the Court (O 14, R 2)

2 Any agreement in writing between the barristers and solicitors in admiralty actions, dated and signed by the barristers and solicitors of both parties, may, if the Admiralty Registrar think it reasonable and such as the Judge would under the circumstances allow, be filed, and shall thereupon become an order of the Court, and have the same effect as if such order had been made by the Judge in person.

[HC 12,475] Filing documents in admiralty actions (O 14, R 3)

3 On filing any instrument or document in admiralty actions the barrister and solicitor shall state in writing, on a printed form, called a minute, to be obtained in the Admiralty Registry, the nature of the instrument or document filed, and the date of the filing thereof.

[HC 12,480] Minute Book in admiralty actions (O 14, R 4)

4 In admiralty actions a record of all such minutes as in Rule 3 mentioned, and of all actions commenced, and appearances entered, and of all orders of the Court shall be entered in a book, to be kept in the Admiralty Registry, called the "Minute Book".

[The next page is 804,141]

Service 0

804,042

ORDER 15 — FORMS

[HC 12,485] Forms (O 15, R 1)

1 The forms in force and used in the Admiralty Division of the High Court of Judicature in England, and contained in the Appendices to the Supreme Court (England) Rules 1883, shall, with such variations as circumstances may require, be in force and be used in admiralty actions in the High Court of Fiji.

804,141

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[The next page is 804,241]

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804,142

ORDER 16 — FEES

[HC 12,490] Schedule (O 16, R 1)

1 The fees contained in the Schedule shall be taken in the High Court in admiralty causes for the several matters mentioned herein.

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804,241

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[The next page is 804,341]

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804,242

[HC 12,590] SCHEDULE — TABLES OF FEES TO BE
TAKEN IN THE HIGH COURT OF FIJI

[Sch subst LN 51 of 1993 r 2, opn 1 July 1993]

(ADMIRALTY JURISDICTION)
1 — COURT FEES

	\$ c
On administering any oath or declaration in court or in chambers.....	5
On examination before him or her of any witness before trial.....	40
On any motion in chamber.....	20
On any motion in court.....	20
On a final decree in an uncontested action.....	20
On a final decree in a contested action.....	50
On the assessment of damages, or taking of any account, if assessed or taken by the Judge, according to the case.....	From 20 to 50
On signing or certifying any document.....	5

2 — IN THE REGISTRY

1. *For preparing instruments etc*

For sealing any writ of summons or other document required to be sealed.....	10
For preparing any warrant, release, commission, attachment, or other instrument, required to be sealed or any bail bound.....	5
For preparing a receivable order or a receipt for money to be paid out of Court.....	5
For preparing and sending any notice.....	5
For preparing any other document, for every folio.....	5

Note — The fees for preparing shall include drawing and fair copying
or engrossing

2. *For filing*

On filing any instrument or other document except.....	10
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3. *For evidence etc*

For administering any oath or declaration, except before the Judge.....	5
For taking down and certifying the evidence of any witness examined before him or her, for every folio	0.50

4. *For the trial etc*

On a final decree in an uncontested action.....	20
On a final decree in a contested action.....	50
For attendance before the Judge when any order is made or act done, other than pronouncing a final decree.....	20

Note — The above fees shall include the entry of the decree or order in the
Minute Book

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Service 0

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5. For Reference

For hearing any reference, according to the case, per day.....	From 20
	to 50
For preparing the report of a reference.....	5

6. For Taxation

For taxing a bill costs—	
If the bill does not exceed ten folios.....	20
For every folio beyond ten.....	0.50

7. For office copies etc

For an office copy of any document, for every folio (in addition to the fee for sealing).....	0.40
For a search of the records by any person not a party to the action.....	5
Note — The search fee is to be charged to a party to the action, or to any seaman	

3 — BY THE ASSESSORS

For each nautical or other assessor, whether at the examination of witnesses or at the trial of an action, or upon any assessment of damages, or taking of an account, according to the case, per day	From 20
	to 50

Note — The above fees shall be paid to the Registrar, for the assessors, and in the instance by the party preferring the claim.

4 — BY A COMMISSIONER TO WITNESSES

For administering any oath or declaration.....	2
For taking down and certifying the evidence of any witness examined before him or her, for every folio.....	5

5 — BY A COMMISSIONER TO TAKE BAIL

For attending the execution of any bail bond.....	10
For taking any affidavit of justification.....	5

6 — IN THE MARSHAL'S OFFICE

For executing any warrant or attachment.....	50
For keeping possession of any ship, goods, or ship and goods (exclusive of any payments necessary for the safe custody thereof), for each day.....	20
Note — No fee shall be allowed to the Marshal for the custody and possession of property under arrest, if it consists of money in a bank, or goods stored bonded warehouse, or if it is in the custody of a Customs Officer or other authorised person.	
On release of any ship, goods or person from arrest.....	10
For attending the unlivery of cargo, for each day.....	20
For executing any commission of appraisement, sale, or appraisement and sale, exclusive of the fees, if any, paid to the appraiser and auctioneer.....	25

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For executing any other commission or instrument.....	10
On the gross proceeds of any ship, or goods etc sold by order of the Court—	
If not exceeding \$200.....	20
For every additional \$2.00 or part thereof.....	10
Note — If the Marshal, being duly qualified, acts as auctioneer, he or she shall be allowed a double fee on the gross proceeds.	
On a final decree in an uncontested action.....	30
On a final decree in a contested action.....	50
Note — If the Marshal or his or her officer is required to go any distance in execution of his or her duties, a reasonable sum may be allowed for travelling, boat hire, or other necessary expenses in addition to the preceding fees.	
7 — BY BARRISTER AND SOLICITOR ACTING AS SOLICITOR	
Retaining fee.....	20
For preparing a writ of summons (to include attendances in the registry for sealing the same).....	20
For bespeaking and extracting any warrant or other instrument prepared in the registry (to include attendances).....	20
For serving a writ of summons or a subpoena.....	10
For taking instructions for a petition or answer.....	40
For drawing a petition or answer.....	40
For taking instructions for any further pleading.....	10
For drawing any further pleading.....	20
For drawing any other document, for every folio.....	2
For fair-copying or engrossing any document, for every folio.....	1
For taking instructions for any affidavit (unless made by the barrister and solicitor or his or her clerk) or for interrogatories or answers, according to the nature or importance thereof	From to 10
	to 50
For taking instructions for brief.....	From 10
	to 50
For attending counsel in conference or consultation	20
For attending to fee counsel	20
For attendance on any motion before the Judge—	
If counsel.....	20
If without counsel.....	40
For attendance at the trial, for each day.....	From 40
	to 120
For attendance at the delivery of judgment, if reserved.....	20
For attendance at the hearing of a reference to the Registrar, for each day—	
If with counsel.....	From 50
	to 80
If without counsel.....	From 50
	to 200

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For any other necessary attendance before the Judge, or in the registry, or on the Marshal, or on the adverse party or barrister and solicitor, in the course of the action..... 10

Note — Where more than one document can conveniently be filed, or one document can be filed and another bespoken, at the same time, the fee for one attendance only shall be allowed

For any necessary letter to the adverse party..... 8

For serving any notice..... 6

For extracting and collating any office copy obtained from the registry, for every folio 2

For correcting the press, for every folio 2

For attending the taxation of any bill of costs, not exceeding 10 folios..... 20

For every folio beyond 10..... 2

8 — BY BARRISTER AND SOLICITOR ACTING AS COUNSEL

Retaining fee..... 40

For settling any pleading, interrogatories or answers etc..... From 40 to 160

For any necessary consultation in the course of the action..... From 40 to 60

For any motion..... From 40 to 80

For the examination of witnesses before the trial, for each day..... From 60 to 120

For the trial of all uncontested action..... 60

For the trial of a contested action, for the first day..... From 80 to 180

For each day after the first..... From 60 to 200

For attending judgment if reserved..... From 40 to 60

[The next page is 806,341]

High Court (Notarial Acts Abroad) Rules 1915

TABLE OF PROVISIONS

<i>Rule</i>	<i>Title</i>	<i>Paragraph</i>
1	Short title	[HC 13,590]
2	Notarial acts may be done before Ambassador, Envoy etc .	[HC 13,595]

806,341

Service 0

[The next page is 806,441]

Service 0

806,342

High Court (Notarial Acts Abroad) Rules 1915

TABLE OF AMENDMENTS

High Court (Notarial Acts Abroad) Rules 1915 (FRG No 81 of 1915) commenced on 5 November 1915, as amended by:

Amending Legislation	Date of Commencement
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806,441

Service 0

[The next page is 806,541]

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806,442

[HC 13,590] Short title

1 These Rules may be cited as the High Court (Notarial Acts Abroad) Rules 1915.

[HC 13,595] Notarial acts may be done before Ambassador, Envoy etc

2 All notarial acts which any notary public can do within Fiji and all examinations, affidavits, declarations, affirmations and attestations of honour in causes or matters depending in the High Court may be sworn, taken, administered or done before or by any Fiji or British Ambassador, High Commissioner, Envoy, Minister, Charge d'Affaires, or Secretary of Embassy or Legation exercising his or her functions in any foreign country, or any Fiji or British Consul-General, Consul, Vice-Consul, Acting Consul, Pro-Consul or Consular Agent exercising his or her functions in any foreign place, and the Judges and other officers of the High Court shall take judicial notice of the seal or signature as the case may be of any such person as aforesaid, attached, appended, or subscribed to any such notarial act, examination, affidavit, declaration, affirmation or attestation of honour, or to any other deed or document.

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[The next page is 815,001]

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