

PART 40

Appointment of referee to inquire and report

CPR 40.1 Power to order trial before referee

Where:

- (a) the parties agree;
- (b) the court considers that the claim requires—
 - (i) prolonged examination of documents; or
 - (ii) scientific or local investigation which cannot conveniently be carried out by the court; or
- (c) the matters in dispute are wholly or mainly matters of account,

then, subject to rule 40.7, the court may order the claim or any issue or allegation to be tried by a referee.

CPR 40.2

40.2 Reference to referee for inquiry and report

The court may refer to a referee for inquiry and report any question or issue of fact arising in a claim.

CPR 40.3

40.3 Appointment of referee

- (1) The general rule is that the appointment of a referee under rule 40.1 or 40.2 must be made at a case management conference or pre-trial review.
- (2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).
- (3) Where the parties cannot agree who should be the referee, the court may—
 - (a) select the referee from a list prepared or accepted by the parties; or
 - (b) direct that the referee be selected in such other manner as the court may direct.

(4) The court must specify the question or issue upon which the referee is to report.

(5) The court must decide—

- (a) what fee is to be paid to the referee; and
- (b) by whom.

(6) Notwithstanding paragraph (5), the court may ultimately order any party to pay the fee of the referee.

(7) The court may on application by either party or of its own motion revoke the appointment of any person as referee and may appoint another person as referee.

CPR 40.4

40.4 Conduct of referee

(1) For the purpose of the inquiry, the referee has the same powers as the court other than the power to commit for contempt of court.

(2) Unless the court otherwise orders, the referee must adopt what appears to the referee to be the simplest, least expensive, most expeditious and just method of conducting the reference.

(3) The referee may hold the trial or conduct the inquiry by videoconference or by in person hearings at any place and at any time which appears to the referee to be convenient to the parties.

(4) Where a person served with a witness summons to appear before a referee—

- (a) fails to attend;
- (b) refuses to be sworn or to affirm for the purposes of the inquiry; or
- (c) refuses to answer any lawful question or produce any document at the inquiry,

the referee may sign and file a certificate of such failure or refusal.

(5) Any party may apply to the court for an order requiring the witness to attend, to be sworn or to affirm, to answer any question or to produce any document as the case may be.

(6) An application for an order under sub-rule (5) may be made on 3 days' notice to the witness and to each interested party, supported by evidence on affidavit.

(7) In the case of non-attendance, the affidavit must prove—

- (a) service of an appropriate witness summons; and
- (b) that the person served with the witness summons was paid or offered the payments required by rule 33.6.

(8) Any order made by the court must be served personally on the witness and be endorsed with the following notice:

'NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned'

(9) A person who wilfully disobeys an order made against that person under sub-rule (5) which complies with sub-rule (8) is guilty of contempt of court.

(10) The court may order the person against whom an order is made under this rule to pay any costs resulting from the—

- (a) failure to attend before a referee;
- (b) refusal to answer any lawful question or produce any document at the inquiry; or
- (c) refusal to be sworn or to affirm for the purpose of the inquiry.

CPR 40.5

40.5 Reports following reference

(1) The report of the referee appointed under this Part is to be made to the court.

(2) The referee must supply a copy of the report to each party.

(3) The referee may in his report—

- (a) submit any question for the decision of the court; or
- (b) make a special statement of facts from which the court may draw inferences.

CPR 40.6

40.6 Consideration of report by the court

- (1) Upon receipt of the report, the court must fix a date, time and place for its consideration by the court.
- (2) The court must give 21 days' notice thereof to the parties.
- (3) The court may, after hearing the parties:
 - (a) adopt the report in whole or in part;
 - (b) vary the report;
 - (c) ask the referee to explain any part of the report;
 - (d) remit any question or issue for further consideration;
 - (e) decide the question or issue on the evidence taken by the referee;
 - (f) direct that additional evidence be given to the court; or
 - (g) reject the report.

CPR 40.7

40.7 Restrictions on appointment of referee in proceedings by or against Crown

In proceedings by or against the Crown, a referee may not be appointed under this Part without the consent of the Attorney-General.

Part 41
Accounts and inquiries

CPR 41.1

41.1 Scope of this Part

- (1) This Part deals with claims—
 - (a) for an account; or
 - (b) for some other relief which requires the taking of an account.
- (2) A claim for an account must be made—
 - (a) in existing proceedings, by an application under Part 11 supported by evidence on affidavit
 - (b) where there are no existing proceedings, by a fixed date statement of claim supported by evidence on affidavit.

Rule 8.1 deals with the issue of a fixed date statement of claim and rule 27.2 deals with the first hearing of such a fixed date claim.

CPR 41.2

41.2 Directions for account

- (1) The court may—
 - (a) direct that any preliminary issue of fact be tried;
 - (b) order an account to be taken;
 - (c) order that inquiries be made; and
 - (d) order that any amount shown to be due to a party on the account be paid by a date specified in the order.
- (2) Every direction that an account be taken must be so numbered that each distinct account and inquiry may be designated by that number.
- (3) On directing that an account be taken, or subsequently, the court must direct how it shall be taken or verified.
- (4) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objection that any party may properly take.

CPR 41.3

41.3 Verification of account

- (1) When there has been a direction for an account to be taken, the accounting party must prepare an account and verify it by affidavit exhibiting the account.
- (2) The items on each side of the account must be numbered consecutively.
- (3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy of each on all other parties.

CPR 41.4

41.4 Omissions etc.

Any party who claims that there are omissions or who challenges any item in the account must give written notice to the accounting party with—

- (a) the best particulars that the party who so claims can give of the omission or error; and
- (b) the grounds for alleging it.

CPR 41.5

41.5 Allowances

In taking any account all just allowances shall be made without any express directions to that effect.

CPR 41.6

41.6 Delay

Where there is undue delay in taking the account, the court may—

- (a) require the accounting party, or any other party, to explain the delay;
- (b) give directions to expedite the taking of the account;
- (c) direct any other party to take over the taking of the account; or
- (d) make such other order, including an order as to costs, as is just.

CPR 41.7

41.7 Distribution before entitlement ascertained

Where some of the persons entitled to share in a fund are known but there is, or is likely to be, difficulty or delay in ascertaining other persons so entitled, the court may direct or allow immediate payment of their shares to the known persons without reserving any part of those shares to meet the subsequent costs of ascertaining the other persons.

DRAFT #1

Part 42

Judgments and orders

CPR 42.1

42.1 Scope of this Part

- (1) This Part contains rules about judgments and orders made by the court.
- (2) This Part does not apply to the extent that any other rule makes a different provision in relation to the judgment or order in question.

CPR 42.2

42.2 Parties present when order made or notified of terms to be bound

A party is bound by the terms of the judgment or order whether or not the judgment or order is served where that party—

- (a) is present whether in person, by Videoconference or by an attorney when the judgment is given or the order is made; or
- (b) is notified of the terms of the judgment or order by telephone or e-mail.

CPR 42.3

42.3 Practice forms to be used where available

Where there is a practice form for a judgment or order of any description, a judgment or order of that description should generally be in that form.

CPR 42.4

42.4 Standard requirements

- (1) Every judgment or order must state the name and judicial title of the person who gave or made it, unless it is—
 - (a) a default judgment under Part 12;
 - (b) a judgment entered by a Registrar on an admission or following a court order under Rule 14.6, 14.7, 14.8, 14.10, or 14.11.
 - (c) a consent judgment or order under rule 42.7.
- (2) Every judgment (except a default judgment) and every order must—

- (a) be signed or initialled by the Judge or Registrar who made the judgment or order; or
 - (b) where such Judge or Registrar is unavailable, be signed by a Registrar; and
 - (c) be sealed, either electronically or manually, by the court; and
 - (d) bear the date on which it is given or made.
- (3) A judgment, order or direction which imposes a time limit for doing any act must, wherever practicable, express the last day for compliance as a calendar date and include the time of day by which the act must be done.

CPR 42.5

42.5 Drawing up of judgments and orders

- (1) Every judgment or order must be drawn up by the party on whose claim or application the judgment or order was made, unless—
- (a) the court directs someone else to draft it;
 - (b) the court dispenses with the need to do so; or
 - (c) it is a consent order under rule 42.7.
- (2) Where such an order or judgment is required to be produced by a party, that party shall send to all other parties represented at the hearing for approval a draft of such order and shall submit the same to the Judge or Registrar for their signature or initialling no later than 14 days from the date on which the order was made.
- (3) Where an objection is taken to the draft of the order, or no approval is given within 7 days of receipt of such draft, the party required to produce such draft shall submit such draft to the Judge or Registrar who made the judgment or order with the objections, if any, attached or written confirmation that no approval has been received and the Judge or Registrar shall settle the order.
- (4) Where a party fails to file a draft of an order within 14 days after the direction was given, any other party may draft and file the approved order.
- (5) A party who drafts an order must file sufficient copies for service on all parties who are to be served.

CPR 42.6

42.6 Service of orders

(1) Unless the court otherwise directs, every judgment or order must be served on—

- (a) every party to the proceedings in which the judgment or order is made; and
- (b) any other person on whom the court orders it to be served.

Part 6 deals with service.

(2) Where a party is acting by an attorney, the court may direct that any judgment or order be served on the party in person as well as on the attorney.

CPR 42.7

42.7 Consent judgments and orders

(1) This rule applies where—

- (a) none of these Rules prevents the parties agreeing to vary the terms of any court order; and
- (b) all relevant parties agree upon the terms in which judgment should be given or an order made.

(2) Except as provided by sub-rules (3) and (4), this rule applies to the following kinds of judgment or order:—

- (a) a judgment for—
 - (i) the payment of a debt or damages, including a judgment or order for damages or the value of goods to be assessed;
 - (ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; or
 - (iii) costs;
- (b) an order for—
 - (i) the dismissal of any proceedings, wholly or in part;

- (ii) the stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a 'Tomlin Order');
- (iii) the stay of enforcement of a judgment, either unconditionally or on condition that money due under the judgment is paid on a stated date or by instalments specified in the order;
- (iv) the setting aside of a default judgment under Part 13;
- (v) the payment out of money which has been paid into court;
- (vi) the discharge from liability of any party;
- (vii) the payment, assessment or waiver of costs, or such other provision for costs as may be agreed; or
- (viii) any procedural order other than one falling within rule 26.7(3), 27.8(1) and (2).

(3) This rule does not apply—

- (a) where any party is a litigant in person;
- (b) where any party is a minor or patient;
- (c) in Admiralty proceedings; or
- (d) where the court's approval is required by these Rules or by any enactment before an agreed order can be made.

(4) This rule does not allow the making of a consent order by which any hearing date fixed by the court is to be adjourned.

(5) Where this rule applies the order must be—

- (a) drawn in the terms agreed;
- (b) expressed as being 'By Consent';
- (c) signed by the attorney acting for each party to whom the order relates; and
- (d) filed at the Registry for sealing.

CPR 42.8

42.8 Time when judgment or order takes effect

A judgment or order takes effect on and from the day it is given or made, unless the court specifies that it is to take effect on a different date.

CPR 42.9

42.9 Time for complying with judgment or order

A party must comply with a judgment or order immediately, unless—

- (a) the judgment or order specifies some other date for compliance;
- (b) the court varies the time for compliance including specifying payment by instalments; or
- (c) the claimant, on requesting default judgment under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance.

CPR 42.10

42.10 Correction of error in judgment or order

(1) The court may at any time, without an appeal, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.

(2) A party applying for a correction must give notice to all other parties.

CPR 42.11

42.11 Cases where court gives judgment both on claim and counterclaim

(1) This rule applies where the court gives judgment for specified amounts both for the claimant on a claim and the defendant on a counterclaim.

(2) If there is a balance in favour of one of the parties, the court may order the party whose judgment is for the lesser amount to pay the balance.

(3) In a case to which this rule applies, the court may make against the claimant and the defendant, whether or not it makes an order under sub-rule (2),—

- (a) a separate order as to damages; and

(b) a separate order as to costs.

CPR 42.12

42.12 Service of copy of order on person not a party

- (1) Without limiting the rules as to the joinder of necessary parties, where in any proceeding an order is made which may affect the rights of persons who are not parties to the action, the court may at any time direct that a copy of any judgment or order be served on any such person.
- (2) Service must be effected in accordance with Part 6 and the court may direct which party is to be responsible for service.
- (3) The copy of the order must be endorsed with a notice in Form J6.
- (4) The court may dispense with service of the copy of the order or judgment if it appears impracticable to serve that person.
- (5) Any person so served, or on whom service is dispensed with,—
 - (a) is bound by the terms of the judgment or order; but
 - (b) may apply within 28 days of being served, to discharge, vary or add to the judgment or order; and
 - (c) may take part in any proceedings under the judgment or order.

Part 43
Enforcement of judgments or orders: general provisions

Section I
CPR 43.1

43.1 Scope of this Part and interpretation

(1) This Part contains general rules about enforcement of judgments and orders.

(2) In this Part, in Parts 44, 45, 47, 48, 50, 51 and in Section II of Part 53 (receivers by way of equitable execution)—

- (a) 'judgment creditor' means a person who has obtained or is entitled to enforce a judgment or order;
- (b) 'judgment debtor' means a person against whom a judgment or order was given or made;
- (c) 'judgment or order' includes an award which the court has—
 - (i) registered for enforcement;
 - (ii) ordered to be enforced; or
 - (iii) given permission to enforce

as if it were a judgment or order of the court, and in relation to such an award, 'the court which made the judgment or order' means the court which registered the award or made such an order; and

- (d) 'judgment or order for the payment of money' includes a judgment or order for the payment of costs, but does not include a judgment or order for the payment of money into court.
- (e) 'Provost Marshal' includes one of his Deputies.

CPR 43.2

43.2 Procedure for beginning enforcement

(1) Where a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request.

(2) Where any of these rules requires the permission of the court to begin enforcement proceedings, the judgment creditor must first obtain that permission.

CPR 43.3

43.3 Judgment subject to conditions

(1) A person who has obtained a judgment or order subject to the fulfilment of a condition may not enforce the judgment or order unless

- (a) the condition is fulfilled; or
- (b) the court gives permission for the judgment or order to be enforced.

(2) Where a person has obtained a judgment or order subject to the fulfilment of a condition and there is a failure to fulfil that condition, then, unless the court otherwise orders

- (a) that person loses the benefit of the judgment or order; and
- (b) any other person interested may take any steps which
 - (i) are warranted by the judgment or order; or
 - (ii) might have been taken if the judgment or order had not been given or made.

CPR 43.4

43.4 Separate enforcement of costs

A judgment creditor who has judgment with costs may enforce the judgment and the costs separately.

CPR 43.5

43.5 Effect of order setting aside judgment or order

(1) Where the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.

(2) The court may however, direct that an order remain in force.

CPR 43.6

43.6 Court's powers where person ordered to do act fails to comply

(1) Where

- (a) the court orders a person to do an act; but
- (b) that person does not comply;

the judgment creditor may apply for an order that

- (i) the judgment creditor; or
 - (ii) some person appointed by the court,
- may do the act.

(2) The court may order the judgment debtor to pay the costs of the application and the costs and expenses incurred pursuant to the order made under this rule.

(3) This rule does not affect any other mode of enforcement of the judgment or order or the powers of the court to punish for contempt.

CPR 43.7

43.7 Judgment for sum in foreign currency

(1) This rule has effect where the court gives judgment for a sum expressed in a currency of a country other than that in use in The Bahamas.

(2) The judgment creditor must, when commencing enforcement proceedings in The Bahamas, file a certificate stating the current exchange rate in The Bahamas at the close of business on the previous business day for the purpose of the unit of foreign currency in which the judgment is expressed.

CPR 43.8

43.8 Enforcement of judgment or order by or against non-party

If a judgment or order is given or made in favour of or against a person who is not a party to proceedings, it may be enforced by or against that person by the same methods as if he were a party.

CPR 43.9

43.9 Execution by or against person not being a party

(1) Any person, not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) Any person, not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to the judgment or order as if he were a party.

CPR 43.10

43.10 Enforcement of awards, etc. made by outside body

(1) This rule has effect

(a) in relation to the enforcement of an award not made by the court but which is enforceable by virtue of a statutory provision as if it were an order of the court; and

(b) in relation to the registration of such an award, so that it may be enforceable as if it were an order of the court.

(2) In this rule,

“award” means the award, order or decision which it is sought to enforce; and

“outside body” means any authority other than the court.

(3) The general rule is that an application

(a) for permission to enforce an award; or

(b) to register an award,

is to be made on notice supported by evidence on affidavit.

(4) The applicant must

(a) exhibit or annex to the affidavit the award or a copy of it;

(b) where the award is for the payment of money, certify the amount remaining due to the applicant; and

(c) give an address for service on the person against whom the applicant seeks to enforce the award.

Section II
CPR 43.11

43.11 Methods of enforcing judgments or orders

(1) A judgment creditor may enforce a judgment or order for the payment of money by any of the following methods:

- (a) a writ of *fiery facias* or warrant of execution (Part 48);
- (b) a third party debt order (Part 45);
- (c) in relation to securities, a charging order, stop order or stop notice (Part 47);
- (d) in relation to land, by a fixed date claim form to enforce the equitable charge created by section 63 Supreme Court Act Ch: 53 (Part 50);
- (e) the appointment of a receiver (Part 53);
- (f) a writ of sequestration (Part 50).

(2) A judgment creditor may, except where an enactment or rule provides otherwise—

- (a) use any method of enforcement which is available; and
- (b) use more than one method of enforcement, either at the same time or one after another.

(3) If a judgment creditor is claiming interest on a judgment debt, he must include in his application or request to issue enforcement proceedings in relation to that judgment details of—

- (a) the amount of interest claimed and the sum on which it is claimed;
- (b) the dates from and to which interest has accrued; and
- (c) the rate of interest which has been applied and, where more than one rate of interest has been applied, the relevant dates and rates.

CPR 43.12

43.12 Matters occurring after judgment: stay of execution, etc.

Without prejudice to rule 48.1 (power to stay *fi fa*), 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.

CPR 43.13

43.13 Forms of writs

- (1) A writ of *fiери facias* must be in such of the Forms [] in Appendix [] as is appropriate in the particular case.
- (2) A writ of delivery must be in Form [] in Appendix [], whichever is appropriate.
- (3) A writ of possession must be in Form [] in Appendix [], whichever is appropriate.
- (4) A writ of sequestration must be in Form [] in Appendix [].

CPR 43.14

43.14 Writ and *praecipe* where Exchange Control Act (Ch. 360), and Regulations apply

(1) Where any party entitled to enforce a judgment or order for the payment of money is resident outside the scheduled territories, then, unless the Central Bank of The Bahamas has given permission under the Exchange Control Act and Regulations for payment of the money to him unconditionally or on conditions which have been complied with, any writ of execution to enforce that judgment or order must direct the Provost Marshal to pay the proceeds of execution into court. Notice of a payment into court in compliance with such a direction must be given by the Provost Marshal to the party by whom the writ of execution was issued or to his attorney or agent.

(2) Where the Central Bank of The Bahamas has given such permission unconditionally or on conditions which have been complied with, the *praecipe* for the issue of a writ of execution to enforce the judgment or order in question must be indorsed with a certificate of that fact.

CPR 43.15

43.15 Duration and renewal of writ of execution

- (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.
- (3) Before a writ the validity of which has been extended under this rule is executed either the writ must be sealed with the seal of the court showing the date on which the order extending its validity was made or the applicant for the order must serve a sealed notice in Form [] in Appendix [], on the Provost Marshal to whom the writ is directed informing him of the making of the order and the date thereof.
- (4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the Provost Marshal.
- (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.

CPR 43.16

43.16 Return to a writ of execution

- (1) Any party at whose instance a writ of execution was issued may serve a notice on the Provost Marshal to whom the writ was directed requiring him, within such time as may be specified in the notice, to indorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement.
- (2) If a Provost Marshal on whom such a notice is served fails to comply with it, the party by whom it was served may apply to the Court for an order directing the Provost Marshal to comply with the notice.

Part 44

Orders to obtain information from judgment debtors

CPR 44.1

44.1 Scope of this Part

This Part contains rules which provide for a judgment debtor to be required to attend court to provide information, for the purpose of enabling a judgment creditor to enforce a judgment or order against him.

CPR 44.2

44.2 Notice to judgment debtor to complete financial statement

(1) A judgment creditor may serve on the judgment debtor a notice in Form [] with 2 copies of Form [].

(2) A notice in Form [] requires the judgment debtor to complete and serve on the judgment creditor a statement in Form [] of the judgment debtor's—

- (a) receipts and payments for the preceding 12 months; and
- (b) assets and liabilities; and
- (c) income and expenditure; and
- (d) means of satisfying the judgment.

(3) The judgment debtor must serve the statement in Form [] on the judgment creditor within 14 days after the date on which the notice in [] is served on him.

CPR 44.3

44.3 Order to attend court

(1) Whether or not a notice has been served under 44.2 above, a judgment creditor may apply for an order requiring—

- (a) a judgment debtor; or
- (b) if a judgment debtor is a company or other corporation or legal entity, an officer of that body,

to attend court, either in person or by Videoconference, to provide information about—

- (i) the judgment debtor's receipts and payments for the preceding 24 months, assets and liabilities, income and expenditure; and
- (ii) any other matter about which information is needed to enforce a judgment or order.

(2) An application under paragraph (1) may be made without notice;

(3) The application notice must be in the Form [].

(4) An application under paragraph (1) may be dealt with by a Registrar without a hearing.

(5) If the application notice complies with paragraph (3), an order to attend court will be issued in the terms of paragraph (6).

(6) The judgment debtor or officer served with an order issued under this rule must—

- (a) attend court, either in person or by Videoconference as provided in the order, at the time and place specified in the order;
- (b) when he does so, produce at court documents in his control which are described in the order; and
- (c) answer on oath or affirmation such questions as the court may require.

(7) An order under this rule must be in Form EX14 and will contain a notice in the following terms—

“You must obey this order. If you do not, you may be arrested and then sent to prison for contempt of court.”

CPR 44.4

44.4 Service of order

(1) An order to attend court must, unless the court otherwise orders, be served personally on the judgment debtor or officer ordered to attend court not less than 14 days before the hearing.

CPR 44.5

44.5 Travelling expenses

- (1) A judgment debtor or officer resident in another island of The Bahamas who is ordered to attend court in person in New Providence or Grand Bahama may, within 7 days of being served with the order, ask the judgment creditor to pay him a sum not exceeding a sum reasonably sufficient to cover his travelling expenses to and from court and in any event an amount not exceeding \$300.00.
- (2) The judgment creditor, if requested to pay a sum mentioned in paragraph (1), must pay the same in sufficient time for the judgment debtor to be able to attend the examination in person.

CPR 44.6

44.6 Judgment creditor's affidavit

- (1) The judgment creditor must file an affidavit or affidavits—
- (a) by the person who served the order giving details of how and when it was served;
 - (b) stating either that—
 - (i) in the event that the person is ordered to attend court in person, he has not requested payment of his travelling expenses; or
 - (ii) the judgment creditor has paid a sum in accordance with such a request; and
 - (c) stating how much of the judgment debt remains unpaid.
- (2) The judgment creditor must either—
- (a) file the affidavit or affidavits not less than 2 days before the hearing; or
 - (b) produce it or them at the hearing.

CPR 44.7

44.7 Conduct of the hearing

- (1) The judgment debtor or officer served —

- (a) must appear either in person or by Videoconference as directed by the order;
 - (b) may be represented by counsel, who may examine the judgment debtor or officer and be heard on the matter of the judgment debtor's means;
 - (c) may be cross examined by the judgment creditor or his counsel;
 - (d) may be examined by a Registrar or a Judge.
- (2) The information given by the person must be given on oath or affirmation, taken down and read to the judgment debtor or officer who shall be given an opportunity to correct any information incorrectly recorded.

CPR 44.8

44.8 Adjournment of hearing

If the hearing is adjourned, the Registrar or Judge must give directions about the manner in which notice of the new hearing is to be served on the judgment debtor or officer, if necessary.

CPR 44.9

44.9 Orders by court

- (1) After an examination is completed, the Registrar or Judge who conducted the hearing may, after giving all parties or persons an opportunity to be heard, do any one or more of the following:
- (a) direct that enforcement proceedings be commenced or continued, direct any steps to be taken in those proceedings, and issue any summons or make any order for the purpose of those proceedings;
 - (b) make an order that the money owing under the judgment be paid by instalments payable at times fixed by the court;
 - (c) stay any proceeding for the enforcement of the judgment;
 - (d) make an order varying any order relating to the enforcement of the judgment.
- (2) The Registrar or Judge may do any one or more of the things referred to in sub clause (1), even though—

- (a) no application was made for the particular direction, order, or stay; or
- (b) that application was made for a different direction, order, or stay.

CPR 44.10

44.10 Failure to comply with order for examination

- (1) A Judge may issue a warrant for the arrest of the judgment debtor or officer who fails to attend the examination. The warrant shall be Form [].
- (2) A warrant for arrest under (1) above must not be made unless the judgment creditor has filed the affidavit(s) required by rule 44.6.
- (3) If a warrant for arrest is made, the Judge must direct that the warrant is suspended provided the judgment debtor or officer attends the court in person for examination at a time and place specified in the order.
- (4) If a judgment debtor or officer who has been served with an arrest order fails to attend in person the examination or fails to comply with any other term on which the arrest order was suspended, the Registrar or Judge may issue a certificate to that effect.
- (5) Upon the Registrar or Judge certifying under (4) above that the judgment debtor or officer named is in breach of the warrant of arrest, the judgment debtor or officer shall be arrested and brought before a Judge so that the Judge may consider whether to commit the judgment debtor or officer named to prison.

CPR 44.11

44.11 Discharge of arrest order

- (1) When an judgment debtor or person named is brought before a Judge, the Judge must discharge the arrest order unless the Judge is satisfied beyond reasonable doubt that—
 - (a) the judgment debtor or officer has failed to comply with—
 - (i) the original order to attend court; and
 - (ii) the terms on which the warrant of arrest was suspended; and
 - (b) both orders have been served on the judgment debtor or officer.

(2) If the Judge does not discharge the warrant of arrest, the Judge may fine the judgment debtor or officer a sum not exceeding five thousand dollars or commit the judgment debtor or officer to prison for a term of imprisonment of not more than one month.

CPR 44.12
44.12

If at any hearing under this Part a judgment debtor or officer refuses

- (a) to be sworn or to affirm or
 - (b) to answer one or more of the questions put to him or
 - (c) refuses to produce or permit to be inspected any document or property after being ordered to do so by the Registrar or Judge,
- the Judge may commit the judgment debtor or officer to prison for a term of imprisonment not exceeding one month.

Part 45

Third party debt orders [*formerly garnishee*]

CPR 45.1

45.1 Scope of this Part and interpretation

(1) This Part contains rules which provide for a judgment creditor to obtain an order for the payment to him of money which a third party who is within the jurisdiction owes to the judgment debtor.

(2) In this Part, 'bank or credit union' includes any person carrying on a business in the course of which he lawfully accepts deposits in The Bahamas.

CPR 45.2

45.2 Third party debt order

(1) Upon the application of a judgment creditor, the court may make an order (a 'final third party debt order') requiring a third party to pay to the judgment creditor—

- (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or
- (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor's costs of the application.

(2) The court will not make an order under paragraph 1 without first making an order (an 'interim third party debt order') as provided by rule 45.4(2).

CPR 45.3

45.3 Application for third party debt order

(1) An application for a third party debt order may be made without notice; and

(2) the application notice must be in Form []

CPR 45.4

45.4 Interim third party debt order

(1) An application for a third party debt order will initially be dealt with by a judge without a hearing.

- (2) The judge may make an interim third party debt order—
 - (a) fixing a hearing date to consider whether to make a final third party debt order; and
 - (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.
- (3) An interim third party debt order will specify the amount of money which the third party must retain, which will be the total of—
 - (a) the amount of money remaining due to the judgment creditor under the judgment or order; and
 - (b) an amount for the judgment creditor's fixed costs of the application, as specified in the relevant practice direction.
- (4) An interim third party debt order becomes binding on a third party when it is served on him.
- (5) The date of the hearing to consider the application shall be not less than 28 days after the interim third party debt order is made.

CPR 45.5

45.5 Service of interim order

- (1) Copies of an interim third party debt order, the application notice and any documents filed in support of it must be served—
 - (a) on the third party, not less than 21 days before the date fixed for the hearing; and
 - (b) on the judgment debtor not less than—
 - (i) 7 days after a copy has been served on the third party; and
 - (ii) 7 days before the date fixed for the hearing.
- (2) If the judgment creditor serves the order, he must either—
 - (a) file a certificate of service not less than 2 days before the hearing; or
 - (b) produce a certificate of service at the hearing.

CPR 45.6

45.6 Obligation of third parties served with interim order

(1) A bank or credit union served with an interim third party debt order must carry out a search to identify all accounts held with it by the judgment debtor.

(2) The bank or credit union must disclose to the court and the creditor within 7 days of being served with the order, in respect of each account held by the judgment debtor—

- (a) the number of the account;
- (b) whether the account is in credit; and
- (c) if the account is in credit—
 - (i) whether the balance of the account is sufficient to cover the amount specified in the order;
 - (ii) the amount of the balance at the date it was served with the order, if it is less than the amount specified in the order; and
 - (iii) whether the bank or credit union asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so giving details of the grounds for that assertion.

(3) If—

- (a) the judgment debtor does not hold an account with the bank or credit union; or
- (b) the bank or credit union is unable to comply with the order for any other reason (for example, because it has more than one account holder whose details match the information contained in the order, and cannot identify which account the order applies to),

the bank or credit union must inform the court and the judgment creditor of that fact within 7 days of being served with the order.

(4) Any third party other than a bank or credit union served with an interim third party debt order must notify the court and the judgment creditor in writing within 7 days of being served with the order, if he claims—

- (a) not to owe any money to the judgment debtor; or

(b) to owe less than the amount specified in the order.

CPR 45.7

45.7 Arrangements for debtors in hardship

(1) If—

- (a) a judgment debtor is an individual;
- (b) he is prevented from withdrawing money from his account with a bank or credit union as a result of an interim third party debt order; and
- (c) he or his family is suffering hardship in meeting ordinary living expenses as a result,

the court may, on an application by the judgment debtor, make an order permitting the bank or credit union to make a payment or payments out of the account ('a hardship payment order').

(2) An application notice seeking a hardship payment order must—

- (a) include detailed evidence explaining why the judgment debtor needs a payment of the amount requested; and
- (b) be verified by a statement of truth.

(3) Unless the court orders otherwise, the application notice—

- (a) must be served on the judgment creditor at least 2 days before the hearing; but
- (b) does not need to be served on the third party.

(5) A hardship payment order may—

- (a) permit the third party to make one or more payments out of the account; and
- (b) specify to whom the payments may be made.

CPR 45.8

45.8 Further consideration of the application

(1) If the judgment debtor or the third party objects to the court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections.

(2) If the judgment debtor or the third party knows or believes that a person other than the judgment debtor has any claim to the money specified in the interim order, he must file and serve written evidence stating his knowledge of that matter.

(3) If—

(a) the third party has given notice under rule 45.6 that he does not owe any money to the judgment debtor, or that the amount which he owes is less than the amount specified in the interim order; and

(b) the judgment creditor wishes to dispute this,

the judgment creditor must file and serve written evidence setting out the grounds on which he disputes the third party's case.

(4) Written evidence under paragraphs (1), (2) or (3) must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.

(5) If the court is notified that some person other than the judgment debtor may have a claim to the money specified in the interim order, it will serve on that person notice of the application and the hearing.

(6) At the hearing the court may—

(a) make a final third party debt order;

(b) discharge the interim third party debt order and dismiss the application;

(c) decide any issues in dispute between the parties, or between any of the parties and any other person who has a claim to the money specified in the interim order; or

(d) direct a trial of any such issues, and if necessary give directions.

CPR 45.9

45.9 Effect of final third party order

(1) A final third party debt order shall be enforceable as an order to pay money.

(2) If—

(a) the third party pays money to the judgment creditor in compliance with a third party debt order; or

(b) the order is enforced against him,

the third party shall, to the extent of the amount paid by him or realised by enforcement against him, be discharged from his debt to the judgment debtor.

(3) Paragraph (2) applies even if the third party debt order, or the original judgment or order against the judgment debtor, is later set aside.

CPR 45.10

45.10 Money in court

(1) If money is standing to the credit of the judgment debtor in court—

(a) the judgment creditor may not apply for a third party debt order in respect of that money; but

(b) he may apply for an order that the money in court, or so much of it as is sufficient to satisfy the judgment or order and the costs of the application, be paid to him.

(2) An application notice seeking an order under this rule must be served on—

(a) the judgment debtor; and

(b) the Registrar.

(3) If an application notice has been issued under this rule, the money in court must not be paid out until the application has been disposed of.

CPR 45.11
45.11 Costs

If the judgment creditor is awarded costs on an application for an order under rule 45.2 or 45.10—

- (a) he shall, unless the court otherwise directs, retain those costs out of the money recovered by him under the order; and
- (b) the costs shall be deemed to be paid first out of the money he recovers, in priority to the judgment debt.

CPR 45.12
45.12 Judgment creditor resident outside scheduled territories

(1) The Court shall not make an order under this part requiring the third party to pay any sum to or for the credit of any judgment creditor resident outside the scheduled territories unless that creditor produces a certificate that the Central Bank of The Bahamas has given permission under the Exchange Control Regulations Act, for the payment unconditionally or on conditions which have been complied with.

(2) If it appears to the Court that payment by the third party to the judgment creditor will contravene any provision of the said Act or Regulations, it may order the third party to pay into court the amount due to the judgment creditor and the costs of the proceedings under this Part after deduction of his own costs, if the Court so orders.

Part 46

Enforcement against firm or person carrying on business in another name

CPR 46.1

46.1 General

(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 46.2 and to the next following paragraph, issue against any person who—

- (a) entered an acknowledgment of service in the action as a partner; or
- (b) having been served as a partner with the statement of claim, failed to enter an acknowledgment of service in the action; or
- (c) admitted in any pleading that he is a partner; or
- (d) was adjudged to be a partner.

(3) Execution to enforce a judgment or order given or made against a firm may not issue against a member of the firm who was out of the jurisdiction when the claim was issued unless he—

- (a) entered an acknowledgment of service in the action as a partner; or
- (b) was served within the jurisdiction with the statement of claim as a partner; or
- (c) was, with the leave of the Court, served out of the jurisdiction with the statement of claim, or notice of the statement of claim, 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 statement of claim 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 application notice which must be served personally on that person.

(5) Where the person against whom an application under paragraph (4) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (3), give leave to issue execution against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

CPR 46.2

46.2 Enforcing judgment or order in actions between partners, etc.

- (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.

CPR 46.3

46.3 Attachment of debts owed by firm

- (1) An order may be made under Part 45 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 Part 45 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 Part 45 requires a firm to appear before the Court, an appearance by a member of the firm constitutes a sufficient compliance with the order.

CPR 46.4**46.4 Actions begun by originating application or fixed date claim form**

This Part shall, with any necessary modification, apply in relation to an action by or against partners in the name of their firm begun by originating application or fixed date claim form as they apply in relation to such an action begun by standard claim form.

CPR 46.5**46.5 Application to person carrying on business in another name**

An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and this Part shall, so far as practicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

CPR 46.6**46.6 Applications for orders charging partner's interest in partnership property, etc.**

(1) Every application to the Court by a judgment creditor of a partner for an order under section 24 of the Partnership Act (which authorises the Supreme Court to make on the application of a judgment creditor of a partner 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 interlocutory application.

(2) The Registrar may exercise the powers conferred on a judge by the said section 24.

(3) Every application issued by a judgment creditor under this rule, and every order made on such application, must be served on the judgment debtor and on such of his 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.

(4) Every application issued by a partner of a judgment debtor under this rule, and every order made on such application, must be served—

- (a) on the judgment creditor; and
- (b) on the judgment debtor; and

(c) on such of the other partners of the judgment debtor as do not join in the application and are within the jurisdiction or, if the partnership is a cost book company, on the purser of the company.

(5) An application notice 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.

DRAFT #1

Part 47

Securities: charging orders, stop orders and stop notices

CPR 47.1

47.1 Order imposing charge on securities

- (1) The Court may, for the purpose of enforcing a judgment or order for the payment of an ascertained sum of money, impose on any interest to which the judgment debtor is beneficially entitled in such of the securities to which this rule applies 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 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 general Act of Parliament; and
 - (b) any dividend of or interest payable on such stock.
- (4) In this Order 'government stock' means any stock issued by the government of The Bahamas or any funds of or annuity granted by that government, and 'stock' includes shares, debentures and debenture stock.

CPR 47.2

47.2 Application for order under 47.1

An application for an order under rule 47.1 must be made by application supported by an affidavit—

- (a) identifying the judgment or order to be enforced, stating the amount unpaid under it at the date of the application, and showing that the applicant is entitled to enforce the judgment 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 witness the judgment debtor is beneficially entitled to an interest in the securities in question, describing that interest, and stating the

sources of the deponent's information or the grounds for his belief.

CPR 47.3

47.3 Service of notice of order to show cause

(1) Unless the Court otherwise directs, a copy of the order under rule 47.1 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 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 Public Treasury;
- (b) where the order relates to other stock, on the company concerned.

CPR 47.4

47.4 Effect of order to show cause

(1) No disposition by the judgment debtor of his interest in any securities to which an order under rule 47.1 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 Public Treasurer 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 Public Treasury or a company, the Public Treasury or company permits any transfer or makes any payment prohibited by paragraph (2), it shall be liable to pay the judgment creditor the value of the stock transferred or, 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.

CPR 47.5

47.5 Making and effect of charging order absolute

- (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 47.1 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.

CPR 47.6

47.6 Discharge, etc., of charging order

The Court, on the application of the judgment debtor or any other person interested in the securities to which an order under rule 47.1 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.

CPR 47.7

47.7 Money in court: charging order

- (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 47.2 and 47.3(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 47.1.

(4) Rules 47.4(1), 47.5(1) and (2) and 47.6 shall, with the necessary modifications, apply in relation to an order under this rule as they apply in relation to an order under rule 47.1.

CPR 47.8

47.8 Jurisdiction to grant injunction or appoint receiver to enforce charge

A Judge shall have power to grant an injunction which is ancillary or incidental to an order under rule 47.1 or 47.7, and an application for the appointment of a receiver or an injunction under this rule may be joined with the application for the order under rule 47.1 or 47.7 to which it relates.

CPR 47.9

47.9 Funds in court: stop order

(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; or
- (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 application notice in the cause or matter relating to the funds in court, or, if there is no such cause or matter, then by fixed date statement of claim.

(3) The application notice must be served on every person whose interest may be affected by the order applied for 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.

CPR 47.10

47.10 Securities not in court: stop notice

- (1) Any person claiming to be beneficially entitled to an interest in any securities to which rule 1 applies, other than securities in court, who wishes to be notified of any proposed transfer or payment of those securities may avail himself of the provisions of this rule.
- (2) A person claiming to be so entitled must file in the Registry—
 - (a) a witness statement identifying the securities in question and describing his interest therein by reference to the document under which it arises; and
 - (b) a notice in Form [] in Appendix [], signed by the witness, and annexed to it, addressed to the Public Treasury or, as the case may be, the company concerned,

and must serve an office copy of the witness statement, and a copy of the notice sealed with the seal of the Supreme Court on the Public Treasury or that company.

- (3) There must be indorsed on the witness statement filed under this rule a note stating the address to which any such notice as is referred to in rule 47.11(1) is to be sent and, subject to paragraph (4), that address shall for the purpose of that rule be the address for service of the person on whose behalf the witness statement is filed.

- (4) A person on whose behalf an affidavit under this rule is filed may change his address for service for the purpose of rule 47.11 by serving on the Public Treasury, or, as the case may be, the company concerned, a 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.

CPR 47.11

47.11 Effect of stop notice

- (1) Where a notice under rule 47.10 has been served on the Public Treasury or a company, then, so long as the notice is in force, the Public Treasury or company shall not register a transfer of any stock or make a payment of any dividend or interest, being a transfer or payment restrained by the notice, without serving on the person on whose behalf the notice was filed at his address for service a notice informing him of the request for such transfer or payment.

(2) Where the Public Treasury or a company receive a request for such a transfer or payment as is mentioned in paragraph (1) made by or on behalf of the holder of the securities to which the notice under rule 47.10 relates, the Public Treasury or company shall not by reason only of that notice refuse to register the transfer or make the payment for longer than 8 days after receipt of the request except under the authority of an order of the Court.

CPR 47.12

47.12 Amendment of stop notice

If any securities are incorrectly described in a notice filed under rule 47.10 the person on whose behalf the notice was filed may file in the office or registry in which the notice was filed an amended notice and serve on the Public Treasury or, as the case may be, the company concerned a copy of that notice sealed with the seal of that office or registry, and where he does so the notice under rule 47.10 shall be deemed to have been served on the Public Treasury or company on the day on which the copy of the amended notice was served on it.

CPR 47.13

47.13 Withdrawal, etc. of stop notice

(1) The person on whose behalf a notice under rule 47.10 was filed may withdraw it by serving a request for its withdrawal on the Public Treasury or, as the case may be, 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 signature must be witnessed by a practising attorney.

(3) The Court, on the application of any person claiming to be beneficially entitled to an interest in the securities to which a notice under rule 47.10 relates, may by order discharge the notice.

(4) An application for an order under paragraph (3) must be made to the Court by application notice, and the application notice must be served on the person on whose behalf the notice under rule 47.10 was filed.

CPR 47.14

47.14 Order prohibiting transfer, etc., of securities

(1) The Court, on the application of any person claiming to be beneficially entitled to an interest in any government stock or any stock of any

company registered under any general Act of Parliament may by order prohibit the Public Treasury or, as the case may be, that company from registering any transfer of such part of that stock as may be specified in the order or from paying any dividend thereof or interest thereon. The name of the holder of the stock to which the order relates shall be stated in the order.

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

(3) The Court, on the application of any person claiming to be entitled to an interest in any stock to which an order under this rule relates, may vary or discharge the order on such terms (if any) as to costs as it thinks fit.

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Part 48

Writs of *fiery facias*

CPR 48.1

48.1 Power to stay execution by writ of *fiery facias*

(1) Where a judgment is given or an order made for the payment by any person of money, and the Court is satisfied,—

- (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 48.2 or 48.3, the Court may by order stay the execution of the judgment or order by writ of *fiery 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 application notice and may be so made notwithstanding that the party liable to execution did not enter an appearance in the action.

(3) An application made by application notice must be supported by an affidavit made by or on behalf of the applicant stating the grounds of the application and the evidence necessary to substantiate them and, in particular, where such application is made on the grounds of the applicant's inability to pay, disclosing his income, the nature and value of any property of his and the amount of any other liabilities of his.

(4) The application notice 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.

CPR 48.2

48.2 Separate writs to enforce payment of costs, etc.

(1) Where only the payment of money, together with costs to be assessed, is adjudged or ordered, then, if when the money becomes payable under the judgment or order the costs have not been assessed, the party entitled to enforce that judgment or order may issue a writ of *fiery*

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 may issue a second writ to enforce payment of the assessed costs.

(2) A party entitled to enforce a judgment or order for the delivery of possession of any property (other than money) may, if he so elects, issue a separate writ of *feri facias* to enforce payment of any damages or costs awarded to him by that judgment or order.

CPR 48.3

48.3 No expenses of execution in certain cases

Where a judgment or order is for less than such sum as shall be specified from time to time by the Chief Justice by practice direction the plaintiff shall not be entitled to costs against the person against whom the writ of *feri facias* to enforce the judgment or order is issued, the writ may not authorise the Provost Marshal to whom it is directed to levy any fees, poundage or other costs of execution.

CPR 48.4

48.4 Order for sale otherwise than by auction

(1) An order of the Court under the Bankruptcy Act that a sale under an execution may be made otherwise than by public auction may be made on the application of the judgment creditor or the judgment debtor or the Provost Marshal to whom it was issued.

(2) Such an application must be made by application notice and the application notice must contain a short statement of the grounds of the application.

(3) Where the applicant for an order under this rule is not the Provost Marshal, the Provost Marshal must, on the demand of the applicant send to the applicant a list containing the name and address of every person at whose instance any other writ of execution against the goods of the judgment debtor was issued and delivered to the Provost Marshal (in this rule referred to as 'the Provost Marshal's list'); and where the Provost Marshal is an applicant, he must prepare such a list.

(4) Not less than 4 clear days before the return day the applicant must serve the application notice on each of the other persons by whom the applicant might have been made and on every person named in the Provost Marshal's list.

(5) The applicant must produce the Provost Marshal's list to the Court on the hearing of the application.

(6) Every person on whom the application notice was served may attend and be heard on the hearing of the application.

DRAFT #1

Part 49
Interpleader

CPR 49.1
49.1 Interpretation

In this rule and rules 49.1 to 49.8, unless the context otherwise requires,—

‘applicant’ means a person entitled under rule 49.2 to apply to the court for relief under rule 49.7

‘claimant’ means a person claiming against an applicant in terms of rule 49.2.

CPR 49.2
49.2 Right to interplead

(1) When a person who is under a liability in respect of a debt or in respect of any money or chattels is, or expects to be, sued for or in respect of the debt, money, or chattels by 2 or more persons making adverse claims, that person may apply to the court, on notice to the persons making the adverse claims, for relief under rule 49.7.

(2) A person who claims money or chattels taken or intended to be taken by the Provost Marshal may apply to the court, serving notice on the judgment creditor, the judgment debtor, and the Provost Marshal for relief under rule 49.7 and shall serve notice of his application on the judgment creditor, the judgment debtor and the Provost Marshal.

(3) Paragraph (2) applies—

- (a) whether or not there has been a return of the order; and
- (b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

CPR 49.3
49.3 Form of application

(1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule 49.2(1), and in cases within rule 49.2(2), the application must be an interlocutory application in the proceeding.

(2) Subject to rules 49.5 to 49.8, Part 11 of these rules applies to the application.

(3) In other cases the application must be made by filing and serving a fixed date statement of claim and notice of proceeding under Part 8.

CPR 49.4

49.4 Affidavit in support

(1) An application under rule 49.2 must be supported by an affidavit stating—

- (a) that the applicant claims no interest in the subject matter in dispute other than the charges or costs; and
- (b) that adverse claims (of which details must be given) have been made by the claimants and the steps already taken by the respective claimants in support of their claims; and
- (c) that the applicant is not colluding with any of the claimants to that subject matter; and
- (d) that the applicant is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.

(2) A copy of the affidavit must be served on each claimant when the application under rule 49.2 is served.

CPR 49.5

49.5 Time for applying

(1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 49.2 must be made before a statement of defence has been filed by the applicant.

(2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

CPR 49.6

49.6 Claimants to file affidavits

(1) Subject to paragraphs (2) and (3), a claimant who wishes to justify a claim must, within 5 working days after service of an application made under paragraph (1) or (2) of rule 49.2, file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.

(2) When, in accordance with rule 49.3(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 49.4, the claimant must file and serve a statement of defence with the claimant's affidavit.

(3) If the claimant, had the claimant been a defendant, might have filed an acknowledgment of service under Part 9, the claimant may, instead of filing and serving an affidavit under paragraph (1), file and serve an appearance.

(4) An acknowledgment of service filed and served under paragraph (3), for all the purposes of rules 49.7 and 49.8, has effect as though the claimant were a defendant in a proceeding brought by the applicant or by any other claimant referred to in the appearance.

CPR 49.7

49.7 Powers of court

(1) Upon hearing an application under rule 49.2, the court may make whatever orders and directions justice requires.

(2) In particular, and without limiting paragraph (1), the court may—

- (a) stay a proceeding commenced by a claimant;
- (b) bar the claim of a claimant who has not filed and served either—
 - (i) an affidavit justifying the claim under rule 49.6(2); or
 - (ii) an acknowledgment of service under rule 49.6(3);
- (c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose;
- (d) if the question appears to be one of law only, direct that the question be determined by the court;
- (e) direct the trial of the issues involved by the method that the court directs;
- (f) order that one of the claimants commence a proceeding against any other or others to try the question involved or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding;

(g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.

(3) Paragraph (4) applies to a claimant who has been served with an application and—

(a) does not appear on the hearing of the application; or

(b) having appeared, fails or refuses to comply with an order.

(4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant but that order does not affect the rights of the claimants as between themselves.

CPR 49.8

49.8 Costs of applicant

(1) An applicant shall be entitled to such costs as the court may direct; such costs may comprise the entirety of the costs incurred by the applicant.

(2) The court may order that the applicant's costs be paid by any one or more of the claimants and may apportion the liability between any two or more claimants, as it thinks just.

(3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.

Part 50

Enforcement in relation to possession of land, delivery of goods and injunction

CPR 50.1

50.1 Enforcement of judgment for possession of land

(1) A judgment or order for the giving of possession of land may be enforced by one or more of the following—

- (a) writ of possession;
- (b) in a case in which rule 50.3 applies, an order of committal; or
- (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 Part 62 applies.

(3) Such leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the land has received such notice of the proceedings as appears to the Court sufficient to enable him to apply to the Court for any relief to which he may be entitled.

(4) A writ of possession may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

CPR 50.2

50.2 Enforcement of judgment for delivery of goods

(1) A judgment or order for the delivery of any goods which does not provide the alternative of paying the assessed value of the goods may be enforced by one or more of the following—

- (a) writ of delivery to recover the goods without alternative provisions for recovery of their assessed value (hereafter in this rule referred to as a 'writ of specific delivery');
- (b) in a case in which rule 3 applies, an order of committal;
- (c) in such a case, writ of sequestration.

(2) A judgment or order for the delivery of any goods or payment of their assessed value may be enforced by—

- (a) writ of delivery to recover the goods or their assessed value;
- (b) with the leave of the Court, writ of specific delivery;
- (c) in a case in which rule 50.3 applies, writ of sequestration.

(3) A writ of specific delivery and a writ of delivery to recover any goods or their assessed value, may include provision for enforcing the payment of any money adjudged or ordered to be paid by the judgment or order which is to be enforced by the writ.

(4) A judgment or order for the payment of the assessed value of any goods may be enforced by the same means as any other judgment or order for the payment of money.

CPR 50.3

50.3 Enforcement of judgment to do or abstain from doing any act

(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 these Rules; or
- (b) a person disobeys a judgment or order requiring him to abstain from doing an act; then, subject to the provisions of these Rules, the judgment or order may be enforced by one or more of the following means:
 - (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 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 4

requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as references to that order made under rule 50.4.

(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 person so liable to deliver the goods to the applicant within a time specified in that order, and that order may be so enforced.

(4) An application for committal or sequestration under this rule is to be made in the proceedings in which the judgment or order was made or the undertaking was given by an application in accordance with Part 11.

(5) Where an application to commit or for sequestration under paragraph (4) is made against a person who is not an existing party to the proceedings, then the committal application is made against that person by an application under Part 11.

(6) The application must –

- (a) set out in full the grounds on which the application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts; and
- (b) be supported by one or more affidavits containing all the evidence relied upon.

(7) Subject to paragraph (8), the application notice and the evidence in support must be served personally on the respondent.

(8) The court may –

- (a) dispense with service under paragraph (8) if it considers it just to do so; or
- (b) make an order in respect of service by an alternative method or at an alternative place.

CPR 50.4

50.4 Judgment, etc. requiring act to be done: order fixing time for doing it

- (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 have power to make an order requiring the act to be done within some other time.
- (2) Where 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 as the court may specify.
- (3) An application for an order under this rule must be made by application under Part 11 and the application must be served on the person required to do the act in question.

CPR 50.5

50.5 Service of copy of judgment, etc. prerequisite to enforcement under rule 3

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to rule 28.2 (duty of party and his attorney in relation to disclosure), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 50.3 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 served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 50.3(1)(ii) or (iii) unless—
 - (a) a copy of the order has also been served personally on the officer against whose property leave is sought to issue a writ of sequestration or against whom an order of committal is sought; and

- (b) in the case of an order requiring the body corporate to do an act, a 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 or service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the Order, he is liable to process of execution to compel him to obey it; and
 - (b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under rule 26.1(2)(k) (Court's case management power to extend or abridge time), extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 50.3(3) or rule 50.4, 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 50.3 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, e-mail, text message or otherwise.
- (7) The Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

CPR 50.6

50.6 Court may order act to be done at expense of disobedient party

If an order of *mandamus*, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with,

then, without prejudice to any other power it may have including its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done may, so far as practicable, be done by the party by whom the order or judgment was obtained or some other person appointed by the Court, at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and execution may issue against the disobedient party for the amount so ascertained and for costs.

DRAFT #1

Part 51 Committal

CPR 51.1

51.1 Committal for contempt of court

- (1) The power of the Supreme Court to punish for contempt of court may be exercised by an order of committal.
- (2) Where contempt of court—
 - (a) is committed in connection with—
 - (i) any proceedings before the Supreme Court (including but not limited to the making of a false statement of truth in a witness statement or breach of duty of a party or his attorney in relation to disclosure; or
 - (ii) criminal proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court; or
 - (b) is committed otherwise than in connection with any proceedings,then, subject to paragraph (4), an order of committal may be made by the Supreme Court.
- (3) Where contempt of court is committed in connection with any proceedings in the Supreme Court, then, subject to paragraph (2), an order of committal may be made by a judge of the Supreme Court.
- (4) Where by virtue of any enactment the Supreme Court has power to punish or take steps for the punishment of any person charged with having done any thing in relation to a court, tribunal or person which would, if it had been done in relation to the Supreme Court, have been a contempt of that Court, an order of committal may be made by a judge of the Court.
- (5) An application for committal under rule 51.1(2)(a)(i) may be made only with the permission of the court dealing with the claim.

CPR 51.2

51.2 Application for order

- (1) The application for the order must be made by originating application to the Supreme Court and, unless the Court or Judge 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 this rule, must be served personally on the person sought to be committed.

(4) The Judge may dispense with service of the notice of motion under this rule if he thinks it just to do so.

CPR 51.3

51.3 Saving for power to commit without application for purpose

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Supreme Court to make an order of committal of its own motion against a person guilty of contempt of court.

CPR 51.4

51.4 Provisions as to hearing

(1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private in the following cases, that is to say—

- (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act;
- (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue;
- (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but, except as aforesaid, the application shall be heard in open court.

(2) If the Court hearing an application in private by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open court state—

- (a) the name of that person;
- (b) in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c) if he is being committed for a fixed period, the length of that period.

(3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the originating application under rule 51.2. The foregoing provision is without prejudice to the powers of the Court to amend a statement of case, make case management orders and rectify matters under rule 26.9.

(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so.

CPR 51.5

51.5 Power to suspend execution of committal order

(1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended, for such period or on such terms or conditions as it may specify.

(2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph.

CPR 51.6

51.6 Discharge of person committed

(1) The Court may, on the application of any person committed to prison for any contempt of court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver anything to some other person

or to deposit it in court or elsewhere, and a writ of sequestration has also been issued to enforce that judgment or order, then, if the thing is in the custody or power of the person committed, the commissioners appointed by the writ of sequestration may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the commissioners as it thinks fit.

CPR 51.7

51.7 Saving for other powers

Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the Supreme Court, to pay a fine or to give security for his good 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.

Part 52
Sales, etc., of land by order of court

CPR 52.1

52.1 Power to order sale of land

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 Part '*land*' includes any interest in, or right over, land.

CPR 52.2

52.2 Manner of carrying out sale

(1) Where an order is made, whether in court or in chambers, directing any land to be sold, the Court may permit the party or person having the conduct of the sale to sell the land in such manner as he thinks fit, or may direct that the land be sold in such manner as the Court may either by the order or under paragraph (4) direct for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court shall direct.

(2) The party entitled to prosecute the order must—

- (a) leave a copy of the order at the judge's chambers with a certificate that it is a true copy of the order; and
- (b) subject to paragraph (3), take out an application to proceed with the order.

(3) Where an order for sale contains directions with regard to effecting the sale, the party entitled to prosecute the order shall not take out a summons under paragraph (2) unless and until he requires the further directions of the Court.

(4) On the hearing of the application 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;
- (h) requiring an abstract of the title to be referred to conveyancing counsel of the Court or some other conveyancing counsel for his opinion thereon and to settle the particulars and conditions of sale.

CPR 52.3

52.3 Certifying result of sale

(1) If either the Court has directed payment of the purchase money into court or the Court so directs, the result of a sale by order of the Court must be certified—

- (a) in the case of a sale by public auction, by the auctioneer who conducted the sale; and
- (b) in any other case, by the attorney of the party or person having the conduct of the sale;

and the Court may require the certificate to be verified by the affidavit of the auctioneer or attorney, as the case may be.

(2) The attorney of the party or person having the conduct of the sale must leave a copy of the certificate and affidavit (if any) at the judge's chambers and, not later than two days after doing so, file the certificate and any affidavit in the Registry.

CPR 52.4

52.4 Mortgage, exchange or partition under order of the court

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.

Section II

Conveyancing Counsel of the Court

BAH CPR 52.5

52.5 Reference of matters to conveyancing counsel of court

The Court may appoint and refer to conveyancing counsel of the Court—

- (a) any matter relating to the investigation of the title to any property with a view to an investment of money in the purchase or on mortgage thereof, or with a view to the sale thereof;
- (b) any matter relating to the settlement of a draft of a conveyance, mortgage, settlement or other instrument; and
- (c) any other matter it thinks fit, and may act upon his opinion in the matter referred.

BAH CPR 52.6

52.6 Objection to conveyancing counsel's opinion

Any party may object to the opinion given by any conveyancing counsel on a reference under rule 52.5, and if he does so the point in dispute shall be determined by the judge either in chambers or in court as he thinks fit.

BAH CPR 52.7

52.7 Distribution of references among conveyancing counsel

The Court may direct or transfer a reference to a particular conveyancing counsel of the Court.

BAH CPR 52.8

52.8 Obtaining counsel's opinion on reference

(1) When any matter is referred to conveyancing counsel of the Court, a minute of the order of reference shall be prepared and signed by the Registrar.

(2) A minute signed as mentioned in paragraph (1) is sufficient authority for counsel to proceed with the reference.

DRAFT #1

Part 53

Receivers by application; receivers by equitable execution; debenture holders' action and receiver's register

Section I

Receivers by application

CPR 53.1

53.1 Application for receiver and injunction

- (1) An application for the appointment of a receiver must be made by application.
- (2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.
- (3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so without notice.
- (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 an application for the appointment of the receiver and may require such application to be issued and to be returnable on such date as the Court may direct.

CPR 53.2

53.2 Giving of security by receiver

- (1) Where a judgment is given, or order made, directing the appointment of a receiver, then, unless the judgment, or order otherwise directs, a person shall not be appointed receiver in accordance with the judgment or order until he has given security in accordance with this rule.
- (2) Where by virtue of paragraph (1), or of any judgment or order appointing a person named therein to be receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.
- (3) Unless the Court otherwise directs, the security shall be by guarantee or by an undertaking.
- (4) The guarantee or undertaking must be filed in the Registry, and it shall be kept as of record until duly vacated.

CPR 53.3

53.3 Remuneration of receiver

A person appointed receiver shall be allowed such proper remuneration, if any, as may be fixed by the Court.

CPR 53.4

53.4 Receiver's accounts

- (1) A receiver must submit accounts to the Court at such intervals or on such dates as the Court may direct in order that they may be passed.
- (2) Unless the Court otherwise directs, each account submitted by a receiver must be accompanied by an affidavit verifying it.
- (3) The receiver's account and affidavit (if any) must be filed in at the Registry, and the party having the conduct of the cause or matter must thereupon obtain an appointment for the purpose of passing such account.
- (4) The passing of a receiver's account must be certified by the Registrar.

CPR 53.5

53.5 Payment of balance, etc., by receiver

The receiver must pay into court any balance shown on the accounts under rule 53.4 as due from him, or such part thereof as the Court may certify as proper to be paid in by him, within 14 days of the passing of any account or within such other period as fixed by the Court.

CPR 53.6

53.6 Default by receiver

- (1) Where a receiver fails to attend for the passing of any account of his, or fails to submit any account, make any affidavit or do any other thing which he is required to submit, make or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.
- (2) Without prejudice to paragraph (1), where a receiver fails to attend for the passing of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum shown by his

account as due from him, the Court may disallow any remuneration claimed by the receiver in any subsequent account and may, where he has failed to pay any such sum into court, charge him with interest at the rate of \$12 per cent per annum on that sum while in his possession as receiver.

Section II

Receivers by way of equitable execution

CPR 53.7

53.7 Appointment of receiver by way of equitable execution

(1) Where an application is made for the appointment of a receiver by way of equitable execution, the Court in determining whether it is just or convenient that the appointment should be made shall have regard to the amount claimed by the judgment creditor, to the amount likely to be obtained by the receiver and to the probable costs of his appointment and may direct an inquiry on any of these matters or any other matter before making the appointment.

(2) Where on an application for the appointment of a receiver by way of equitable execution it appears to the Court that the judgment creditor is resident outside the scheduled territories, or is acting by order or on behalf of a person so resident, then, unless the permission of the Central Bank of The Bahamas required by the Exchange Control Regulations has been given unconditionally or on conditions that have been complied with, any order for the appointment of a receiver shall direct that the receiver shall pay into court to the credit of the cause or matter in which he is appointed any balance due from him after deduction of his proper remuneration.

CPR 53.8

53.8 Application of rules as to appointment of receiver, etc.

An application for the appointment of a receiver by way of equitable execution may be made in accordance with rule 53.1 and rules 53.2 to 53.6 shall apply in relation to a receiver appointed by way of equitable execution as they apply in relation to a receiver appointed for any other purpose.

Section III

Debenture Holders' Action and Receiver's Register

CPR 53.9

53.9 Receiver's register

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 Part referred to as 'the receiver's register').

CPR 53.10

53.10 Registration of transfers, etc.

(1) Where a receiver is required by rule 53.9 to keep a receiver's register then, on the application of any person entitled to any debentures or debenture stock by virtue of any transfer or other transmission of title, and on production of such evidence of identity and title as the receiver may reasonably require, the receiver shall, subject to the following provisions of this rule, register the transfer or other transmission of title in that register.

(2) Before registering a transfer the receiver must, unless the due execution of the transfer is proved by affidavit, send by post to the registered holder of the debentures or debenture stock transferred at his registered address (or by email if there is a registered email address for the holder of the debentures or debenture stock)) a notice stating—

- (a) that an application for the registration of the transfer has been made; and
- (b) that the transfer will be registered unless within the period specified in the notice the holder informs the receiver that he objects to the registration,

and no transfer shall be registered until the period so specified has elapsed. The period to be specified in the notice shall in no case be less than 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 receiver.

CPR 53.11

53.11 Application for rectification of receiver's register

- (1) Any person aggrieved by anything done or omission made by a receiver under rule 53.10 may apply to the Court for rectification of the receiver's register, the application to be made by application notice in the action in which the receiver was appointed.
- (2) The summons shall in the first instance be served only on the claimant or other party having the conduct of the action but the Court may direct that the application notice be served on any other person appearing to be interested.
- (3) The Court hearing an application under this rule may decide any question relating to the title of any person who is party to the application to have his name entered in or omitted from the receiver's register and generally may decide any question necessary or expedient to be decided for the rectification of that register.

CPR 53.12

53.12 Receiver's register evidence of transfers, etc.

Any entry made in the receiver's register, if verified by an affidavit made by the receiver or by such other person as the Court may direct, shall in all proceedings in the action in which the receiver was appointed be evidence of the transfer or transmission of title to which the entry relates and, in particular, shall be accepted as evidence thereof for the purpose of any distribution of assets, notwithstanding that the transfer or transmission has taken place after the making of a certificate in the action certifying the holders of the debentures or debenture stock certificates.

CPR 53.13

53.13 Proof of title of holder of bearer debenture, etc.

- (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 title) be sufficiently proved by the production of the debenture or debenture stock certificate, as the case may be, together with a certificate of identification signed by the person producing the debenture or certificate identifying the debenture or certificate produced and certifying the person (giving his name and address) who is the holder thereof.

(3) Where such a debenture or certificate as is referred to in paragraph (1) is produced in the chambers of the judge, the attorney of the plaintiff in the action must cause to be indorsed thereon a notice stating—

- (a) that the person whose name and address is specified in the notice (being the person named as the holder of the debenture or certificate in the certificate of identification produced under paragraph (2)) has been recorded in the chambers of the judge as the holder of the debenture or debenture stock certificate, as the case may be; and
- (b) that that person will, on producing the debenture or debenture stock certificate, as the case may be, be entitled to receive payment of any dividend in respect of that debenture or stock unless before payment a new holder proves his title in accordance with paragraph (2); and
- (c) that if a new holder neglects to prove his title as aforesaid he may incur additional delay, trouble and expense in obtaining payment.

(4) The attorney of the plaintiff in the action must preserve any certificates of identification produced under paragraph (2) and must keep a record of the debentures and debenture stock certificates so produced and of the names and addresses of the persons producing them and of the holders thereof, and, if the Court requires it, must verify the record by an affidavit.

CPR 53.14

53.14 Requirements in connection with payments

(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, the Public Treasurer shall not make a payment in respect of any such debenture or stock unless either there is produced to him the certificate for which paragraph (2) provides or the Court has in the case in question for special reason dispensed with the need for the certificate and directed payment to be made without it.

(2) For the purpose of obtaining any such payment the debenture or debenture stock certificate must be produced to the attorney of the plaintiff in the action or to such other person as the Court may direct, and that attorney 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, and send the certificate to the Public Treasurer.

DRAFT #1

Part 54
Judicial review

CPR 54.1

54.1 Cases appropriate for application for judicial review

(1) An application for—

- (a) an order of *mandamus*, prohibition or *certiorari*; or
- (b) an injunction under section 18 of the Supreme Court Act restraining a person from acting in any office of a public nature in which he is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this Part.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order or *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.

CPR 54.2

54.2 Joinder of claims for relief

On an application for judicial review any relief mentioned in rule 54.1(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.

CPR 54.3

54.3 Grant of leave to apply for judicial review

- (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 shall be made without notice to a judge by filing in the Registry—
 - (a) a notice in Form A in the Schedule to this Part containing a statement of—
 - (i) the name and description of the applicant;
 - (ii) the relief sought and the grounds upon which it is sought;
 - (iii) the name and address of the applicant's counsel and attorney (if any); and
 - (iv) the applicant's address for service; and
 - (b) an affidavit which verifies the facts relied on.
- (3) The judge may determine the application without a hearing, unless a hearing is requested in the notice of application, and need not sit in open Court; PROVIDED that in no case shall leave be refused or granted on terms not sought in the application without giving the applicant a hearing.
- (4) Where the application for leave in any criminal cause or matter is refused by the judge, or is granted on terms, the applicant may renew it by applying to the Court of Appeal.
- (5) In order to renew his application for leave the applicant shall, within 10 days of being served with notice of the judge's refusal, file in the Registry notice of his intention in Form [] in the Schedule to this Part.
- (6) The Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit provided that if the applicant shall fail to amend his statement within the time specified by the order of the court then such order shall cease to have effect unless the court orders otherwise.
- (7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of *certiorari* to remove for the purpose of its being quashed any judgment, order, conviction or other proceedings which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then—

- (a) if the relief sought is an order of prohibition or *certiorari* and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

CPR 54.4

54.4 Delay in applying for relief

(1) An application for judicial review shall be made promptly and in any event within six months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) Where the relief sought is an order of *certiorari* in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

CPR 54.5

54.5 Mode of applying for judicial review

(1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made to a judge by an originating application.

(2) In any other such cause or matter, the application shall be made by an originating application to a judge sitting in open Court, unless the Court directs that it shall be made to a judge in Chambers.

(3) The originating application shall be served on all persons directly affected and where it relates to any proceedings in or before a magistrates court or tribunal and the object of the application is either to compel the magistrates court or tribunal or an officer of the magistrates court or tribunal to do any act in relation to the proceedings or to quash them or any order made therein, the application notice shall also be served on the Clerk or Registrar of the magistrates court or tribunal and, where any objection to the conduct of the magistrate or tribunal is to be made, on the magistrate or the president of the tribunal.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 clear days between the service of the application notice and the hearing.

(5) The application must be entered for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on all persons who have been served with the application notice shall be filed before the originating application is entered for hearing and, if any person who ought to be served, under this rule has not been served, the affidavit shall state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the application.

(7) If on the hearing of the application 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 originating application may be served on that person.

CPR 54.6

54.6 Statements and affidavits

(1) Copies of the statement in support of an application for leave under rule 54.3 shall be served with the originating application 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 application allow the applicant to amend his statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow

further affidavits to be used 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 statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within 6 weeks after service upon him of the documents required to be served by paragraph (1).

(5) Each party to the application shall supply to every other party on demand copies of every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 54.3.

CPR 54.7

54.7 Claim for damages

(1) On an application for judicial review the Court may, subject to paragraph (2) award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Any rule and any practice direction relating to the contents and form of a statement of case shall apply to a statement relating to a claim for damages in any application under this Part.

CPR 54.8

54.8 Application for disclosure, further information, cross-examination, etc

(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers, notwithstanding that the application for judicial review is to be heard by a judge in open court.

(2) In this paragraph 'interlocutory application' includes an application for an order discontinuing the application or for cross-examination of the maker of an affidavit.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

CPR 54.9

54.9 Hearing of application for judicial review

(1) On the hearing of any application under rule 54.5, any person who desires to be heard in opposition to the application, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with an application notice.

(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 application he has filed in the Registry a copy thereof verified by affidavit accounting for his failure to do so to the satisfaction of the Court hearing the application notice.

(3) Where an order for *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 the Supreme Court.

(4) Where the relief sought is an order of *certiorari* and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the Court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where 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 a claim form by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by a claim form; and the court shall give such directions as it considers appropriate pursuant to its case management powers.

(6) No action or proceedings shall be begun or prosecuted against any person in respect of anything done in obedience to an order of *mandamus*.

CPR 54.10

54.10 Appeal from Judge's order

No appeal shall lie from an order made under paragraph (3) of rule 54.3 on an application for leave which may be renewed under paragraph (4) of that rule.

CPR 54.11

54.11 Meaning of Court

In relation to the hearing by a judge of an application for leave under rule 54.3 or of an application for judicial review, any reference in this Part to 'the Court' shall, unless the context otherwise requires, be construed as a reference to the judge.

SCHEDULE

Form A (rule 54.3(2))

Application for leave to apply for judicial review

**THE BAHAMAS
IN THE SUPREME COURT**

Name address and description of applicant.....

Judgment, Order, Decision or other proceeding in respect of
which relief is sought.....

Relief Sought.....

Name and address of applicant's Attorney, or if no Attorney acting, the
address for service of the applicant

.....

Signed..... Dated.....

Grounds and reasons therefor on which relief is sought.....

Note: Grounds must be supported by affidavit which verifies facts relied on.

*Form B (rule 54.3(5))
Notice of renewal of application for leave to apply for judicial review*

**THE BAHAMAS
IN THE SUPREME COURT**

Name, address and description of applicant.....

The applicant intends to renew his application for leave to apply for Judicial Review.....

Signed..... Date.....

Received in the Registry of the Supreme Court.

DRAFT #1

Part 55

Application for writ of *habeas corpus*

CPR 55.1

55.1 Application for writ of *habeas corpus ad subjiciendum*

(1) An application for a writ of *habeas corpus ad subjiciendum* must be made to a judge in court except that in cases where the application is made on behalf of an infant, it must be made in the first instance to a judge otherwise than in court.

(2) An application for such writ may be made without notice and, subject to paragraph (3), must be supported by an affidavit by the person restrained showing that it is made at his instance and setting out the nature of the restraint.

(3) Where the person restrained is unable for any reason to make the affidavit required by paragraph (2), the affidavit may be made by some other person on his behalf and that affidavit must state that the person restrained is unable to make the affidavit himself and for what reason.

CPR 55.2

55.2 Power of court to whom *ex parte* application made

(1) The judge to whom an application under rule 1 is made without notice 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 application applying for the writ be issued or that an application therefor be made orally to a judge in court;
- (b) where the application is made to a judge in court, adjourn the application so that notice thereof may be given.

(2) The originating application must be served on the person against whom the issue of the writ is sought and on such other persons as the judge may direct, and, unless the judge otherwise directs, there must be at least 8 clear days between the service of the originating application and the date named therein for the hearing of the application.

CPR 55.3

55.3 Copies of affidavits to be supplied

Every party to an application under rule 55.1 must supply to every other party on demand and on payment of the proper charges copies of the affidavits which he proposes to use at the hearing of the application.

CPR 55.4

55.4 Power to order release of person restrained

Without prejudice to rule 55.2(1), the judge hearing an application for a writ of *habeas corpus ad subjiciendum* may in his discretion order that the person restrained be released, and such order shall be a sufficient warrant to any superintendent of a prison, constable or other person for the release of the person under restraint.

CPR 55.5

55.5 Directions as to return to writ

Where a writ of *habeas corpus ad subjiciendum* is ordered to issue, the judge by whom the order is made shall give directions as to the judge before whom, and the date on which, the writ is returnable.

CPR 55.6

55.6 Service of writ and notice

(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 a superintendent of a prison or other public official, it must be served by leaving it with a servant or agent of the person to whom the writ is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person, the writ must be served in manner provided by this rule on the person first named in the writ, and copies must be served on each of the other persons in the same manner as the writ.

(4) There must be served with the writ a notice (in Form EX24 in Appendix A) stating the 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.

(5) A copy of the writ must be served on the Attorney-General.

CPR 55.7

55.7 Return to the writ

(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 other return substituted therefor, by leave of the judge before whom the writ is returnable.

CPR 55.8

55.8 Procedure at hearing of writ

When a return to a writ of *habeas corpus ad subjiciendum* is made, the return shall first be read, and motion then made for discharging or remanding the person restrained or amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel shall be heard first, then the counsel for the Crown, and then one counsel for the person restrained in reply.

CPR 55.9

55.9 Application to be made on affidavit

(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.

CPR 55.10

55.10 Form of Writ

A writ of *habeas corpus* must be in Form [], [] or [] whichever is appropriate.

Part 56
Applications by the Attorney General

CPR 56.1

56.1 Attorney-General application

(1) Every application to the Supreme Court by the Attorney-General under section 29 of the Supreme Court Act, 1996 shall be heard and determined by a judge.

(2) The application must be made by an originating application, notice of which, together with an affidavit in support, shall be filed in the Registry and served on the person against whom the order is sought.

DRAFT

Part 57

Appeals, etc., to Supreme Court by case stated: appeal from magistrate's court by case stated

BAH CPR 57.1

57.1 General

- (1) All appeals from a magistrate's court by case stated shall be heard and determined by a judge of the Supreme Court.
- (2) An appeal from a magistrate's court by case stated shall not be set down for hearing unless and until the case and a copy of the judgment, order or decision in respect of which the case has been stated have been served on the office of the Attorney-General.
- (3) No such appeal shall be filed after the expiration of 6 months from the date of the judgment, order or decision in respect of which the case was stated unless the delay is accounted for to the satisfaction of a judge of the Supreme Court. Notice of intention to apply for an extension of time for filing the appeal must be served on the respondent at least 3 clear days before the day named in the notice for the hearing of the application.
- (4) Where any such appeal has not been filed by reason of a default in complying with the provisions of this rule, the magistrate's court may proceed as if no case had been stated.

CPR 57.2

57.2 Form of case

Where the judgment, order or decision of the magistrate's court in respect of which a case is to be stated states all the relevant facts found by that court and the questions of law to be determined by the Supreme Court, a copy of the judgment, order or decision signed by the person who presided at the hearing in the magistrate's court must be annexed to the case, and the facts so found and the questions of law to be determined shall be sufficiently stated in that case by referring to the statement thereof in the judgment, order or decision.

CPR 57.3

57.3 Notice of filing of appeal

Within 4 days after an appeal from the magistrate's court by case stated is filed the appellant must serve notice of the appeal on the respondent.

CPR 57.4

57.4 Appeals relating to affiliation proceedings

Appeals from the magistrate's court by case stated which relate to affiliation proceedings shall be heard and determined by a judge of the Supreme Court, and the foregoing provisions of this Part shall accordingly apply to such appeals.

CPR 57.5

57.5 Case stated by Ministers, tribunal, etc.

- (1) The jurisdiction of the Supreme Court under any enactment to hear and determine a case stated by a Minister of the Crown, government department, tribunal or other person, or a question of law referred to that Court by such a Minister or department or tribunal or other person by way of case stated, shall be exercised by a judge of the Supreme Court.
- (2) The jurisdiction of the Supreme Court under any enactment to hear and determine an application for an order directing such a Minister or department or tribunal or other person to state a case for determination by the Supreme Court, or to refer a question of law to that Court by way of case stated, shall be exercised by a judge of the Supreme Court.
- (3) The following rules of this Part shall apply to proceedings for determination of such a case, question or application and, in relation to any such proceedings, shall have effect subject to any provision made in relation to those proceedings by any other provision of these Rules 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.
- (5) 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.

CPR 57.6

57.6 Application for order to state a case

- (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 application; the persons to be served with the originating application 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 originating application 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 its refusal to state a case.

(3) The application must be set down for hearing, and the notice thereof served, within 14 days after receipt by the applicant of notice of the refusal of his request to state a case.

CPR 57.7

57.7 Signing and service of case

(1) A case stated by a tribunal must be signed by the chairman or president of the tribunal, and a case stated by any other person must be signed by him 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 Supreme 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.

CPR 57.8

57.8 Proceedings for determination of case

(1) Proceedings for the determination by the Supreme 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 application by the person on whom the case was served in accordance with rule 57.7(2).

(2) The persons to be served with the originating application 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 originating application on any such party.
- (3) The originating application must set out the applicant's contentions on the question of law to which the case stated relates.
- (4) The originating application must be set down 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 application 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 otherwise directs, the motion shall not be heard sooner than 7 days after service of the originating application.

CPR 57.9

57.9 Amendment of case

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.

CPR 57.10

57.10 Right of Minister to appear and be heard

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.

Part 58
Appeals from the registrar

CPR 58.1

58.1 Appeals from certain decisions of the registrar to judge in chambers

- (1) Except as provided by rule 2, an appeal shall lie to a judge in chambers from any judgment, order or decision of the Registrar.
- (2) The appeal shall be brought by filing a Notice of Appeal and serving a copy thereof on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice.
- (3) Unless the Court otherwise orders, the Notice must be filed:
 - (a) if it is made by a party who was present or represented when the judgment, order or decision of the Registrar was given within 5 working days after the judgment, order or decision; or
 - (b) if it is made by a party who was not present or represented when the judgment, order or decision of the Registrar was given within 5 working days after receipt by the party of notice of the judgment, order or decision.
- (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.

CPR 58.2

58.2 Appeals from certain decisions of registrar to Court of Appeal

- (1) An appeal shall lie to the Court of Appeal from any judgment, order or decision of a registrar (other than an interlocutory judgment, order or decision) given or made –
 - (a) on the hearing or determination of any cause, matter, question or issue tried before or referred to him ; or
 - (b) on an assessment of damages under Part 16 or otherwise; or
 - (c) on the hearing or determination of any proceedings under Part 45 or Part 49; or

(d) on the hearing or determination of any other proceedings whereby such an appeal is provide for in any enactment, provision or Practice Direction.

(2) In the case of an appeal in proceedings under Part 45 or Part 49 the time within which notice of appeal must be filed and served shall be the same as in the case of an appeal from an interlocutory order.

DRAFT #1

Part 59
Admiralty proceedings

CPR 59.1

59.1 Application and interpretation

(1) This Part applies to Admiralty causes and matters, and the other provisions of these Rules apply to those causes and matters subject to the provisions of this Part.

(2) In this Part—

‘action in rem’ means an Admiralty action in rem;

‘caveat against arrest’ means a caveat entered in the caveat book under rule 59.6;

‘caveat against release and payment’ means a caveat entered in the caveat book under rule 59.14;

‘caveat book’ means the book kept in the Registry in which caveats issued under this Part are entered;

‘limitation action’ means an action by shipowners or other persons under the Merchant Shipping Act for the limitation of the amount of their liability in connection with a ship or other property;

‘marshal’ means the Admiralty Marshal;

‘pleading’ means statement of claim, defence or reply;

‘ship’ includes any description of vessel used in navigation.

CPR 59.2

59.2 Certain Admiralty actions

(1) Every action to enforce a claim for damage, loss of life or personal injury arising out of—

- (a) a collision between ships; or
- (b) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two ships; or
- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulation; and

(d) every limitation action, shall be heard by the Supreme Court.

(2) In this rule 'collision regulations' means regulations made under section 189 of the Merchant Shipping Act, or any such rules as are mentioned in subsection (3) of section 289 of that Act.

CPR 59.3

59.3 Issue of claim and appearance

(1) An action in rem must be begun by statement of claim, and the statement of claim must be in Form ADM2 or ADM3 in Appendix B, whichever is appropriate.

(2) Rule 8.11 shall apply in relation to a statement of claim by which an Admiralty action is begun, and Part 9 shall apply in relation to such an action.

CPR 59.4

59.4 Service of statement of claim out of the jurisdiction

(1) Subject to the following provisions of this rule, service out of the jurisdiction of a statement of claim containing any such claim as is mentioned in rule 59.2(1) is permissible with the permission of the Court if, but only if—

- (a) the defendant has his habitual residence or a place of business within The Bahamas; or
- (b) an action arising out of the same incident or series of incidents is proceeding in the Supreme Court or has been heard and determined in the Supreme Court; or
- (c) the defendant has submitted or agreed to submit to the jurisdiction of the Supreme Court.

(2) Part 7 shall apply in relation to an application for the grant of leave under this rule.

(3) Paragraph 1 shall not apply to an action in rem.

CPR 59.5

59.5 Warrant of arrest

(1) After a statement of claim has been issued in an action in rem a warrant in Form ADM4 in Appendix B for the arrest of the property against

which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the claimant or of the defendant, as the case may be.

(2) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a *praecipe* in Form ADM5 in Appendix B requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (6), (7) and (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court, or where notice has been given under paragraph (11), a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in the Island of New Providence, being an action for the possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(6) Every affidavit must state—

- (a) the name and address of the applicant for the warrant;
- (b) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and
- (c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(7) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent. A copy of any such notice must be annexed to the affidavit.

(8) An affidavit in such an action as is referred to in paragraph (6), must have exhibited thereto a certified copy of the bottomry bond, or of the translation thereof.

CPR 59.6

59.6 Caveat against arrest

(1) A person who desires to prevent the arrest of any property must file in the Registry a *praecipe*, in Form [] in Appendix [], signed by him or his attorney undertaking—

- (a) to enter an appearance in any action that may be begun against the property described in the *praecipe*; and
- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the *praecipe* or to pay the amount so specified into court; and on the filing of the *praecipe* a caveat against the issue of a warrant to arrest the property described in the *praecipe* shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

CPR 59.7

59.7 Remedy where property protected by caveat is arrested (without good and sufficient reason)

Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

CPR 59.8

59.8 Service of statement of claim in action in rem

(1) Subject to paragraph (2), a statement of claim by which an action in rem is begun must be served on the property against which the action is brought except—

- (a) where the property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried; or
- (b) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A statement of claim need not be served on the property or Registrar mentioned in paragraph (1) if:

- (a) the defendant's attorney indorses on the statement of claim a statement that he accepts service of the statement of claim on behalf of that defendant, in which event the statement of claim 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 or
- (b) a statement of claim is not duly served on a defendant but he unconditionally acknowledged service in the action begun by the statement of claim, the statement of claim shall be deemed to have been duly served on him and to have been so served on the date on which he entered the Acknowledgment of Service.

(3) Where by virtue of this rule a statement of claim is required to be served on any property, the claimant may request service of the statement of claim to be effected by the marshal if, but only if, a warrant of arrest has been issued for service against the property or the property is under arrest, and in that case the claimant must file in the Registry and lodge—

- (a) the statement of claim and a copy thereof; and
- (b) an undertaking to pay on demand all expenses incurred by the marshal or his substitute in respect of the service of the statement of claim, and thereupon the marshal or his substitute shall serve the claim form on the property described in the *praecipe*.

(4) Where the claimant in an action in rem, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the statement of claim forthwith on the person at whose instance the caveat was entered.

(5) Where a statement of claim by which an action in rem is begun is amended under rule 20.4 (amendment of pleading) after service thereof, then, unless the Court otherwise directs on an application made without notice, the amended statement of claim must be served on any defendant

who has entered an acknowledgement of service in the action or, if no defendant has acknowledged service therein, on the property or Registrar mentioned in paragraph (1) of this rule.

CPR 59.9

59.9 Committal of attorney failing to comply with undertaking

Where the attorney of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his attorney to enter an acknowledgement of service in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

CPR 59.10

59.10 Execution, etc. of warrant of arrest

- (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.
- (2) A warrant of arrest may be executed only by the marshal or his substitute.
- (3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal to pay the fees and expenses of the marshal has been lodged in the marshal's office.
- (4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.
- (5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.
- (6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.
- (7) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the Registry by the marshal.

CPR 59.11

59.11 Service on ships, etc.: how effected

- (1) Subject to paragraph (2), service of a warrant of arrest or statement of claim in an action in rem against a ship, freight or cargo shall be effected by—

- (a) affixing the warrant or statement of claim for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and
 - (b) on removing the warrant or statement of claim, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the statement of claim) on a sheltered conspicuous part of the ship.
- (2) Service of a warrant of arrest or statement of claim in an action in rem against freight or cargo or both shall, if the cargo has been landed or trans-shipped, be effected—
- (a) by placing the warrant or statement of claim for a short time on the cargo, and, on removing the warrant or statement of claim, leaving a copy of it on the cargo; or
 - (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or statement of claim with that person.

CPR 59.12

59.12 Applications with respect to property under arrest

- (1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.
- (2) The marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

CPR 59.13

59.13 Release of property under arrest

- (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall be released only under the authority of an instrument of release (in this rule referred to as a 'release'), in Form [] in Appendix [], issued out of the Registry.
- (2) A party at whose instance any property was arrested may, before an acknowledgement of service is entered in the action, file a notice

withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must—

- (a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his attorney requiring the caveat to be withdrawn; and
- (b) file a *praecipe* in Form [] in Appendix [] requesting issue of a release.

(6) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal either—

- (a) pay the fees of the marshal already incurred and lodge in the marshal's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release; or
- (b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(7) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (6), may vary or revoke the directions.

CPR 59.14

59.14 Caveat against release and payment

(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of the court of any money in court representing the proceeds of sale of that property, must file in the Registry a *praecipe* as caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

CPR 59.15

59.15 Duration of caveats

(1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a *praecipe* in Form [] of Appendix [].

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

CPR 59.16

59.16 Bail

(1) Bail on behalf of a party to an action in rem must be given by bond in Form [] in Appendix []; and the sureties to the bond must enter into the bond before a notary public not being a notary public who, or whose partner, is acting as attorney or agent for the party on whose behalf the bail is to be given, or before the registrar or any deputy or assistant registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the notary public or the registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the

affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

CPR 59.17

59.17 Interveners

(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made without notice by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must file an acknowledgment of service therein in the Registry within the period specified in the order granting leave; and rules 9.1 to 9.5 shall, with the necessary modifications, apply in relation to that acknowledgment of service by an intervener as if he were a defendant named in the statement of claim.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

CPR 59.18

59.18 Preliminary acts

(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the claimant must, within 2 months after issue of the statement of claim, and the defendant must, within 2 months after acknowledging service or filing a defence (in accordance with rule 9.1(2)), and before any pleading is served, lodge in the Registry a document (in these Rules referred to as a preliminary act) containing a statement of the following particulars—

- (i) the names of the ships which came into collision and their ports of registry;
- (ii) the date and time of the collision;

- (iii) the place of the collision;
- (iv) the direction and force of the wind;
- (v) the state of the weather;
- (vi) the state, direction and force of the tidal or other current;
- (vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- (viii) the lights (if any) carried by the ship;
- (ix) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
(b) the distance, bearing and approximate heading of the other ship when first seen;
- (x) what light or combination of lights (if any) of the other ship was first seen;
- (xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;
- (xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;
- (xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xiv) what sound signals (if any) were given, and when;
- (xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the proper officer and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the

parties or his attorney to the opening of the preliminary acts is filed with the proper officer.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without statements of case but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) In an action in which preliminary acts are required, the claimant must serve a particulars of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filled unless the Court orders the action to be tried without pleadings.

CPR 59.19

59.19 Failure to lodge preliminary act: proceedings against party in default

(1) Where in such an action as is referred to in rule 59.18(1) the claimant fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by interlocutory application for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Part 12 (default judgment) shall apply as if the defendant's failure to lodge the preliminary act within that period was a failure by him to serve a defence on the claimant within the period fixed by or under these Rules for service thereof, and the claimant, if he has lodged a preliminary act may, subject to Part 65 (proceedings against the Crown), accordingly enter judgment against the defendant in accordance with Part 12.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the claimant, if he has lodged such an act, may apply to the Court by interlocutory application apply for judgment against that defendant, and it shall not be necessary for

the claimant to file or serve a particulars of claim or an affidavit before the hearing of the application.

(4) On the hearing of an application under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the claimant provided he proves his case, it shall order the claimant's preliminary act to be opened and require the claimant to satisfy the Court that his claim is well founded. The claimant's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the claimant in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 59.18(1) or of any order of the Court the claimant or defendant, as the context of the reference requires, is required to lodge a preliminary act.

CPR 59.20

59.20 Special provisions as to pleadings in collision, etc., actions

(1) Notwithstanding any provision in these Rules to the contrary, the claimant in any such action as is referred to in rule 59.2(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the claimant, then, there shall be an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

CPR 59.21

59.21 Judgment by default

(1) Where a statement of claim is served under rule 59.8(4) on a party at whose instance a caveat against arrest was issued, then if—

- (a) the sum claimed in the action begun by the statement of claim does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat; and
- (b) that party or his attorney does not within 14 days after service of the statement of claim fulfil the undertaking given by him as aforesaid, the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to file an acknowledgment of service within the time limited for appearing, then, on the expiration of 14 days after service of the statement of claim and upon filing an affidavit proving due service of the statement of claim, an affidavit verifying the facts on which the action is based and, if a particulars of claim was not indorsed on the statement of claim, a copy of the particulars of claim, the claimant may apply to the Court for judgment by default. Where the statement of claim is deemed to have been duly served on the defendant by reason that the defendant's attorney has indorsed on the statement of claim a statement that he accepts service of the statement of claim on behalf of that defendant or was served on the Registrar under rule 59.8, an affidavit proving due service of the statement of claim need not be filed under this paragraph, but the statement of claim indorsed as mentioned in rule 59.1(2) or indorsed by the Registrar with a statement that he accepts service of the statement of claim must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the claimant, then, after the expiration of the period fixed by or under these Rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a particulars of claim was not indorsed on the statement of claim, a copy of the particulars of claim, the claimant may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under

these Rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the claimant in any such action as is referred to in rule 59.2(1)(a).

(7) An application to the Court under this rule must be made by interlocutory application and if, on the hearing of the application, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

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

(10) Part 12 (default judgments) shall not apply to actions in rem.

CPR 59.22

59.22 Order for sale of ship: determination of priority of claims

(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a); or
- (b) in any other case, after obtaining judgment, apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

- (a) that the order of priority of the claims against the proceeds of the sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into Court;
 - (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;
 - (c) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).
- (3) The notice referred to in paragraph (2)(c) must state—
- (a) that the ship (naming her) has been sold by order of the Supreme Court in an action in rem, identifying the action;
 - (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
 - (c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and
 - (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.
- (4) The marshal must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.
- (5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.
- (6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by interlocutory application, and a copy of the application notice, must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.
- (7) In this rule 'the Court' means a judge in person.

CPR 59.23

59.23 Appraisalment and sale of property

- (1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a *praecipe* in Form [] in Appendix [].
- (2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form [] in Appendix [].
- (3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.
- (4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.
- (5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the assessment to which objection is taken may be reviewed in the same manner and by the same persons as any decisions of the Registrar made in assessment proceedings under Part 16.

CPR 59.24

59.24 Payment into and out of court

- (1) Parts 35 and 36 shall apply in relation to an Admiralty action as they apply to an action for debt or damages.
- (2) Subject to paragraph (3), money paid into court shall not be paid out except in pursuance of an order of a judge in person.
- (3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—
 - (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;

- (b) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
- (c) where in any other case there is no dispute between the parties.

(4) Where, in an Admiralty action, money has been paid into court pursuant to an order made under Section III of Part 17(interim payment), the Registrar may make an order for the money to be paid out to the person entitled thereto.

CPR 59.25

59.25 Application of Parts 25, 26, 27 and 38 (case management objective, powers and procedure)

(1) Parts 25, 26, 27 and 38 shall apply to Admiralty actions (other than limitation actions and actions ordered to be tried as Admiralty short causes) as it applies to other actions, except that—

- (a) the interlocutory application for directions shall be returnable in not less than seven weeks; and
- (b) unless a judge otherwise directs, the interlocutory application for directions shall be heard by a judge in person.

(2) An order made at a case management conference shall determine whether the trial is to be without assessors or with one or more assessors, nautical assessors or other assessors.

(3) The trial shall be in the Supreme Court before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the interlocutory application for directions otherwise provides.

(4) An order may be made on the case management conference, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

(5) Any such order or direction as is referred to in paragraph (2), (3) or (4) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by a judge in person or, with the judge's consent, by the Registrar.

CPR 59.26

59.26 Fixing date for trial, etc.

(1) The Court may at any stage of an action, either on an application made by interlocutory application by any party or by order made by virtue of rule 59.30, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action must be set down for trial—

- (a) where the date was fixed on an application made under paragraph (1), by the applicant;
- (b) where the date was fixed by order made under any other rule, by the claimant.

Where the applicant or claimant does not, within the period fixed by this paragraph, set the action down for trial, any other party may set it down or an application may be made to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or make such other order as it thinks just.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, unless the Court otherwise orders, file in the Registry—

- (a) if trial with one or more assessors has been ordered, a *praecipe* for his or their attendance; and
- (b) three copies or, in the case of a trial with one or more assessors, four copies (if with one assessor) and five copies (if with two) of any pleadings, preliminary acts, notices given under rule 59.18(3) and statements filed under rule 59.18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the Registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Part 37 (discontinuance) shall not apply to Admiralty actions.

CPR 59.27**59.27 Stay of proceedings in collision, etc. actions until security given**

Where an action in rem, being an action to enforce any such claim as is referred to in rule 59.2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then—

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest; but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim, the Court may stay proceedings in the first-mentioned action until security is given to satisfy any judgment given in favour of that party.

CPR 59.28**59.28 Inspection of ship, etc.**

The Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

CPR 59.29**59.29 Examination of witnesses and other persons**

(1) The power conferred Part 33 (Court attendance of witnesses and depositions), shall extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(Rule 33.16 provides that the court may permit a party to issue a witness summons requiring any person to attend prior to the date of trial at a time and place specified in the summons for the purpose of producing one or more documents)

(2) The power conferred by Part 33 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being counsel or attorney, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined, and that attorney shall file it in the Registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 59.18, an order shall not be made authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) The Chief Justice may appoint such number of attorneys as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

CPR 59.30

59.30 Trial as an Admiralty short cause

(1) Where any defendant has entered an acknowledgment in an Admiralty action, the claimant or that defendant may, within 7 days after the filing of the same, apply by an interlocutory application, returnable

before the Registrar for an order that the action be tried as an Admiralty short cause.

(2) The interlocutory application shall be served on every other party to the action not less than 7 days before the hearing.

(3) On the hearing of the application the Registrar may, if he decides to make an order under paragraph (1)—

- (a) direct that the trial of the action be heard without pleadings or further pleadings;
- (b) abridge the period within which a person is required or authorised by these Rules to do any act in the proceedings;
- (c) in the case of such an action as is referred to in rule 59.18(1), fix the time within which, notwithstanding the provisions of that rule, preliminary acts are to be lodged;
- (d) require the parties to the action to make mutual disclosure of documents notwithstanding that the action is ordered to be tried without pleadings;
- (e) if the parties so agree, order that the evidence in support of their respective cases may be given in whole or in part by the production of documents or entries in books;
- (f) give such directions as could be given on an interlocutory application for directions in the action; and
- (g) fix a date for the trial of the action.

(4) The party issuing an interlocutory application under this rule shall include in it an application for such orders or directions as he desires the Registrar to make or give in the exercise of the powers set out in paragraph (3), and any party on whom the application is served shall, within 3 days after service of the interlocutory application on him, give notice to every other party of any other order or direction he desires the Registrar to make or give as aforesaid and lodge a copy of such notice in the Registry.

(5) An application for an order that an Admiralty action be tried without pleadings or further pleadings shall be made by way of an application for an order under paragraph (1) and not otherwise.

(6) Where an order is made under paragraph (1), the statement of claim by which the action was begun shall be marked in the top left-hand corner 'Admiralty Short Cause'.

(7) Any application subsequent to an interlocutory application under paragraph (1) and before judgment as to any matter capable of being dealt with on an interlocutory application in the action shall be made by an interlocutory application by 2 clear days' notice to the other party stating the grounds of the application.

CPR 59.31

59.31 Further provisions with respect to evidence

Unless the Court otherwise directs, an affidavit for the purposes of rules 59.19(4), 59.21 or 59.37(2) may, except in so far as it relates to the service of a statement of claim, contain statements of information or belief with the source and grounds thereof.

CPR 59.32

59.32 Proceedings for apportionment of salvage

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by a fixed date claim form.

(2) The application notice, together with the affidavits in support thereof, must be filed in the Registry 7 days at least before the hearing of the application, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the application the judge may exercise any of the jurisdiction conferred by the Merchant Shipping Act.

CPR 59.33

59.33 Filing and service of interlocutory application

(1) The application notice in any action, together with the affidavits (if any) in support thereof, must be filed in the Registry 3 days at least before the hearing of the application unless the Court gives leave to the contrary.

(2) A copy of the application notice and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

CPR 59.34

59.34 Agreement between attorneys may be made order of court

Any agreement in writing between the attorneys of the parties or a cause or matter, dated and signed by those attorneys, may, if the Registrar thinks it reasonable and such as a judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by a judge in person.

CPR 59.35

59.35 Originating application notice procedure

- (1) An originating application notice in Admiralty may be issued out of the Registry.
- (2) Rule 59.26, (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating application.

CPR 59.36

59.36 Limitation action: parties

- (1) In a limitation action the person seeking relief shall be the claimant and shall be named in the statement of claim by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.
- (2) The claimant must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.
- (3) At least one of the defendants to the action must be named in the statement of claim by his name but the other defendants may be described generally and not named by their names.
- (4) The statement of claim must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.
- (5) In this rule and rules 59.37, 59.38 and 59.39 'name' includes a firm name or the name under which a person carries on his business, and where any person with a claim against the claimant in respect of the casualty to which the action relates has described himself for the purposes

of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the statement of claim and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the statement of claim by his name.

CPR 59.37

59.37 Limitation action: application for decree or directions

- (1) Within 7 days after the entry of acknowledgment of service by one of the defendants named by their names in the statement of claim, or, if none of them enters an acknowledgment of service, within 7 days after the time limited for appearing, the claimant, without serving a particulars of claim, must issue an interlocutory application returnable in chambers before the Registrar, asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.
- (2) The application must be supported by an affidavit or affidavits proving—
 - (a) the claimant's case in the action; and
 - (b) if none of the defendants named in the statement of claim by their names has filed an acknowledgement of service, the service of the statement of claim on at least one of the defendants so named.
- (3) The affidavit in support of the application must state—
 - (a) the names of all the persons who, to the knowledge of the claimant, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the statement of claim by their names; and
 - (b) the address of each of those persons, if known to the claimant.
- (4) The application notice and every affidavit in support thereof must, at least 7 clear days before the hearing of the application, be served on any defendant who has filed an acknowledgement of service.
- (5) On the hearing of the application the Registrar, if it appears to him that it is not disputed that the claimant has a right to limit his liability, shall make a decree limiting the claimant's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the application the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the claimant has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the application the Registrar does not make a decree limiting the claimant's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of an interlocutory application for directions under Part 27 (case management conference).

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the claimant's right to limit his liability must forthwith file a notice to that effect in the Registry and serve a copy on the claimant and on any other defendant who has filed an acknowledgement of service.

(9) If every defendant who disputes the claimant's right to limit his liability serves a notice on the claimant under paragraph (8), the claimant may take out an interlocutory application returnable in chambers before the Registrar asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to an application under this paragraph as they apply to an application under paragraph (1).

CPR 59.38

59.38 Limitation action: proceedings under decree

(1) Where the only defendants in a limitation action are those named in the statement of claim by their names and all the persons so named have either been served with the statement of claim or filed an acknowledgement of service, any decree in the action limiting the claimant's liability (whether made by the Registrar or on the trial of the action)—

(a) need not be advertised; but

(b) shall only operate to protect the claimant in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action, limiting the claimant's liability (whether made by the Registrar or on the trial of the action)—

- (a) shall be advertised by the claimant in such manner and within such time as may be provided by the decree;
- (b) shall fix a time within which persons with claims against the claimant in respect of the casualty to which the action relates may take part in the action by filing an acknowledge service as if they were a defendant in the action (if they have not already done so) and file their claims, and, in cases to which rule 59.39 applies, take out an interlocutory application if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a), shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the claimant's liability and the time allowed thereby for filing an acknowledgement of service, the filing of claims and the taking out of an interlocutory application to set the decree aside. The claimant must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar or judge thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no acknowledgment of service may be entered, claim filed or interlocutory application taken out to set aside the decree except with the leave of the Registrar or, on appeal, of the judge.

(5) Save as aforesaid, any decree limiting the claimant's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by the Merchant Shipping Act.

CPR 59.39

59.39 Limitation action: proceedings to set aside decree

(1) Where a decree limiting the claimant's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance with rule 59.38(2), any person with a claim against the claimant in respect of the casualty to which the action relates, who—

- (a) was not named by his name in the statement of claim, as a defendant to the action; or
 - (b) if so named, neither was served with the statement of claim nor filed an acknowledgement of service, may, within that time, after filing an acknowledgement of service, take out an interlocutory application returnable in chambers before the Registrar asking that the decree be set aside.
- (2) The application must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the claimant in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the claimant is not entitled to the relief given to him by the decree.
- (3) The interlocutory application and every affidavit in support thereof must, at least 7 clear days before the hearing of the application, be served on the claimant and any defendant who has entered an acknowledgment of service.
- (4) On the hearing of the application the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the claimant and sufficient prima facie grounds for the contention that the claimant is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of an interlocutory application for directions at a case management conference under rule 27.3.

CPR 59.40

59.40 References to Registrar

- (1) Any party (hereafter in this rule referred to as the 'claimantf') making a claim which is referred to the Registrar for decision must, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.
- (2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by interlocutory application for directions as to the proceedings on the reference, and the Registrar shall

give such directions, if any, as he thinks fit including without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an interlocutory application made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made, the claimant or, where the reference is in a limitation action, the claimant must enter the reference for hearing by lodging in the Registry a *praecipe* requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file—

- (a) a list, signed by him and every, other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item; and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed, and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

CPR 59.41

59.41 Hearing of reference

(1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

(4) When the hearing of the reference has been concluded, the Registrar shall—

- (a) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed;
- (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
- (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given up by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

CPR 59.42

59.42 Objection to decision on reference

(1) Any party to a reference to the Registrar may, by an interlocutory application in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but the application notice specifying the points of objection to the decision must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 59.41(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing an interlocutory application in objection thereto, or while such an application is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 59.41 (4).

CPR 59.43

59.43 Drawing up and entry of judgments and orders

Every judgment given or order made in an Admiralty cause or matter shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

DRAFT #1

Part 60
Arbitration proceedings

Section I
The Arbitration Act 2009

CPR 60.1
60.1 Applications to the Court under the Arbitration Act 2009

(1) The rules in this section of this Part are to be applied subject to the provisions of section 4 of the Arbitration Act 2009 (application of the Act).

(2) Every application to the Court pursuant to the Arbitration Act 2009 under—

- (a) section 12: to extend the time for beginning arbitral proceedings;
- (b) section 21: in relation to the disclosure or prohibition of disclosure of confidential information;
- (c) section 53: enforcement of peremptory order made by tribunal;
- (d) section 55: court powers exercisable in support of arbitral proceedings
- (e) section 56: determination of preliminary point of law;
- (f) section 72: extension of time for making award;
- (g) section 85: in relation to costs of the arbitration;
- (h) section 86: questions in relation to fees and expenses of arbitrators;
- (i) section 88: application for leave to enforce award
- (j) section 89: challenging the award: substantive jurisdiction;
- (k) section 90: challenging the award: serious irregularity;
- (l) section 91: appeal on point of law;
- (m) section 98: powers of court in relation to service of documents;
- (n) section 100: powers of court to extend time limits relating to arbitral proceedings; or

(o) under any other provision of the Arbitration Act 2009,

shall be made by a Fixed Date Claim Form with a statement of claim returnable before a judge in chambers.

(3) The fixed date claim form in respect of an application under rules 60.1 (2)(b), (d), (e), (f), (g), (h), (j), (k), (l) or (n) shall be served on the arbitrator.

(4) An applicant under section 88 (application for leave to enforce award) may, at the same time as applying for leave and subject to the court granting leave, apply for an order or orders in relation to the enforcement of the award.

(5) An applicant who is additionally applying for an order for enforcement under paragraph (4) of this rule shall include in the fixed date statement of claim and in his affidavit all such particulars and evidence as may be necessary in relation to such order or orders for enforcement for which he is applying and the court may, on the hearing of such application for leave, make such order in relation to enforcement as it thinks fit.

(6) In the case of every application other than an application under section 88, the statement of claim must state in general terms the grounds of the application and, where the application is founded on evidence by affidavit, a copy of every affidavit intended to be used must be served with the statement of claim.

(7) The Chief Justice may from time to time direct which applications under the Arbitration Act 2009 shall or may be heard by the Registrar.

CPR 60.2

60.2 Special provisions as to applications to challenge or to appeal in respect of an award

(1) An application to the court—

- (a) under section 89 of the Arbitration Act to challenge an award of the arbitral tribunal as to its substantive jurisdiction; or
- (b) under section 90 of the Arbitration Act to challenge an award on the ground of serious irregularity;
- (c) under section 91 of the Arbitration Act appeal on point of law

may be made at any time within 28 days after the award has been published to the parties.

Section II

Enforcement of an arbitration award to which section 6 of the Reciprocal Enforcement of Judgments Act applies

CPR 60.3

60.3 Registration in Supreme Court of foreign awards

Where an award is made in proceedings on an arbitration to which section 6 of the Reciprocal Enforcement of Judgments Act applies, the Rules of Court (Reciprocal Enforcement of Judgments) shall apply in relation to the award as it applies in relation to a judgment given by a court in that place, subject, however, to the following modifications:

- (a) for references to the country of the original court there shall be substituted references to the place where the award was made; and
- (b) the affidavit required by rule 3 of the said Rules must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

Section III

The Arbitration (Foreign Arbitral Awards) Act 2009
(enforcement pursuant to The New York Convention on the recognition and enforcement of foreign arbitral awards adopted by the United Nations Conference on International Commercial Arbitration on 10th June, 1958)

CPR 60.4

60.4 Application to enforce a foreign arbitral award

- (1) An application to enforce an award under this Section of this Part shall be made by fixed date statement of claim returnable before a judge in chambers and supported by affidavit.
- (2) The applicant shall exhibit to his affidavit—
 - (a) the duly authenticated original award or a duly certified copy of it;
 - (b) the original arbitration agreement or a duly certified copy of it; and

(c) a translation of the award or agreement certified by an official or sworn translator or by a diplomatic or consular agent, if the award or agreement is in a language other than English.

(3) The applicant may include in the fixed date statement of claim and in his affidavit all such particulars and evidence as may be necessary in relation to such order or orders for enforcement for which he is applying and the court may, on the hearing of such application, make such order in relation to enforcement as it thinks fit.

(4) The applicant shall file the affidavit with the court and shall serve a copy of the affidavit on every respondent.

(5) The Chief Justice may from time to time direct which applications under the Arbitration Act 2009 shall or may be heard by the Registrar.

CPR 60.5

60.5 Respondent's response

A respondent who proposes to oppose an application to enforce under The Arbitration (Foreign Arbitral Awards) Act 2009 shall, within 14 days after service upon him of the applicant's affidavit, file and serve an affidavit setting out the grounds upon which the enforcement of the award is opposed.

Part 61
Defamation actions

CPR 61.1
61.1 Application

These Rules apply to actions for libel or slander subject to the following rules of this Part.

CPR 61.2
61.2 Content of statement of claim in libel action

Before a statement of claim in an action for libel is issued it must contain sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

CPR 61.3
61.3 Obligation to give particulars

(1) Where in an action for libel or slander the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the claimant alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the claimant intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the claimant and the party against whom it is made the defendant.

CPR 61.4

61.4 Provisions as to payment into court

(1) Where in an action for libel or slander against several defendants sued jointly the claimant, in accordance with Part 35, accepts an offer to settle by any of those defendants in satisfaction of his cause of action against that defendant, then the action shall be stayed as against that defendant only, but—

- (a) the sum recoverable under any judgment given in the claimant's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed; and
- (b) the claimant shall not be entitled to his costs of the action against the other defendant after 21 days after the date of the offer unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which, section 3 of the Libel Act provides, rule 35.5(3) (non-communication of offer to court), shall not apply in relation to that pleading.

CPR 61.5

61.5 Statement in open court

(1) Where a party accepts, in satisfaction of a cause of action for libel or slander, an offer to settle then the claimant or defendant, as the case may be, may apply to a judge in chambers by application for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that the action be set down for trial, and before the date fixed for the trial the statement must be submitted for the approval of the judge before whom it is to be made.

CPR 61.6**61.6 Interrogatories not allowed in certain cases**

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were published on a privileged occasion, no request for further information under Part 34 as to the defendant's sources of information or grounds of belief shall be allowed.

CPR 61.7**61.7 Evidence in mitigation of damages**

In an action for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the claimant, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the claimant of the matters as to which he intends to give evidence.

Part 62

Mortgage claims and Money-lending Actions

Section I Mortgage claims

Section II Money-lending Actions

Section I Mortgage claims

CPR 62.1

62.1 Scope of this Section

(1) This Part deals with a claim by a mortgagor or mortgagee for any of the following forms of relief—

- (a) payment of moneys secured by a mortgage;
- (b) sale of a mortgaged property;
- (c) foreclosure;
- (d) possession of a mortgaged property;
- (e) redemption of a mortgage;
- (f) re-conveyance of the property or release from the mortgage; and
- (g) delivery of possession by the mortgagee.

(2) In this Part—

‘mortgage’ includes a legal or equitable mortgage and a legal or equitable charge;

‘mortgage claims’ means the claims by a mortgagee or mortgagor for any of the forms of relief referred to in sub-rule (1);

‘mortgagee’ means the person to whom the mortgage was granted;
and

‘mortgagor’ means the person who has granted a mortgage of the mortgaged property.

(3) This Part does not affect any procedure under any enactment relating to the registration of title to land unless court proceedings are taken.

CPR 62.2

62.2 Mortgage claim to be brought by fixed date statement of claim

- (1) A mortgage claim is brought by issuing a fixed date claim form and statement of claim (Form 2).
- (2) In addition to serving the statement of claim on all defendants, the claimant must give notice of the claim to all mortgagees of the land who may not be parties.

CPR 62.3

62.3 Evidence at first hearing

A claimant who seeks final judgment at the first hearing must—

- (a) file evidence on affidavit in support of the claim; and
- (b) serve—
 - (i) a copy of the affidavit but not necessarily any exhibit; and
 - (ii) a notice stating what relief is sought;with the claim form; and
- (c) file a certificate of service not less than 7 days before the first hearing.

CPR 62.4

62.4 Claim for possession or payment of mortgage debt

- (1) On a claim for possession of the mortgaged property or for payment of the mortgage debt the claimant must file with the claim form, evidence on affidavit—
 - (a) exhibiting a copy of the original mortgage;
 - (b) exhibiting a copy of any other document which sets out the terms of the mortgage;
 - (c) giving particulars of—
 - (i) the amount remaining due under the mortgage; and
 - (ii) where the claim includes a claim for interest to judgment, the daily rate at which such interest accrues; and

- (d) where the claimant seeks possession of the mortgaged property,—
 - (i) stating the circumstances under which the right to possession has arisen; and
 - (ii) giving details of any person other than the defendant and his family who to the claimant's knowledge is in occupation of the mortgaged property.

(2) Where the mortgage created a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if the tenancy was determined by service of a notice, a copy of the notice must be annexed and the affidavit must state when and how the notice was served.

Section II Money-lending Actions

CPR 62.5

62.5 Application and interpretation

(1) These Rules apply to a money-lending action subject to the following rules of this Order.

(2) In these Rules —

“the Act” means the Money Lending Act; and

“money-lending action” means any action for the recovery of money lent or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee, and includes any action to which section 3 of that Act applies.

CPR 62.6

62.6 Commencing proceedings and Particulars to be included in a statement of claim

(1) Every action to which this Part applies must be commenced using a fixed date claim form under rule 8.1(5)

(2) Every statement of claim in a money-lender's action 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) the date when a copy of the note or memorandum was delivered or sent to the borrower;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

CPR 62.7

62.7 Judgment in default of acknowledgement of service or of defence

(1) In a money-lender's action judgment in default of acknowledgement of service 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 application notice served on the defendant.

(3) If the application is for leave to enter judgment in default of acknowledgement of service, the application notice shall not be issued until after the time limited for acknowledging service or serving a defence under rule 9.1(2) has expired.

(4) On the hearing of such an application, whether the defendant appears or not, the

Court —

(a) may exercise the powers of the court under section 3 of the Money Lending Act;

(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 thinks fit.

DRAFT #1

Part 63
Contentious probate proceedings

CPR 63.1
63.1 Interpretation

(1) In these Rules—

‘court’ means the Supreme Court;

‘grant of probate’ means a grant issued by the court to administer the will of a deceased person;

‘probate action’ means an action, other than a non-contentious action for—

- (a) the grant of probate of the will or of letters of administration of the estate of a deceased person;
- (b) the revocation of a grant; or
- (c) for a decree pronouncing for or against the validity of an alleged will;

‘Probate Registry’ means the registry of the Probate Division in the Supreme Court situate in New Providence and includes a sub-registry;

‘sub-registry’ means a registry of the Probate Division situate elsewhere than in New Providence.

CPR 63.2
63.2 Scope and Interpretation

(1) This Part sets out the procedure for obtaining—

(a) a grant of—

- (i) probate of a will;
- (ii) letters of administration,

of the estate of a deceased person;

(b) a revocation of a grant referred to under paragraph (a);

(c) 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.

(2) In this Part—

- (a) a reference to a Part or rule, is a reference to a Part or rule of the Civil Procedure Rules;
- (b) a 'will' includes a codicil.

CPR 63.3

63.3 Application for contentious probate

(1) A person who seeks to begin a contentious probate action must do so by a fixed date form and statement of claim issued out of the Probate Registry and indorsed with—

- (a) a statement of the nature of the interest of the claimant 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 statement of claim has been produced to him for examination and that two copies of the will have been lodged with the Probate Registrar.

(2) Part 12 (Judgment by default) shall not apply in relation to a probate action.

CPR 63.4

63.4 Parties to an action for revocation of grant

A person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his grant shall be made a party to any action for revocation of the grant.

CPR 63.5

63.5 Lodgment of grant for revocation

(1) Where, at the commencement of an action for the revocation of a grant of:

- (a) probate of the will; or
- (b) 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—

- (i) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Probate Registry within seven days after the issue of the writ;
- (ii) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Probate Registry within fourteen days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the court to lodge the probate or letters of administration in the Probate Registry within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the court until he has complied with the order.

CPR 63.6

63.6 Affidavit of testamentary scripts

(1) Unless the court otherwise directs, the claimant and every defendant who has filed a defence or an acknowledgement of service in a probate action must swear an affidavit—

- (a) describing any testamentary script of the deceased person, whose estate is subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
- (b) if any such script of which he has knowledge, is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent must be lodged in the Probate Registry within fourteen days after the filing of a defence or acknowledgement of service by a defendant to the action or, if no defendant enters an acknowledgement of service therein and the court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script or any part thereof required by this rule to be lodged in the Probate Registry is written in pencil, then, unless the court otherwise directs, a photostat copy of that script, of the page or pages thereof containing the part written in pencil, must also be lodged in the Probate Registry and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule, 'testamentary script' means—

- (a) a will or draft thereof;
- (b) written instructions for a will made by or at the request or under the instructions of the testator; or
- (c) 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.

CPR 63.7

63.7 Counterclaim

A defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.

CPR 63.8

63.8 Contents of statement of case

(1) Where the claimant in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his statement of case that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents, must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say—

- (a) that the will was not duly executed;
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and
- (c) that the execution of the will was obtained by undue influence or fraud,

shall be made by that party unless that other plea is also pleaded.

CPR 63.9

63.9 Discontinuance and probate dismissal

(1) Part 37 (discontinuance) 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:

- (a) the claimant; or
- (b) of any party to the action who has entered an acknowledgement of service 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 application.

CPR 63.10

63.10 Compromise of action: trial on affidavit evidence

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.

CPR 63.11

63.11 Application for order to bring in will, etc

- (1) An application for an order under section 33 of the Probate and Administration of Estates Act, 2011 shall be for an order requiring a person to bring a will or other testamentary paper into the Probate Registry or to attend in court for examination.
- (2) An application under paragraph (1) shall be made by application in the action, which must be served on the person against whom the order is sought.
- (3) An application for the issue of a subpoena under section 32 of the Probate and Administration of Estates Act shall be for the issue of a subpoena requiring a person to bring into the Probate Registry a will or other testamentary paper.
- (4) An application under paragraph (3) may be made without notice 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) A person against whom a subpoena is issued under this rule and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

CPR 63.12

63.12 Administration *pendente lite*

- (1) An application under section 6 of the Probate and Administration of Estates Act for an order for the grant of administration shall be made by application if there are existing proceedings or otherwise by fixed date statement of claim.
- (2) Where an order for a grant of administration is made under section 9 of the Act, rules 53.2, 53.4 and 53.6 and (subject to subsection (2) of the said section) rule 53.3, shall apply as if the administrator were a receiver appointed by the court.

CPR 63.13

63.13 Deposits to credit of a deceased persons

The manager of a bank may, in accordance with section 40 of the Act, pay any sum not exceeding two thousand five hundred dollars standing to the credit of a deceased person without the production of a grant of probate or letters of administration.

DRAFT #1

Part 64

Administration and similar actions

CPR 64.1

64.1 Interpretation

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.

CPR 64.2

64.2 Mode of commencement

(1) Where any proceedings under this Part are unlikely to involve substantial disputes of fact then such proceedings may be brought under Part 8 Section II.

(2) Where any proceedings under this Part are likely to involve substantial disputes of fact or allegations of breach of trust then such proceedings must be brought by a fixed date claim form with a statement of claim.

CPR 64.3

64.3 Determination of questions, etc., without administration

(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 capacity of executor, administrator or trustee;
- (c) an order directing a person to do or abstain from doing a particular act in his capacity of executor, administrator or trustee;
- (d) an order approving any sale, purchase, compromise or other transaction by a person in his capacity of executor, administrator or trustee;
- (e) an order directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust which the Court could order to be done if the estate or trust were being administered or executed, as the case may be, under the direction of the Court.

CPR 64.4

64.4 Parties

(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 64.3 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 claimant must be made a defendant.

(2) All the persons 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 claimant may make such of those persons, whether all or any one or more of them, parties as, having regard to the nature of the relief or remedy claimed in the action, he thinks fit.

(3) Where, in proceedings under a judgment or order given or made in an action for the administration under the direction of the Court of the estate of a deceased person, a claim in respect of a debt or other liability is made against the estate by a person not a party to the action, no party other than the executors or administrators of the estate shall 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.

CPR 64.5

64.5 Grant of relief in action begun by originating application

In an administration action or such an action as is referred to in rule 64.3, the Court may make any certificate or order and grant any relief to which the claimant may be entitled by reason of any breach of trust, wilful default or other misconduct of the defendant notwithstanding that the action was begun original application, but the foregoing provision is without prejudice to the power of the Court to order that the action shall continue as if begun by a fixed date claim and statement of claim.

CPR 64.6

64.6 Judgments and orders in administration actions

- (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 claimant 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 claimant 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.

CPR 64.7

64.7 Conduct of sale of trust property

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.

DRAFT #1

Part 65
Proceedings by and against The Crown

CPR 65.1

65.1 Application and interpretation

(1) These Rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Part.

(2) In this Order—

‘civil proceedings by the Crown, civil proceedings against the Crown and civil proceedings by or against the Crown’ have the same respective meanings as in Part II of the Crown Proceedings Act and do not include any of the proceedings specified in section 23(1) of that Act;

‘civil proceedings to which the Crown is a party’ has the same meaning as it has for the purposes of section 15 of the Crown Proceedings Act;

‘Order against the Crown’ means any order (including an order for costs) made in any civil proceedings by or against the Crown or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a Government department or against an officer of the Crown as such;

‘order’ includes a judgment, decree, rule, award or declaration.

CPR 65.2

65.2 Particulars to be included in statement of claim

(1) In the case of a statement of claim in civil proceedings against the Crown there shall be included in the statement of claim a statement of the circumstances in which the Crown’s liability is alleged to have arisen and as to the Government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the statement of claim does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for filing an acknowledgment of service, apply to the claimant 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 shall not expire until 4 days after the defendant has notified the claimant 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 interlocutory application 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.

CPR 65.3

65.3 Service on the Crown

(1) Part 6 and any other provision of these Rules relating to service within or out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite but where the proceedings are by or against the Crown service on the Crown must be effected by leaving the document at the office of the Attorney-General.

CPR 65.4

65.4 Counterclaim and set-off

(1) Notwithstanding any provision in these Rules, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding any provision in these Rules, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown—

- (a) if the Crown is sued or sues in the name of a Government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
- (b) if the Crown is sued or sues in the name of the Attorney-General.

(3) Any application for leave under this rule must be made by interlocutory application.

CPR 65.5

65.5 Summary judgment

(1) No application against the Crown shall be made under Part 15 for summary judgment or for specific performance in any proceedings against the Crown nor shall the Crown apply for summary judgment under Part 15 in any proceedings by counterclaim or in third party proceedings.

(2) Where an application is made by the Crown under Part 15 for summary judgment or specific performance, the affidavit required in support of the application must be made by

- (a) the attorney acting for the Crown; or
- (b) an officer duly authorised by the attorney so acting or by the department concerned, and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim with a real prospect of success to which the application relates at all or only except as to the amount of any damages claimed.

CPR 65.6

65.6 Judgment in default

(1) Except with the leave of the Court, no judgment in default of an acknowledgment of service or of pleading shall be entered against the Crown in civil proceedings against the Crown.

(2) Except with the leave of the Court a party may not enter default judgment against the Crown in third party proceedings.

(3) An application for leave under this rule may be made by interlocutory application and the same must be served not less than 7 days before the return day.

CPR 65.7

65.7 Third party proceedings

(1) A party may not issue or serve a third party notice on the Crown without the leave of the Court, and the application for the grant of such leave must be made by interlocutory application, and the application notice must be served on the claimant and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

CPR 65.8

65.8 Interpleader: application for order against crown

No order shall be made against the Crown under Part 49 (interpleader), except upon an application by summons served not less than 7 days before the return day.

CPR 65.9

65.9 Disclosure

(1) Part 28 (disclosure) shall not apply in civil proceedings to which the Crown is a party unless the Court orders otherwise.

(2) In any civil proceedings to which the Crown is a party any order of the Court made under the powers conferred by section 22(1) of the Crown Proceedings Act, shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of a Minister of the Government, be injurious to the public interest to disclose.

(3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for disclosure against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.

(4) Where in any such proceedings an order is made under the said section 22 for further information to be answered by the Crown, the Court shall direct by what officer of the Crown the request for information is to be answered.

CPR 65.10

65.10 Evidence

(1) Civil proceedings against the Crown may be instituted in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.

(2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable

in proceedings by or against the Crown as they are exercisable in proceedings between subjects.

CPR 65.11

65.11 Execution and satisfaction of orders

(1) Except as expressly provided in this Part, nothing in Parts 43 - 45, 47 – 48, 51 and 53 shall apply in respect of any order against the Crown.

(2) An application under the proviso to section 19(1) of the Crown Proceedings Act 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 without notice.

(3) Any such certificate must be in Form [] or [], whichever is appropriate.

CPR 65.12

65.12 Attachment of debts, etc

(1) Every application to the Court for an order under section 21 of the Crown Proceedings Act, restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by interlocutory application served at least 4 days before the return day on the Crown and, unless the Court otherwise orders, on the person to be restrained or his attorney; 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 Crown in respect of which it is made.

(2) Rule 45.8(6)(c) shall apply in relation to such an application as is mentioned in paragraph (1) for an order restraining a person from receiving money payable to him by the Crown as that rule applies to an application under rule 45.2, for an order for the third party debt order, except that the Court shall not have power to order execution to issue against the Crown.

Part 66

Applications and appeals to The Supreme Court under various acts

CPR 66.1

66.1 Scope of this Part

(1) This Part deals with appeals to the Supreme Court from any tribunal or person under any enactment other than an appeal by way of case stated.

(2) In this Part,

“appellant” means any person challenging the decision of a tribunal or person

under this Part;

“clerk to the tribunal” means the clerk, secretary or other person responsible

for the administration of the tribunal;

“decision” means the order, determination, decision or award appealed against;

and

“tribunal” means any tribunal other than a court of law established under an

enactment.

(3) This Part takes effect subject to any provisions in the relevant enactment.

CPR 66.2

66.2 How to appeal to the court

(1) An appeal to the court under this Part must be brought by originating application.

(2) Every originating application by which such an appeal is brought must have attached to it a formal document entitled “Grounds of Appeal”.

(3) The appellant’s grounds of appeal must show

- (a) details of the decision against which the appeal is made;
- (b) the name of the tribunal or person whose decision is under appeal;
- (c) the enactment and section enabling an appeal to be made to the court;
- (d) the facts found by that tribunal or person; and
- (e) the grounds on which it is contended the decision should be reversed,
varied or set aside, identifying
 - (i) any finding of fact; and
 - (ii) any finding of lawwhich the appellant seeks to challenge.

CPR 66.3

66.3 Effect of appeal

The filing of an appeal does not operate as a stay of proceedings on the decision against which the appeal is brought unless

- (a) the court; or
- (b) the tribunal or person whose decision is under appeal

so orders.

CPR 66.4

66.4 Persons on whom originating application must be served

The appellant must serve the originating application and grounds of appeal on

- (a) the clerk to the tribunal, minister or other person by whom the decision appealed against was made; and
- (b) every other party to the proceedings in which the decision was made.

CPR 66.5

66.5 Time within which originating application must be served

The originating application and grounds of appeal must be filed and served within 28 days of the date on which the decision was given to the appellant.

CPR 66.6

66.6 Amendment of grounds of appeal, etc.

(1) The appellant may amend the originating application and the grounds of appeal without permission by filing and serving not less than 10 days before the first hearing of the appeal an amended originating application and grounds of appeal on each of the persons on whom the initial originating application was served.

(2) Except with the permission of the Court, no grounds other than those stated in the originating application and grounds of appeal or amended originating application and grounds of appeal by which the appeal is brought may be relied upon by the appellant at the hearing; but the 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.

(3) The foregoing provisions of this rule are without prejudice to the powers of the Court under rule 20.4 (amendment), rule 26.2 (case management powers) and rule 26.9 (general power to rectify).

(4) Permission to amend the grounds of appeal may be given after the 10 days

specified in sub-rule (1) where the court considers that the interests of justice

so require.

CPR 66.7

66.7 First hearing

(1) Unless the Court otherwise directs, the date fixed for the first hearing must not be less than 28 nor more than 56 days after the issue of the originating application.

(2) The appellant must file at the Registry, not less than 7 days

before the first hearing, a copy of the transcript of the proceedings in which the

decision was made.

(2) Where the court does not hear the appeal at the first hearing, the court must fix a date, time and place for the full hearing.

CPR 66.8

66.8 Hearing of appeal

(1) An appeal to which this Part applies shall be heard and determined by a judge of the Supreme Court.

(2) Unless an enactment otherwise provides, the appeal is to be by way of rehearing.

(3) The court may receive further evidence on matters 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.

(4) The court may draw any inferences of fact which might have been drawn

in the proceedings in which the decision was made.

(5) It shall be the duty of the appellant to apply to the person presiding at the proceedings in which the decision appealed against was given for a signed copy of any note made by him of the proceedings and to furnish that copy for the use of the Court; and in default of production of such a note, or, if such note is incomplete, in addition to such note, the Court may hear and determine the appeal on any other evidence or statement of what occurred in those proceedings as appears to the Court to be sufficient. Except where the Court otherwise directs, an affidavit or note by a person present at the proceedings shall not be used in evidence under this paragraph unless it was previously submitted to the person presiding at the proceedings for his comments.

(6) The court may

(a) give any decision or make any order which ought to have been given

or made by the tribunal or person whose decision is under appeal;

(b) make such further or other order as the case requires; or

(c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.

(7) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

(8) The court is not bound to allow an appeal as a result of

(a) a misdirection; or

(b) the improper admission or rejection of evidence

unless it considers that a substantial wrong or a miscarriage of justice has been

caused.

DRAFT

Part 67

Lodgement, investment, etc., of funds in court; applications with respect to funds in court

CPR 67.1

67.1 Payment into court under Trustee Act

(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 75 of the Trustee Act must make and file an affidavit setting out—

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose;
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him;
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any application notice, statement of claim order or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represent a legacy, or residue or any share thereof, to which an infant or a person resident outside The Bahama is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court.

CPR 67.2

67.2 Notice of lodgement

Any person who has lodged money or securities in court in accordance with rule 67.1 must forthwith send notice of the lodgement to every person appearing from the affidavit on which the lodgement was made to be entitled to, or to have an interest in the money or securities lodged.

CPR 67.3

67.3 Applications with respect to funds in court

(1) Where an application to the Supreme Court—

- (a) for the payment or transfer to any person of a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;
- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in subparagraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by originating application, unless the application is made in a pending cause or matter in which event it shall be made by interlocutory application in those proceedings.

(3) Where an application under paragraph 1 (d) is made in relation to funds which do not exceed \$5,000 in value, the application may be made without notice to the Registrar and the Registrar may dispose of the application or give directions for the disposal of the application. Unless otherwise directed, the without notice application under this paragraph shall be made by affidavit.

(4) This rule does not apply to any application for an order under Part 36 (payment into court under an offer to settle).

Part 68

Proceedings concerning minors; application for declaration affecting matrimonial status

Section I

Proceedings Concerning Minors

CPR 68.1

68.1 Application to make minor a ward of court

(1) An application to make a minor a ward of court must be made by fixed date claim form with a statement of claim.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made without notice to the Registrar for leave to issue a fixed date claim form with a statement of claim with the minor named as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to a claim under this rule in the first instance.

CPR 68.2

68.2 Applications under the Child Protection Act

Where there is pending any proceeding by reason of which a minor is a ward of court, any application under the Child Protection Act (hereafter in this Section of this Part referred to as 'the Act') with respect to that minor may be made by application notice in that proceeding, but except in that case any such application must be made by originating application.

CPR 68.3

68.3 Defendants to guardianship applications

(1) Where the minor with respect to whom an application under the Act is made is not the claimant, he shall not, unless the Court otherwise directs, be made a defendant to the claim nor, if the application is made by application notice, be served with the application notice, 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 claim form or application notice, as the case may be.

(2) The Court may dispense with service of a fixed date claim form and statement of claim or originating application on any person and may order it to be served on any person not originally served.

CPR 68.4

68.4 Guardianship proceedings may be in chambers

Applications under the Act may be disposed of in chambers.

CPR 68.5

68.5 Jurisdiction of Registrar

In proceedings to which this Section of this Part applies the Chief Justice by Practice Direction may direct that the Registrar may transact such business and exercise such authority and jurisdiction as may be transacted and exercised by a judge in chambers.

Section II

Application for declaration affecting matrimonial status

CPR 68.6

68.6 Application for declaration affecting matrimonial status

(1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by originating application.

(2) Unless the court otherwise directs, it shall not be necessary for any person to be named as a defendant to the application nor shall it be served on any person.

(3) The application notice shall state—

- (a) the names of the parties and the residential address of each of them at the date of presentation of the application notice;
- (b) the place and date of any ceremony of marriage to which the application relates;
- (c) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;
- (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it, and shall conclude with a prayer setting out the declaration sought and any claim for costs.

- (4) Nothing in the foregoing provisions shall be construed—
- (a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it; or
 - (b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.
- (5) This rule does not apply to proceedings to which rule 67.3 applies.

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Part 69

Obtaining evidence for foreign courts, etc.

CPR 69.1

69.1 Jurisdiction of Registrar to make order

(1) Subject to paragraph (2), the power of the Supreme Court or a judge thereof under any Act to make, in relation to a matter pending before a court or tribunal in a place outside the jurisdiction, orders for the examination of witnesses and for attendance and for production of documents and to give directions may be exercised by the Registrar.

(2) The Registrar may not make such an order if the matter in question is a criminal matter.

CPR 69.2

69.2 Application for order

(1) Subject to paragraph (3) and rule 69.3, an application for an order under rule 69.1 may be made without notice by a person duly authorised to make the application on behalf of the court or tribunal in question and must be supported by affidavit.

(2) There must be exhibited to the affidavit in support the letter of request, certificate or other document evidencing the desire of the court or tribunal to obtain for the purpose of a matter pending before it the evidence of the witness to whom the application relates or the production of any documents and, if that document is not in the English language, a translation thereof in that language.

(3) After an application for such an order as is mentioned in paragraph (1) has been made in relation to a matter pending before a court or tribunal, an application for a further order or directions in relation to the same matter must be made by interlocutory application.

BAH CPR 69.3

69.3 Application by Attorney-General in certain cases

Where a letter or request, certificate or other document requesting that the evidence of a witness within the jurisdiction in relation to a matter pending before a court or tribunal in a foreign country be obtained—

- (a) is received by a Minister of the Government and sent by him to the Registrar with an intimation that effect should be given to the

request without requiring an application for that purpose to be made by the agent in The Bahamas of any party to the matter pending before the court or tribunal; or

- (b) is received by the Registrar in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in The Bahamas for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of such a party

the Registrar shall send the document to the Attorney-General and the Attorney-General may make an application for an order and take such other steps as may be necessary, to give effect to the request.

CPR 69.4

69.4 Person to take and manner of taking examination

- (1) Any order made in pursuance of this Order for the examination of a witness may order the examination to be taken before any fit and proper person nominated by the person applying for the order or before such other qualified person as to the Court seems fit.
- (2) Subject to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination shall be taken in manner provided by Part 33, and an order may be made under rule 33.12, for payment of the fees and expenses due to the examiner, and those rules shall apply accordingly with any necessary modifications.

CPR 69.5

69.5 Dealing with deposition

Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination was taken must send the deposition of that witness to the Registrar, and the Registrar shall—

- (a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the letter of request, certificate, or other document from the court or tribunal out of the jurisdiction requesting the examination, the order of the Court for examination and the deposition taken in pursuance of the order; and

- (b) send the certificate with the documents annexed thereto to the appropriate Government Minister, or, where the letter of request, certificate or other document was sent to the Registrar by some other person in accordance with a Civil Procedure Convention to that other person, for transmission to that court or tribunal.

CPR 69.6

69.6 Claim to privilege

(1) The provisions of this rule shall have effect where a claim by a witness to be exempt from giving any evidence on the ground specified in section 6(1)(b) of the Evidence (Proceedings in Other Jurisdictions) Act, 2000 is not supported or conceded as mentioned in subsection (2) of that section.

(2) The examiner may, if he thinks fit, require the witness to give the evidence to which the claim relates and, if the examiner does not do so, the court may do so, on the application without notice of the person who obtained the order under section 5 of the Evidence (Proceedings in Other Jurisdictions) Act, 2000.

(3) If such evidence is taken—

- (a) it must be contained in a document separate from the remainder of the deposition of the witness;
- (b) the examiner shall send to the Registrar with the deposition a statement signed by the examiner setting out the claim and the ground on which it was made;
- (c) on receipt of the statement the Registrar shall, notwithstanding anything in rule 5, retain the document containing the part of the witness's evidence to which the claim relates and shall send the statement and a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 5;
- (d) and if the claim is rejected by the foreign court or tribunal, the Registrar shall send to that court or tribunal the document containing that part of the witness's evidence to which the claim relates, but if the claim is upheld the Registrar shall send the document to the witness, and shall in either case notify the witness and the person who obtained the order under section 5 of the Evidence (Proceedings in Other Jurisdictions) Act, 2000, the court or tribunal's determination.

Part 70

Change of Attorney

CPR 70.1

70.1 Scope of this Part

This Part deals with the procedure where

- (a) there is a change of attorney;
- (b) an attorney acts in the place of a party in person; or
- (c) a party who has previously acted by an attorney acts in person.

CPR 70.2

70.2 Change of attorney

(1) A party to any cause or matter who sues or defends by an attorney may change his attorney without an order for that purpose but, unless and until notice of the change is filed and copies of the notice are served in accordance with this rule, the former attorney shall subject to rules 70.5 and 70.6, be considered the attorney of the party until the final determination of the cause or matter in the Supreme Court.

(2) Where a party changes his attorney, the new attorney must

- (a) file a notice of change of attorney which states his business name, address, telephone number and email address; and
- (b) serve a copy of the notice on every other party and the former attorney.

CPR 70.3

70.3 Notice of appointment of attorney

Where a person who has previously acted in person instructs an attorney, that attorney must

- (a) file a notice of change at the Registry which states his business name, address, telephone number and email address; and
- (b) serve a copy of the notice on every other party.

CPR 70.4

70.4 Party acting in person

(1) Where a party who has previously been represented by an attorney decides to act in person that party must

- (a) file notice of that fact at the Registry stating the address, an address for service within the jurisdiction, telephone number and email address of that party; and
- (b) serve a copy of the notice on every other party and the former attorney.

(2) The former attorney must also, promptly on his instructions being withdrawn, file a notice that he has ceased to act and serve a copy of that notice on every other party and on his former client.

CPR 70.5

70.5 Application by another party to remove name of attorney from the record

(1) Where

- (a) an attorney on record for a party has
 - (i) died;
 - (ii) become bankrupt;
 - (iii) been removed from the roll; and
- (b) notice of the appointment of a new attorney under rule 70.2 or of the party acting in person under rule 70.4 has not been received,

any other party may apply to the court for an order declaring that the attorney in question has ceased to act.

(2) An application under this Part must be supported by evidence on affidavit and must be served on the attorney, if practicable, and personally on his client.

(3) Any order made must be served by the applicant on the attorney or former attorney, if practicable, and personally on his client.

(4) The applicant must file a certificate of service of the order.

CPR 70.6

70.6 Application by attorney to be removed from the record

(1) An attorney who wishes to be removed from the record as acting for a party may apply to the court for an order that he be removed from the record.

(2) Notice of the application must be served on the client or former client and all other parties.

(3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.

(4) Any order made must be served by the applicant on the other parties' attorneys and on the former client.
The applicant must file a certificate of service of the order.

CPR 70.7

70.7 Time when notice takes effect

A notice under the foregoing rules of this Part does not take effect until it has been served.

Part 71

Costs: general provisions

Section I

Costs definitions

CPR 71.1

71.1 Scope of this Part

This Part contains general rules about costs and the entitlement to costs and Part 72 deals with the quantification of such costs.

CPR 71.2

71.2 Definitions and application

(1) In this Part and Part 72, unless the context otherwise requires—

‘certificate’ includes allocatur;

‘costs’ includes an attorney’s fees, charges, disbursements, fixed costs, expenses and remuneration;

‘detailed assessment’ means the procedure by which the amount of costs is decided by the Registrar in accordance with Part 72 .

‘fixed costs’ has the meaning given to it by rule 71.20.

‘fund’ includes any estate or property held for the benefit of any person or class of person and any fund to which a trustee or personal representative is entitled in that capacity;

‘indemnity basis’ - see 71.7:

‘paying party’ means a party liable to pay costs;

‘receiving party’ means a party entitled to be paid costs;

‘standard basis’ see - 71.7:

‘summary assessment’ means the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs.

(2) The costs to which this Part applies include—

- (a)
 - (i) costs of proceedings in the Supreme Court;
 - (ii) if and so far as necessary costs of proceedings before an arbitrator or umpire;
 - (iii) costs of proceedings before a tribunal or other statutory body; and
 - (iv) costs payable by a client to his attorney;
- (b) costs which are payable by one party to another party under the terms of a contract, where the court makes an order for an assessment of those costs.

(3) If in any enactment there is a reference to the taxation of any costs this is to be construed as referring to the assessment of such costs in accordance with this Part and Part 72, unless the enactment otherwise provides.

CPR 71.3

71.3 Orders about costs

The court's power to make orders about costs include power to make orders requiring a party to pay the costs of another party arising out of or related to all or any part of any proceedings.

CPR 71.4

71.4 Entitlement to recover costs

A person may not recover the costs of proceedings from any other party or person except by virtue of:

- (a) an agreement between the parties;
- (b) an order of the court; or
- (c) a provision of these Rules.

Section II

Discretion, basis of assessment, factors, time for complying with costs order, deemed orders and general rule is summary assessment

CPR 71.5

71.5 Court's discretion and circumstances to be taken into account when exercising its discretion as to costs

- (1) The court has discretion as to—
 - (a) whether costs are payable by one party to another;
 - (b) when to assess costs;
 - (c) the amount of those costs; and
 - (d) when they are to be paid.
- (2) If the court decides to make an order about costs—
 - (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
 - (b) the court may make a different order.
- (3) In deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including—
 - (a) the conduct of all the parties;
 - (b) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
 - (c) any payment into court or admissible offer to settle made by a party which is drawn to the court's attention and which is not an offer to which costs consequences under Part 35 and 36 apply.
- (4) The conduct of the parties includes—
 - (a) conduct before, as well as during, the proceedings;
 - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (c) the manner in which a party has pursued or defended his case or a particular allegation or issue;
 - (d) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and

(e) unreasonable conduct of any kind by any party in relation to the inclusion or exclusion of documents or authorities in any bundle and whether a joint bundle or otherwise.

(5) The orders which the court may make under this rule include an order that a party must pay—

- (a) a proportion of another party's costs;
- (b) a stated amount in respect of another party's costs;
- (c) costs from or until a certain date only;
- (d) costs incurred before proceedings have begun;
- (e) costs relating to particular steps taken in the proceedings;
- (f) costs relating only to a distinct issue in or part of the proceedings;
and
- (g) interest on costs from or until a certain date, including a date before judgment.

(6) Where the court would otherwise consider making an order under paragraph (5)(f), it must instead, if practicable, make an order under paragraph (5)(a) or (c).

(7) Where the court has ordered a party to pay costs, it may order an amount to be paid on account before the costs are assessed.

(8) Where a party entitled to costs is also liable to pay costs the court may assess the costs which that party is liable to pay and either—

- (a) set off the amount assessed against the amount the party is entitled to be paid and direct him to pay any balance; or
- (b) make an order postponing the date of payment in respect of the costs to which the party is entitled until he has paid the amount which he is liable to pay.

(9) If two or more parties having the same interest in relation to proceedings are separately represented the court may disallow more than one set of costs.

CPR 71.6

71.6 Costs against person who is not a party

- (1) This rule applies where
 - a. an application is made for; or
 - b. the court is considering whether to make; an order that a person who is not a party to the proceedings nor the legal practitioner to a party should pay the costs of some other person.
- (2) Any application by a party must be on notice to the person against whom the costs order is sought and must be supported by evidence on affidavit.
- (3) If the court is considering making an order against a person the court must give that person notice of the fact that it is minded to make such an order.
- (4) A notice under paragraph (3) must state the grounds of the application on which the court is minded to make the order.
- (5) A notice under paragraph (2) or (3) must state a date, time and place at which that person may attend to show cause why the order should not be made.
- (6) The person against whom the costs order is sought and all parties to the proceedings must be given 14 days' notice of the hearing.

CPR 71.7

71.7 Basis of assessment

- (1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs—
 - (a) on the standard basis; or
 - (b) on the indemnity basis,but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.
- (2) Where the amount of costs is to be assessed on the standard basis, the court will—

- (a) only allow costs which are proportionate to the matters in issue;
and
- (b) resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

(3) Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

(4) Where—

- (a) the court makes an order about costs without indicating the basis on which the costs are to be assessed; or
- (b) the court makes an order for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(5) Where the amount of an attorney's remuneration in respect of non-contentious business is regulated (in the absence of agreement to the contrary) by any general orders for the time being in force under any statute the amount of the costs to be allowed on assessment in respect of the like non-contentious business shall be the same.

CPR 71.8

71.8 Factors to be taken into account in deciding the amount of costs

(1) The court is to have regard to all the circumstances in deciding whether costs were—

- (a) if it is assessing costs on the standard basis—
 - (i) proportionately and reasonably incurred; or
 - (ii) were proportionate and reasonable in amount, or
- (b) if it is assessing costs on the indemnity basis—
 - (i) unreasonably incurred; or
 - (ii) unreasonable in amount.

(2) In particular the court must give effect to any orders which have already been made.

(3) The court must also have regard to—

- (a) the conduct of all the parties, including in particular—
 - (i) conduct before, as well as during, the proceedings; and
 - (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
- (b) the amount or value of any money or property involved;
- (c) the importance of the matter to all the parties;
- (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
- (e) the skill, effort, specialised knowledge and responsibility involved;
- (f) the time spent on the case;
- (g) the place where and the circumstances in which work or any part of it was done;
- (h) the care, speed and economy with which the case was prepared; and
- (i) in the case of costs charged by an attorney to his or her client –
 - (i) any agreement about what grade of attorney should carry out the work;
 - (ii) any agreement that may have been made as to the basis of charging; and
 - (iii) whether the attorney advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive having regard to the nature of the case.

CPR 71.9

71.9 General rule: summary assessment

(1) As a general rule, the judge hearing any application of any description will summarily assess the costs of that application immediately or so soon as practicable after the same is disposed of.

(2) As a general rule, the judge conducting the trial of any matter will summarily assess the costs of the entire claim immediately after he has delivered judgment in respect of the same or so soon as practicable thereafter.

(3) A judge, instead of summarily assessing the costs under paragraphs (1) or (2) of this rule, may direct that the whole or any part of the costs payable shall be subject to a detailed assessment and he may, when making such direction, indicate which particular matters the Registrar may or shall take into account or exclude in relation to such detailed assessment.

(The court has discretion in respect of when to assess costs: rule 71.5(1)(b))

CPR 71.10

71.10 Cases where costs orders deemed to have been made

(1) Where a right to costs arises under—

- (a) rule 35.13 (claimant's entitlement to costs where a Part 35 offer is accepted);
- (b) 37.6 (defendant's right to costs where plaintiff discontinues),

a costs order will be deemed to have been made on the standard basis.

(2) Interest shall be payable on the costs deemed to have been ordered under paragraph (1) and shall begin to run from the date on which the event which gave rise to the entitlement to costs occurred.

CPR 71.11

71.11 Time for complying with an order for costs

A party must comply with an order for the payment of costs within 21 days of—

- (a) the date of the judgment or order if it states the amount of those costs;

- (b) if the amount of those costs (or part of them) is decided later in accordance with this Part, the date of the certificate which states the amount; or
- (c) in either case, such later date as the court may specify.

CPR 71.12

71.12 Failure to comply to pay costs ordered during proceedings

- (1) Where an order for costs has been made against a party in the course of proceedings and that party fails to pay the costs so ordered when they become due then, if that party is a claimant, the court may stay or strike out the claim or any defence to counterclaim or to third party proceedings or make such other order as it thinks fit.
- (2) Where an order for costs has been made against a party in the course of proceedings and that party fails to pay the costs so ordered when they become due then, if that party is a defendant, the court may strike out the defence or any counterclaim or third party proceedings or make such other order as it thinks fit.

Section III

Special situations, costs only proceedings, costs payable pursuant to a contract or out of a fund

CPR 71.13

71.13 Special situations

- (1) Where the court makes an order which does not mention costs then subject to paragraphs (2) and (3), the general rule is that no party is entitled to costs but this does not affect any entitlement of a party to recover costs out of a fund held by that party as trustee or personal representative, or pursuant to any lease, mortgage or other security.
- (2) Where the court makes—
 - (a) an order granting permission to appeal;
 - (b) an order granting permission to apply for judicial review; or
 - (c) any other order or direction sought by a party on an application without notice,

and its order does not mention costs, it will be deemed to include an order for the applicant's costs in the case.

(3) Any party affected by a deemed order for costs under paragraph (2) may apply at any time to vary the order.

(4) The court hearing an appeal may, unless it dismisses the appeal, make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

(5) Where proceedings are transferred from one court to another, the court to which they are transferred may deal with all the costs, including the costs before the transfer.

CPR 71.14

71.14 Costs-only proceedings

(1) This rule sets out a procedure which may be followed where—

- (a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs) which is made or confirmed in writing; but
- (b) they have failed to agree the amount of those costs; and
- (c) no proceedings have been started.

(2) Either party to the agreement may start proceedings under this rule by issuing a fixed date claim form.

(3) The claim form must contain or be accompanied by the agreement or confirmation.

(4) The court

- (a) may
 - (i) assess the costs summarily
 - (ii) make an order for costs to be determined by detailed assessment; or
 - (iii) dismiss the claim;

(5) Rule 71.15 (amount of costs where costs are payable pursuant to a contract) does not apply to claims started under the procedure in this rule.

CPR 71.15

71.15 Amount of costs where costs are payable pursuant to a contract

(1) Where the court assesses (whether by the summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which—

- (a) have been reasonably incurred; and
- (b) are reasonable in amount,

and the court will assess them accordingly.

CPR 71.16

71.16 Costs payable to a party out of a fund

(1) Save as is provided in paragraph (2) of this rule, where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be;

(2) Where paragraph (1) of this rule would otherwise apply but the court is of the opinion that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, such person has in substance acted for his own benefit rather than for the benefit of the fund, the Court may make such other order as it thinks fit.

Section IV

Attorney's duty to notify client and wasted costs

CPR 71.17

71.17 Attorney's duty to notify client

Where—

- (a) the court makes a costs order against a legally represented party;
and
- (b) the party is not present when the order is made,

the party's attorney must notify his client in writing of the costs order no later than 7 days after the attorney receives notice of the order.

CPR 71.18

71.18 Court's powers in relation to misconduct

- (1) The court may make an order under this rule where—
 - (a) a party or his attorney, in connection with a summary or detailed assessment, fails to comply with a rule, practice direction or court order; or
 - (b) it appears to the court that the conduct of a party or attorney, before or during the proceedings which gave rise to the assessment proceedings, was unreasonable or improper.
- (2) Where paragraph (1) applies, the court may—
 - (a) disallow all or part of the costs which are being assessed; or
 - (b) order the party at fault or his attorney to pay costs which he has caused any other party to incur.
- (3) Where—
 - (a) the court makes an order under paragraph (2) against a legally represented party; and
 - (b) the party is not present when the order is made,

the party's attorney must notify his client in writing of the order no later than 7 days after the attorney receives notice of the order.

CPR 71.19

71.19 Liability of attorney for costs

- (1) Where an attorney for a party has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other omission or default, the court may make an order:
 - (a) disallowing costs between the attorney and client or directing the attorney to repay to the client money paid on account to costs;
 - (b) directing the attorney to reimburse the client for any costs that the client has been ordered to pay to any other party; and

(c) requiring the attorney personally to pay the costs of any party.

(2) An order under sub rule (1) may be made by the court on its own initiative or on the motion of any party to the proceeding, but no such order shall be made unless the attorney is given reasonable opportunity to make representation to the court.

(3) The court may direct the notice of an order against an attorney under sub rule (1) to be given to the client in the manner specified in the order.

Section V

Fixed costs

CPR 71.20

71.20 Provision for fixed costs

A party is entitled to the costs set out in column 3 of Appendix A to this Part in the circumstances set out in column 2 of that Appendix.

The court may however direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

If it does so, the court must assess such costs.

APPENDIX A

(71.20)

Fixed Costs

Part 1

This part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money:

- (a) which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered under Part 12. These sums are to be entered on the application. The Table also deals with claims for possession of land or delivery of goods and an application for an order for the attachment of debts – see Table 1; and

(b) which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in the Table – see Table 2.

Scale of Fixed Costs

Table 1

1. This Table shows the amounts to be entered on an application or a provisional order for the attachment of debts in respect of the charges of an attorney in

- (a) an action for payment of a specified sum of money;
- (b) attachment of debt proceedings; or
- (c) an action for the recovery of land.

2. In addition to the fixed costs, the appropriate court fee is to be allowed together with the sum of \$100 for personal service of the application:

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	Claim exceeding \$5,000 but not exceeding \$15,000 or a claim for recovery of land or delivery of goods.	\$1,500
(b)	claim exceeding \$15,000 but not exceeding \$50,000	\$3,000
(c)	claim exceeding \$50,000 but not exceeding \$100,000	\$4,000
(d)	claim exceeding \$100,000 but not exceeding \$500,000	\$5,500
(e)	claim exceeding \$500,000	\$6,500

Table 2

This Table shows additional costs which may be added on the entry of a default judgment under Part 12 or a judgment on admissions under Part 14 for a specified sum of money.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	Basic Costs	\$1,000
(b)	Where there is more than one defendant, in respect of each additional defendant served, against whom judgment is entered	\$200
(c)	Where an order is made under rule 5.14 (specified method of service), for each defendant served	\$1,500
(d)	Where an order is made under Part 7, for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	\$1,500
(e)	Where judgment is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under rule 14.9	\$1,000
(f)	Where judgment is entered on an admission and the time and rate of payment are not agreed under rule 14.10	\$1,500

Miscellaneous enforcement proceedings

Table 3

This table shows the amount to be allowed in respect of the charges of an attorney in the circumstances set out. The appropriate court fee is to be added.

The court may order that the costs of any such matter be assessed.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
(a)	For filing a request for the issue of a writ of execution	\$400
(b)	For each attendance at a hearing of an (i) oral examination; (ii) application to suspend a writ of execution; or (iii) application for time to pay where the debt is admitted	\$800
(c)	For the costs of the judgment creditor where allowed in proceedings for an order for the attachment of debts or an application for payment out of money in court under rule 45.10 where the amount recovered (i) does not exceed \$1000 ii) exceeds \$1,000	One half of the amount recovered \$800
(d)	For the costs of the judgment creditor	

	where allowed in an application for a charging order	\$1,000
(e)	In addition, for the personal service of any application requiring such service	\$100

DRAFT #1

Part 72
Procedure for detailed assessment of costs

Section I
Powers of Registrar

CPR 72.1
72.1 Powers of the Registrar to assessment costs

The Registrar shall have power to assess—

- (a) the costs of or arising out of any cause or matter in the Supreme Court;
- (b) the costs directed by an award made on a reference to arbitration or pursuant to an arbitration agreement to be paid; and
- (c) any other costs the assessment of which is directed by an order of the Court.

CPR 72.2
72.2 Supplementary powers of the Registrar

The Registrar may, in the discharge of his functions with respect to the assessment of costs—

- (a) take an account of any dealings in money made in connection with the payment of the costs being assessed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings.

CPR 72.3
72.3 Interim certificates

(1) The Registrar may from time to time in the course of the assessment of any costs by him issue an interim certificate for any part of those costs which has been assessed.

(2) If, in the course of the assessment of an attorney's bill to his own client, it appears to the Registrar that in any event the attorney will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the attorney to his client.

(3) On the filing of a certificate issued under paragraph (2) the Court may order the amount specified therein to be paid forthwith to the client or into court or in such other manner as the court may direct.

CPR 72.4

72.4 Power of Registrar where party liable to be paid and to pay costs

Where a party entitled to be paid costs is also liable to pay costs, the Registrar may—

- (a) assess the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance; or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

CPR 72.5

72.5 Assessment of bill of costs comprised in account

(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct the Registrar to assess those costs and the Registrar shall assess the costs in accordance with the direction and shall return the bill of costs, after assessment thereof, together with his report thereon to the Court.

(2) The Registrar assessing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the assessment, as if an order for assessment of the costs had been made by the Court.

CPR 72.6

72.6 Registrar to fix certain fees payable to conveyancing counsel, etc.

(1) Where the Court refers any matter to a conveyancing counsel appointed by the Court the fees payable to counsel in respect of the work

done by him in connection with the reference shall be fixed by the Registrar.

(2) An appeal from the decision of the Registrar under this rule shall lie to the Court, and the decision of the Court thereon shall be final.

Section II

Mode of beginning proceedings for assessment

CPR 72.7

72.7 Procedure on Assessment

(1) A party entitled to require any costs to be assessed must begin proceedings for the assessment of those costs by producing the requisite document and leaving a copy thereof at the Registry.

(2) The requisite document for the purposes of this rule shall be the judgment, order or directions, as the case may be.

(3) Subject to paragraph (4) where a party is entitled to require any costs to be assessed by virtue of—

- (a) a judgment, direction or order given or made in proceedings in the Supreme Court; or
- (b) by these rules a party is entitled to costs without an order,

he must begin proceedings for the assessment of those costs within 12 weeks after the judgment, direction or order was entered, signed or otherwise perfected or, as the case may be, within 12 weeks after service of the notice of acceptance of an offer or payment into court given by him under Part 35 or Part 36.

(4) In relation to the assessment of costs pursuant to an order under the Legal Profession Act, paragraph (3) shall have effect as if for the period of 12 weeks first mentioned in that paragraph there shall be substituted a reference to 14 days.

(5) A party who begins proceedings for assessment must at the same time file in the Registry—

- (a) A bill of costs showing the sum in which the court is being asked to assess the costs and how such sum was calculated; and

- (b) a statement containing the following particulars, that is to say—
- (i) the name of every party, and the capacity in which he is a party, to the proceeding, his position on the record of the proceedings which gave rise to the assessment proceedings and, if any costs to which the assessment proceedings relate are to be paid out of a fund, the nature of his interest in the fund; and
 - (ii) the address of any party to the proceedings who appears in person and the name or firm and business address of the attorney of any party who does not so appear and also (if the attorney is the agent of another) the name of firm and business address of his principal.

CPR 72.8

72.8 Notification of time appointed for assessment).

(1) Where proceedings for assessment have been duly begun in accordance with rule 72.7, then, subject to paragraph (2) of this rule, the party who is beginning the proceedings for assessment shall give to the other and to any other party entitled to be heard in the assessment proceedings, not less than 7 days' notice of the day and time appointed for assessment.

(2) A notice under this rule need not be given to any party who has not filed an acknowledgment of service or taken any part in the proceedings which gave rise to the assessment proceedings:

Provided that this paragraph shall not apply where an order for the assessment of an attorney's bill of costs made under any statute at the instance of the attorney gave rise to the assessment proceedings.

CPR 72.9

72.9 Delivery of bills, etc.

(1) Where a party has begun proceedings for assessment in accordance with rule 72.7, the Registrar shall as soon as practicable give notice to any other party whose costs are to be assessed in the proceedings of the period within which his bill of costs is to be sent to the Registrar by whom the bill is to be assessed.

(2) A party whose costs are to be assessed in any assessment proceedings, except an attorney whose costs are to be assessed by virtue of an order made under any statute, must within 7 working days after beginning the proceedings or, as the case may be, receiving notice under paragraph (1), send a copy of his bill of costs to every other party entitled to be heard in the proceedings, unless that party has not filed an acknowledgment of service or taken any part in the proceedings which gave rise to the assessment proceedings.

CPR 72.10

72.10 Provisions as to bills of costs

- (1) The form of a bill of costs shall be as specified by practice direction.
- (2) Before a bill of costs is filed for assessment it must be indorsed with the name or firm and business address of the attorney whose bill it is.

CPR 72.11

72.11 Provisions as to assessment proceedings

- (1) If any party entitled to be heard in any assessment proceedings does not attend within a reasonable time after the time appointed for the assessment, the Registrar, if satisfied by affidavit or otherwise that the party had due notice of the time appointed, may proceed with the assessment.
- (2) The Registrar by whom any assessment proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

CPR 72.12

72.12 Powers of assessing costs payable out of fund

- (1) Where any costs are to be paid out of a fund the Registrar may give directions as to the parties who are entitled to attend on the assessment of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.
- (2) Where the Court has directed that an attorney's bill of costs be assessed for the purpose of being paid out of a fund, the Registrar by whom the bill is being assessed may, if he thinks fit, adjourn the assessment for a reasonable period and direct the attorney to send to any person having any interest in the fund a copy of the bill, or of any part

thereof, free of charge together with a letter containing the following information, that is to say—

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to the Registrar for assessment;
- (b) the address of the office at which the assessment is proceeding;
- (c) the time appointed by the Registrar at which the assessment will be continued; and
- (d) such other information, if any, as the Registrar may direct.

Section III

Costs payable to one party by another or out of a fund

CPR 72.13

72.13 Assessment of Costs

- (1) This rule applies to costs which by or under these Rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).
- (2) Subject to the following provisions of this rule, costs to which this rule applies shall be assessed on a standard basis, and on an assessment on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.
- (3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be assessed on an indemnity basis.
- (4) On an assessment on the indemnity basis, being a more generous basis than that provided by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be assessed on the indemnity basis the ordinary rules applicable on assessment as between attorney and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if—

- (a) the costs are to be paid out of a fund; or
- (b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be assessed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 72.16(2) shall have effect in relation to the assessment in substitution for paragraph (2) of this rule.

CPR 72.14

72.14 Costs payable to an attorney by his own client

(1) On the assessment of an attorney's bill to his own client all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purpose of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on an assessment of costs in a case to which rule 72.13(2) applies shall, unless the attorney expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), the reference to the client shall be construed—

- (a) if the client was at the material time incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs and represented by a person acting as a litigation guardian, as references to that person acting, where necessary, with the authority of the authority having jurisdiction under that Act;

- (b) if the client was at the material time a minor and represented by a person acting as a litigation guardian, as references to that person.

CPR 72.15

72.15 Costs payable to attorney where money recovered by or on behalf of minor, etc.

(1) This rule applies to—

- (a) any proceedings in which 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 person who is an infant or incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs or in which money paid into Court is accepted by or on behalf of such a person; and
- (b) any proceedings under the Fatal Accidents Act, in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Act or in which money paid into Court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor.

(2) The costs payable to his attorney by any claimant in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be assessed under rule 27; and no costs shall be payable to the attorney of any claimant in respect of those proceedings except such amount of costs as may be certified in accordance with this rule on the assessment under rule 72.14 of the attorney's bill to that claimant.

(3) On the assessment under rule 72.14 of an attorney's bill to any claimant in any proceedings to which this rule applies by virtue of paragraph 1(a) or (b) who is his own client, the Registrar shall also assess any costs payable to that claimant in those proceedings and shall certify—

- (a) the amount allowed on the assessment under rule 72.14, the amount allowed on the assessment of any costs payable to that

claimant in those proceedings and the amount (if any) by which the first mentioned amount exceeds the other; and

- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is an infant or incapable, by reason of mental disorder within the meaning of the Mental Health Act, of managing and administering his property and affairs or the widow of the man whose death gave rise to the proceedings and any other party.
- (4) Nothing in the foregoing provisions of this rule shall prejudice an attorney's lien for costs.
- (5) The foregoing provisions of this rule shall apply in relation to—
- (a) a counterclaim by or on behalf of a person who is an infant or incapable by reason of mental disorder within the meaning of the Mental Health Act, of managing or administering his property and affairs and a counterclaim consisting of or including a claim under the Fatal Accidents Act by or on behalf of the widow of the man whose death gave rise to the claim; and
 - (b) a claim made by or on behalf of a person who is an infant or incapable as aforesaid in an action by any other person for relief under the Merchant Shipping Act, and a claim consisting of or including a claim under the Fatal Accidents Act, made by or on behalf of that widow in such an action,

as if for references to a claimant there were substituted references to a defendant.

CPR 72.16

72.16 Costs payable to a trustee out of the trust fund, etc.

- (1) This rule applies to every assessment of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
- (2) On any assessment to which this rule applies, no costs shall be disallowed, except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

Section IV

Review of assessment

CPR 72.17

72.17 Review in relation to detailed assessment of costs

- (1) Any party to any detailed assessment proceeding who is dissatisfied with the allowance or disallowance in whole or in part of any item by the Registrar, or with the amount allowed by him in respect of any item, may apply to a judge to review the Registrar's decision in respect of that item.
- (2) An application under this rule for review of the Registrar's decision must be made by interlocutory application notice to a judge accompanied by a brief skeleton argument setting out succinctly the matter or matters complained of and why the Registrar was in error.
- (3) An application under this rule for review of the Registrar's decision may not be made later than 14 days after the decision complained of or such longer period as may be fixed by the Registrar or by the judge to whom the application for review has been made.
- (4) On review, the judge may make such order as he sees fit including assessing any item of costs or any disbursement or item of expense.

Section V

Costs capping orders

CPR 72.18

72.18 Costs capping orders - General

1. A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.
2. In this Rule, "future costs" means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.
3. A cost capping order may be in respect of –
 - a. the whole litigation; or
 - b. any issues which are ordered to be tried separately.

4. The court may at any stage of proceedings make a costs capping order against all of any of the parties, if –
 - a. it is in the interests of justice to do so;
 - b. there is a substantial risk that without such an order costs will be disproportionately incurred; and
 - c. it is not satisfied that the risk in sub-paragraph (b) can be adequately controlled by –
 - i. case management directions or orders made under Part 26; and
 - ii. detailed assessment of costs.
5. In considering whether to exercise its discretion under this Rule, the court will consider all the circumstances of the case, including –
 - a. whether there is a substantial imbalance between the financial position of the parties;
 - b. whether the costs of determining the amount of the cap are likely to be proportionate to the overall costs of the litigation;
 - c. the stage which have been incurred to date and the future costs.
6. A costs capping order, once made, will limit the costs recoverable by the party subject to the order unless a party successfully applies to vary the order. No such variation will be made unless –
 - a. there has been a material and substantial change of circumstances since the date when the order was made; or
 - b. there is some other compelling reason why a variation should be made.

CPR 72.19

72.19 Application for a costs capping order

1. An application for a costs capping order must be made on notice in accordance with Part 11.
2. The application must –
 1. set out –

- i. whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and
 - ii. why a costs capping order should be made; and
- 2. be accompanied by an estimate of cost setting out –
 - i. the costs (and disbursements) incurred by the applicant to date; and
 - ii. the costs (and disbursements) which the applicant is likely to incur in the future conduct of the proceedings.
- 3. The court may give directions for the determination of the application and such directions may –
 - a. direct any party to the proceedings –
 - i. to file a schedule of costs;
 - ii. to file written submissions on all or any part of the issues arising;
 - b. fix the date and time estimate of the hearing of the application;
 - c. include any further directions as the court sees fit.

CPR 72.20

72.20 Application to vary a costs capping order

An application to vary a costs capping order must be made by application notice pursuant to Part 11.

Part 73

Transitional provisions

CPR 73.1

73.1 Scope of this Part

This Part deals with the extent to which the former Rules of the Court, 1978 and any amendments heretofore made to them remain in force after these Rules come into force and the way in which actions, matters and other proceedings in existence as at the commencement date become subject to these Rules.

CPR 73.2

73.2 New Proceedings

These Rules apply to all proceedings commenced on or after the commencement date.

CPR 73.3

73.3 Old Proceedings

- (1) The Rules do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.
- (2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these Rules apply from the date that such application is heard.
- (3) Where a trial date has not been fixed in proceedings that commenced before the commencement date,—
 - (a) the Claimant must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least 28 days' notice of the conference; and
 - (b) these Rules apply from the date of the case management conference given under paragraph (a).

CPR 73.4

73.4 Exercise of discretion

Where in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these Rules and, in particular Parts 1 and Part 25.

DRAFT #1

Part 74
Commencement and revocation

CPR 74.1
74.1 Commencement

These Rules shall come into operation on such day as the Chief Justice may appoint by Notice published in the Official Gazette.

CPR 74.2 Revocation

Subject to the provisions of Part 73, the Rules of the Supreme Court, 1978 (S.I. [] No. []) shall be revoked on the day when these Rules come into operation.

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