

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

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

- (1) Where a defendant in an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made.
- (2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, the defendant must issue the counterclaim out of the Registry and serve on the person concerned a sealed copy of the counterclaim together with a form of acknowledgment of service in Form No. 14 in Appendix A (with such modifications as the circumstances may require) and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights and respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.
- (3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to the counterclaim is added.
- (4) The appropriate office for issuing and acknowledging service of a counterclaim made by a person who is not already a party to the action is the Registry.
- (5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these Rules, namely Order 6, rule 7(3) and (5) and Orders 10, 11, 12 and 13 shall, subject to paragraph (4), apply in relation to the counterclaim and the proceedings arising from it as if—
- the counterclaim were a writ and the proceedings arising from it in an action;
 - the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.
- (6) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person other than the plaintiff, who before service is already a party to the action, the provisions of Order 14, rule 5 shall apply in relation to the counterclaim and the proceedings arising from it as if the party against whom the counterclaim is made were the plaintiff in the action.
- (7) A copy of a counterclaim required to be served on a person who is not already a party to the action must be indorsed with a notice, in Form No. 17 in Appendix A, addressed to the person.

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

- (1) Subject to rule 5(1), 2 or more persons may be joined together in one action as plaintiff or as defendants with the leave of the Court or where—
- if separate actions were brought by or against each of them, as the case may be, a common question of law or fact would arise in all the actions; and
 - all rights to relief claimed in the action (whether they are joint, several or otherwise) are in respect of or arise out of the same transaction or series of transactions.
- (2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any writ or summons, unless the Court gives leave to the contrary, be parties to the action and any of them who, with the consent to being joined as a plaintiff must, subject to any order made by the Court, apply for leave under this paragraph, be made a defendant.

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

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

- (1) If claims in respect of 2 or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if 2 or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.
- (2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

6. Misjoinder and nonjoinder of parties (O. 15, r. 6)

- (1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.
- (2) Subject to this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—
- order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
 - order any of the following persons to be added as a party, namely—
 - any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or
 - any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.
 - An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.
- (4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.
- (5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either—
- the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted; or
 - the relevant period arises under the provisions of section 27 or 28 of the Limitation Ordinance (Cap 347) and the Court directs that those provisions should not apply to the action by or against the new party.
- (6) In this paragraph, "any relevant period of limitation" means a time limit under the Limitation Ordinance (Cap 347).
- (7) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5) and only if, the Court is satisfied that—

2. Affidavit by 2 or more deponents (O. 41, r. 2)

Where an affidavit is made by 2 or more deponents, the names of the persons making the affidavit must be inserted in the jurat except that, if the affidavit is sworn by both or all the deponents at one time before the same person, it shall be sufficient to state that it was sworn by both (or all) of the "above named" deponents.

3. Affidavit by illiterate or blind person (O. 41, r. 3)

Where it appears to the person administering the oath that the deponent is illiterate or blind, he must certify in the jurat that—

- (a) the affidavit was read in his presence to the deponent;
- (b) the deponent seemed perfectly to understand it; and
- (c) the deponent made his signature or mark in his presence,
- (d) and the affidavit shall not be used in evidence without such a certificate unless the Court is otherwise satisfied that it was read to and appeared to be perfectly understood by the deponent.

4. Use of defective affidavit (O. 41, r. 4)

An affidavit may, with the leave of the Court, be filed or used in evidence notwithstanding any irregularity in the form thereof.

5. Contents of affidavit (O. 41, r. 5)

- (1) Subject to Order 14, rules 2(2) and 4(2), to Order 86, rule 2(1), to paragraph (2) of this rule and to any order made under Order 38, rule 3, an affidavit may contain only such facts as the deponent is able of his own knowledge to prove.
- (2) An affidavit sworn for the purpose of being used in interlocutory proceedings may contain statements of information or belief with the sources and grounds thereof.

6. Scandalous, etc., matter in affidavit (O. 41, r. 6)

The Court may order to be struck out of any affidavit any matter which is scandalous, obscene or otherwise oppressive.

7. Alterations in affidavits (O. 41, r. 7)

- (1) An affidavit which has in the jurat or body thereof any interlineation, erasure or other alteration shall not be filed or used in any proceeding without the leave of the Court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of erasure, has re-written in the margin of the affidavit any words or figures written on the main body and has signed or initialled them.
- (2) Where an affidavit is sworn at the Registry, the Seal of the Court may be substituted for signature or initials required by this rule.

8. Affidavit not to be sworn before solicitor of party, etc. (O. 41, r. 8)

No affidavit shall be sufficient if sworn before the solicitor of the party on whose behalf the affidavit is to be used or before any agent, partner or clerk of that solicitor.

9. Filing of affidavits (O. 41, r. 9)

- (1) Every affidavit used in a cause or matter proceeding in the Court must be filed at the Registry.
- (2) Every affidavit must be indorsed with a note showing on whose behalf it is filed and the date of swearing and filing, and an affidavit which is not so indorsed may not be filed or used without the leave of the Court.

10. Use of original affidavit or office copy (O. 41, r. 10)

- (1) Subject to paragraph (2), an original affidavit may be used without the leave of the Court notwithstanding that it has not been filed in accordance with rule 9.

- (2) Where an original affidavit is used then, unless the party whose affidavit it is undertakes to file it, he must immediately after it is used leave it with the judicial clerk in court or chambers, as the case may be, who shall send it to be filed.
- (3) Where an affidavit has been filed, an office copy thereof may be used in any proceedings.

11. Document to be used in conjunction with affidavit to be exhibited to it (O. 41, r. 11)

- (1) Any document to be used in conjunction with an affidavit must be exhibited, and not annexed, to the affidavit.
- (2) Any exhibit to an affidavit must be identified by a certificate of the person before whom the affidavit is sworn.
- (3) The certificate must be entitled in the same manner as the affidavit and rule 1(1), (2) and (3) shall apply accordingly.

12. Affidavit taken outside Hong Kong admissible without proof of seal, etc. (O. 41, r. 12)

- (1) Any affidavit sworn in any place outside Hong Kong before any judge, officer or other person duly authorized, or before any commissioner authorized by the Court to take affidavits thereat, may be used in the Court in all cases where affidavits are admissible.
- (2) Any affidavit sworn in any place outside Hong Kong before a judge or magistrate, being authenticated by the official seal of the foreign court to which he is attached or of such magistrate, or before a notary public or a consular officer, may be used in the Court in all cases where affidavits are admissible.
- (3) The fact that an affidavit purports to have been sworn in the manner prescribed by paragraph (1) or (2) of this rule shall be prima facie evidence of the seal or signature, as the case may be, of any such court, judge, magistrate, commissioner or other officer or person therein mentioned, appended or subscribed to such affidavit, and of the authority of such court, judge, magistrate, commissioner or other officer or person to administer oaths.

**JUDGMENTS AND ORDERS
JUDGMENTS, ORDERS, ACCOUNTS AND INQUIRIES**

1. Form of judgment and interest thereon, etc. (O. 42, r. 1)

- (1) If, in the case of any judgment, a form thereof is prescribed by Appendix A the judgment must be in that form. (See Appendix A, Forms 39-45, 48, 49)
- (2) The party entering any judgment shall be entitled to have recited therein a statement of the cause in which, and the place at which, the writ or other originating process by which the cause in question was begun was served.
- (3) An order other than a consent order to which rule 5A applies must be marked with the name of the judge or the master by whom it was made and must be sealed.

1A. Judgment in favour of reversioner for detention of goods (O. 42, r. 1A)

Where a claim relating to the detention of goods is made by a partial owner whose right of action is not founded on a possessory title, any judgment or order given or made in respect of the claim shall be for the payment of damages only.

In this paragraph "partial owner" (IRdGN) means one of 2 or more persons having interest in the goods, unless he has the written authority of every other such person to sue on the latter's behalf.

2. Judgment, etc. requiring act to be done: time for doing it (O. 42, r. 2)

- (1) Subject to paragraph (2), a judgment or order which requires a person to do an act must specify the time after service of the judgment or order, or some other time, within which the act is to be done.
- (2) Where the act which any person is required by any judgment or order to do is to pay money to some other person, give possession of any land or deliver any goods, a time within which the

19. Taxation of bill of costs comprised in account (O. 62, r. 19)

- (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 a taxing master to tax those costs and the taxing master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.
- (2) A taxing master taxing 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 taxation, as if an order for taxation of the costs had been made by the Court.

PROCEDURE OF TAXATION**21. Mode of beginning proceedings for taxation (O. 62, r. 21)**

- (1) A party entitled to require any costs to be taxed shall file in the Court his bill of costs and shall obtain from the taxing master an appointment to tax.
- (2) Not less than 7 days' notice of such appointment to tax together with a copy of the bill of costs shall be served by such person on every person entitled to be heard on taxation.
- (3) It shall not be necessary for a copy of the bill of costs or of the notice of appointment to tax to be sent to any party who has not acknowledged service in the proceedings which gave rise to the taxation.
- (4) In proceedings for the taxation of costs of, or arising out of, a cause or matter in which the amount of the bill of costs does not exceed the sum of \$100,000, the taxing master may by order inform the party commencing the proceedings for taxation the amount which the taxing master proposes to allow in respect of the costs to be taxed and further the taxing master shall not be bound to allow any notice under paragraph (2) unless, within 14 days after serving notice of the amount proposed to allow, any person entitled to be heard on taxation applies to the taxing master for an appointment to tax.
- (5) Costs in the amount specified in any notice under paragraph (4) shall be taxed and an appointment to tax shall be made within 14 days after the service of such notice any person entitled to be heard on taxation.
- (6) A party must, when he files his bill of costs, deposit with the Court an amount equal to the taxing fee which would be payable if the bill were to be allowed in full. When the taxing master signs a certificate, the balance of the sum so deposited, if any, after deducting the prescribed fee, shall be repaid to the party who deposited such amount.
- (7) If a bill of costs is withdrawn less than 7 days before the appointment for taxation, the fee shall be payable by the party who withdraws the bill.
- (8) The fee payable under paragraph (6) shall be deducted by the Court from the amount deposited under paragraph (5).

22. Delay in filing of bill of costs (O. 62, r. 22)

- (1) If, within one month after an order of the Court requiring the payment of any costs taxed, the person entitled to payment thereof has neither agreed the amount of such costs nor is a person liable to pay the same nor served upon such person a notice of appointment to tax in accordance with rule 21, the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment thereof, may order that the person entitled to payment of the costs shall proceed to taxation in accordance with rule 21 and such period as the taxing master may order.
- (2) If within the period ordered by the taxing master or any extension thereof granted by the taxing master, notice of appointment to tax has not been served in accordance with rule 21, the amount due has not been agreed between the parties, the order of the Court requiring the payment of the costs shall thereupon be wholly discharged.
- (3) On any order in accordance with paragraph (1) and on the taxation thereof, whether or not an order has been made under that paragraph, the taxing master shall determine whether or not an order has been made under that paragraph, the taxing master shall determine whether there has been undue delay in the filing of the bill of costs or in the service of a notice of appointment to tax, may make such order as he shall consider appropriate in the circumstances.

application or of any order or as to the costs of the taxation and may disallow any item contained in the bill of costs.

23. Deposit of papers and vouchers (O. 62, r. 23)

- (1) Not less than 2 days before the date appointed for taxation, the person who filed the bill of costs in accordance with rule 21 shall deposit with the taxing master all papers and vouchers relating to the items contained in the bill of costs.
- (2) If by reason of the failure of such person to deposit such papers and vouchers the taxation is adjourned, the taxing master may make such order as to costs thrown away by such adjournment as he may consider appropriate.

24. Notice of taxation (O. 62, r. 24)

- (1) If, at the date and time of an appointment to tax, a person entitled to be heard upon such taxation does not appear before the taxing master in person or by his representative, the taxing master, on being satisfied that notice of the appointment to tax and a copy of the bill of costs were duly served on such person in accordance with rule 21, may proceed to taxation of the bill of costs in the absence of such person or of his representative.
- (2) If notice of the appointment to tax and the copy of the bill of costs were not served upon such person, the taxing master shall adjourn the taxation for such period as he may consider necessary to enable service of the notice of the adjourned appointment to tax and of the bill of costs to be effected on such person and may make such order as he may consider appropriate in relation to costs thrown away by such adjournment.

25. Provisions as to bills of costs (O. 62, r. 25)

- (1) In any solicitor's bill of costs the professional charges and the disbursements must be set out in separate columns and every column must be cast before the bill is left for taxation.
- (2) Before a solicitor's bill of costs is left for taxation it must be indorsed with the name or firm and business address of the solicitor whose bill it is.

26. Power to adjourn (O. 62, r. 26)

- (1) The taxing master by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

27. Powers of taxing master taxing costs payable out of fund (O. 62, r. 27)

- (1) Where any costs are to be paid out of a fund the taxing master may give directions as to the person who is to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.
- (2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing master by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having or deemed to have 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—
- that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing master for taxation;
 - the name of the taxing master and the address of the office at which the taxation is taking place;
 - the time appointed by the taxing master at which the taxation will be continued; and such other information, if any, as the taxing master may direct.

ASSESSMENT OF COSTS**28. Costs payable to one party by another or out of fund (O. 62, r. 28)**

- (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

ORDER 5
MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT OF FIRST INSTANCE
(25 of 1998 s. 2)

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

Subject to the provisions of any written law and of these rules, civil proceedings in the Court of First Instance may be begun by writ, originating summons, originating motion or petition.
(25 of 1998 s. 7)

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

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

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

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

Proceedings by which an application is to be made to the Court of First Instance or a judge thereunder any written law must be begun by originating summons except where by these rules or under any written law the application in question is expressly required or authorized to be begun by some other means.
(25 of 1998 s. 2)

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

(1) Except in the case of proceedings which by these rules or by or under any written law are required to be begun by writ or originating summons or are required or authorized to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.

(2) Proceedings—

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

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

Proceedings may be begun by originating motion or petition if, but only if, by these rules or under any written law the proceedings in question are required or authorized to be so begun.

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

(1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he is a trustee or personal representative, or in any other representative capacity) may begin and carry on proceedings in the High Court or

solicitor or in person. (25 of 1998 s. 2)

(2) A body corporate may not begin or carry on any such proceedings in the Court otherwise than by a solicitor except—

- (a) as expressly provided by or under any enactment; or
- (b) where leave is given under paragraph (3) for it to be represented by one of its directors.

(3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director.
(L.N. 99 of 1993; L.N. 108 of 2002)

(b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(4) No appeal shall lie from an order of the Registrar under paragraph (3) giving or refusing leave.

(5) Leave given by a Registrar under paragraph (3) may be revoked by the Court at any time.

(6) No appeal shall lie from an order of the Court revoking leave given by a Registrar.
(Enacted 1988)

ORDER 6
WRITS OF SUMMONS: GENERAL PROVISIONS

Remarks

Amendment amendments retroactively made - see 25 of 1998 s. 2

Form of Writ, etc. (O. 6, r. 1)

Every writ must be in Form No. 1 in Appendix A.

1 Indorsement of claim (O. 6, r. 2)

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

(a) with a statement of claim or, if the statement of claim is not indorsed on the writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

(b) where the claim made by the plaintiff is for a debt or liquidated demand only, with a statement of the amount claimed in respect of the debt or demand and for costs and also with a statement that further proceedings will be stayed if, within the time limited for acknowledging service, the defendant pays the amount so claimed to the plaintiff, his solicitor or agent.

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

Before a writ is issued it must be indorsed—

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

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

5 Indorsement as to solicitor and address (O. 6, r. 5)

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

(a) where the plaintiff sues by a solicitor, with the plaintiff's address and the solicitor's name or firm and a business address of his within the jurisdiction and also (if the solicitor is an agent of another) the name or firm and business address of his principal;

(b) where the plaintiff sues in person, with the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of his place within the jurisdiction at or to which documents for him may be delivered or sent.

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

(a) where he sues by a solicitor, the business address to which may be added a numbered box at a document exchange of the solicitor indorsed on the writ;

this Order, are required to be considered on the hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, on the summons for directions, an action is ordered to be transferred to the District Court or some other court, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order on the summons.

(7) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 2 days' notice to the other parties.

3. Particular matters for consideration (O. 25, r. 3)

On the hearing of the summons for directions the Court shall in particular consider, if necessary, of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say—

- (a) any provision of Part IV and Part V of the Evidence Ordinance (Cap 8) (hearsay evidence of fact or opinion in civil proceedings) or of Part III and Part IV of Order 38;
- (b) Order 20, rule 5 and Order 38, rules 2 to 7;
- (c) section 40 of the District Court Ordinance (Cap 336).

4. Admissions and agreements to be made (O. 25, r. 4)

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

5. Limitation of right of appeal (O. 25, r. 5)

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

6. Duty to give all information at hearing (O. 25, r. 6)

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

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

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

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

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

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

7. Duty to make all interlocutory applications on summons for directions (O. 25, r. 7)

(1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

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

Automatic directions in personal injury actions (O. 25, r. 8)

(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically—

(a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;

(b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 6 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;

(c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;

(d) photographs, a sketch plan and the contents of any police accident report shall be receivable in evidence at the trial and shall be agreed if possible;

(e) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;

(f) ~~Repealed L.N. 99 of 1993~~

(g) Where paragraph (1)(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided in this rule thereafter as the reports on each side are available.

(2) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate or prevent the making of an order for the transfer of the proceedings to a final court.

(3) For the purpose of this rule—

"road accident" means an accident on land due to a collision or apprehended collision involving a vehicle and

"documents relating to special damages" include—

7. Service of copy of judgment, etc., prerequisite to enforcement under r. 5 (O. 45, r. 7)

- (1) In this rule references to an order shall be construed as including references to a judgment.
- (2) Subject to Order 24, rule 16(3), Order 26, rule 6(3) and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless—
- a copy of the order has been served personally on the person required to do or abstain from doing the act in question, and
 - in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.
- (3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(ii) or (iii) unless—
- a copy of the order has also been served personally on the officer against whose committal is sought, and
 - in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.
- (4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served—
- in the case of service under paragraph (2) that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it, and
 - in the case of service under paragraph (3) that if the body corporate neglects to obey the order within the time so specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.
- (5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this Order, a copy of the previous order requiring the act to be done.
- (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either
- by being present when the order was made, or
 - by being notified of the terms of the order, whether by telephone, telegram or otherwise.
- (7) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so.

8. Court may order act to be done at expense of disobedient party (O. 45, r. 8)

If an order of mandamus, a mandatory order, an injunction or a judgment or order for the specific performance of a contract is not complied with, then, without prejudice to its powers to punish the disobedient party for contempt, the Court may direct that the act required to be done, in 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.

9. Execution by or against person not being a party (O. 45, r. 9)

- (1) Any person, not being a party to a cause or matter, who obtains any order or judgment in his 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 order or 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.

10. Conditional judgment: waiver (O. 45, r. 10)

A party entitled under any judgment or order to any relief subject to the fulfilment of any condition who fails to fulfil that condition is deemed to have abandoned the benefit of the judgment or order, and, unless the Court otherwise directs, any other person interested may take any proceedings which either are warranted by the judgment or order or might have been taken if the judgment or order had not been given or made.

11. Matters occurring after judgment: stay of execution, etc. (O. 45, r. 11)

Without prejudice to Order 47, rule 1, a party against whom a judgment has been given or an order made may apply to the Court for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant such relief, and on such terms, as it thinks just.

12. Forms of writs (O. 45, r. 12)

- A writ of fieri facias must be in such of the Forms Nos. 53 to 63 in Appendix A as is appropriate in the particular case.
- A writ of delivery must be in Form No. 64 or 65 in Appendix A, whichever is appropriate.
- A writ of possession must be in Form No. 66 or 66A in Appendix A.
- A writ of sequestration must be in Form No. 67 in Appendix A.

13. Enforcement of judgments and orders for recovery of money, etc. (O. 45, r. 13)

- Rule 1(1) of this Order, with the omission of sub-paragraphs (e) and (f) thereof, and Orders 46, 47, 48, 49, 49B, 50, 51 shall apply in relation to a judgment or order for the recovery of money as they apply in relation to a judgment or order for the payment of money. <* Note — Exp. X-Ref.: Orders 46, 47, 48, 49, 49B, 50, 51 * >
- Rule 3 of this Order, with the omission of paragraph (1)(b) and (c) thereof, and Order 47, rule 3(2), shall apply in relation to a judgment or order for the recovery of possession of land as they apply in relation to a judgment or order for the giving or delivery of possession of land.
- Rule 4 of this Order, with the omission of paragraphs (1)(b) and (c) and (2)(c) thereof, and Order 47, rule 3(2), shall apply in relation to a judgment or order that a person do have a return of any goods and to a judgment or order that a person do have a return of any goods or do recover the assessed value thereof as they apply in relation to a judgment or order for the delivery of any goods and a judgment or order for the delivery of any goods or payment of the assessed value thereof respectively.

14. Power of the Court to order immediate execution (O. 45, r. 14)

- The Court may at the time of giving judgment, on the oral application of the party in whose favour the judgment is given, order immediate execution thereof without the issue of a writ of execution, except as to so much as relates to the costs, and that the judgment shall be executed on the costs as soon as the amount thereof has been ascertained by taxation.
- The order for immediate execution shall be in writing and shall be sufficient authority to the party to proceed at once to execution of the judgment against the property of the party against whom judgment is given: Provided that the party obtaining the order shall as soon thereafter as practicable comply with the requirements of Order 46, rule 6: Provided further that, if the party against whom the order has been made satisfies the Court that he has sufficient means and intends to satisfy the judgment, the Court may discharge the order for immediate execution.

15. Judgment for money against representatives of deceased persons (O. 45, r. 15)

If the judgment is against a party as the representative of a deceased person and such judgment is for money to be paid out of the property of the deceased person, it may be executed by the attachment and sale of any such property or, if no such property can be found and the defendant fails to satisfy the Court that he has duly applied such property of the deceased person

in the custody of the court until a memorandum of the order has been endorsed thereon or permanently affixed thereto.

DISABILITY

105. Person under disability must sue by next friend, etc.

(1) In this rule—

“mentally disordered person” has the same meaning as in the Mental Health Ordinance (Cap 136);

“person under disability” means a person who is a minor or a mentally disordered person.

(2) A person under disability may begin and prosecute any matrimonial proceedings by his next friend and may defend any such proceedings by his guardian ad litem and, except as otherwise provided by this rule, it shall not be necessary for a guardian ad litem to be appointed by the court.

(3) No person's name shall be used in any proceedings as next friend of a person under disability unless he is the Official Solicitor or the documents mentioned in paragraph (7) have been filed.

(4) Where a person entitled to defend any matrimonial proceedings is a mentally disordered person, then—

(a) the Official Solicitor shall, if he consents, be the patient's guardian ad litem, but at any stage of the proceedings an application may be made, on not less than 4 days' notice to the Official Solicitor, for the appointment of some other person as guardian; (98 of 1991 s. 9)

(b) in any other case, an application may be made on behalf of the mentally disordered person for the appointment of a guardian ad litem;

and there shall be filed in support of any application under this paragraph the documents mentioned in paragraph (7).

(5) Where a petition, answer, originating application or originating summons has been served on a person whom there is reasonable ground for believing to be a person under disability and no notice of intention to defend has been given, or answer or affidavit in answer filed, or his next friend the party at whose instance the document was served shall, before taking any further step in the proceedings, apply to a court for directions as to whether a guardian ad litem should be appointed to act for that person in the cause, and on any such application the court may, if it considers it necessary in order to protect the interests of the person served, order that some proper person be appointed his guardian ad litem. (L.N. 325 of 1982)

(6) No notice of intention to defend shall be given, or answer or affidavit in answer filed, on behalf of a person under disability unless the person giving the notice or filing the answer or affidavit—

(a) is the Official Solicitor or, in a case to which paragraph (4) applies, is the Official Solicitor or has been appointed by the court to be guardian ad litem; or (98 of 1991 s. 9)

(b) in any other case, has filed the documents mentioned in paragraph (7).

(7) The documents referred to in paragraphs (3), (4) and (6) are—

(a) a written consent to act by the proposed next friend or guardian ad litem and

(b) a certificate by the solicitor acting for the person under disability—

(i) that he knows or believes that the person to whom the certificate relates is a minor or a mentally disordered person stating (in the case of a mentally disordered person) the grounds of his knowledge or belief; and

(ii) that the person named in the certificate as next friend or guardian ad litem has no interest in the cause or matter in question adverse to that of the person under disability and that he is a proper person to be next friend or guardian. (L.N. 135 of 1972)

106. Service on person under disability

(1) Where a document to which rule 6(3)(b) or 14 applied is required to be served on a person under disability within the meaning of the last foregoing rule, it shall be served—

(a) in the case of a minor who is not also a mentally disordered person, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;

(b) in the case of a mentally disordered person—

(i) on the Committee (if any) appointed under section 11 of the Mental Health Ordinance (Cap 136), or

(ii) if there is no Committee so authorized, on the Official Solicitor if he has consented under rule 105(4) to be the guardian ad litem of the patient, or (98 of 1991 s. 9)

(iii) in any other case, on the person with whom the mentally disordered person resides or in whose care he is;

Provided that the court may order that a document which has been, or is to be, served on the person under disability or on a person other than one mentioned in sub-paragraph (a) or (b) shall be deemed to be duly served on the person under disability.

(2) Where a document to which rule 14 applies is served in accordance with paragraph (1), it shall be endorsed with a notice in Form 19; and after service has been effected the person at whose instance the document was served shall, unless the Official Solicitor is the guardian ad litem of the person under disability or the court otherwise directs, file an affidavit by the person on whom the document was served stating whether the contents of the document were, or its purport was, communicated to the person under disability and, if not, the reasons for not doing so. (98 of 1991 s. 9)

(L.N. 135 of 1972)

107. Petition for nullity on ground of insanity, etc.

(1) Where a petition for nullity of marriage has been presented on the ground that the respondent at the time of the marriage was of unsound mind or suffering from mental disorder of such a kind or to such an extent as to be unfitted for marriage and the procreation of children, or was subject to recurrent attacks of insanity or epilepsy, then, whether or not the respondent gives notice of intention to defend, the petitioner shall not proceed with the cause without the leave of the court.

(L.N. 325 of 1982)

(2) The court by which an application for leave is heard may make it a condition of granting leave that some proper person be appointed to act as guardian ad litem of the respondent.

108. Separate representation of children

(1) Without prejudice to rule 72, if in any matrimonial proceedings it appears to the court that a child ought to be separately represented, the court may—

(a) of its own motion, appoint the Official Solicitor if he consents, or (98 of 1991 s. 9)

(b) on the application of any other proper person, appoint that person, to be guardian ad litem of the child with authority to take part in the proceedings on the child's behalf.

(2) The applicant for an order under paragraph (1)(b) shall, on making the application, file a certificate by a solicitor certifying that the person named in the certificate as the proposed guardian ad litem has no interest in the proceedings adverse to that of the child and that he is a proper person to be such guardian.

PROCEDURE: GENERAL

109. Service out of Hong Kong

(1) Any document in matrimonial proceedings may be served out of Hong Kong without leave of the court (hereinafter prescribed by these rules or where the proceedings are pending in the Court of Final Appeal or in the District Court, in accordance with R.H.C. Order 11, rules 5 and 6 (which relate to the service of a writ abroad).

(L.N. 26 of 2002)

(2) Where the document is served in accordance with R.H.C. Order 11, rules 5 and 6, those rules shall apply for the purposes of the said Order 11 (which deals with the expenses incurred by the Chief Secretary for Administration) shall have effect in relation to service of the document as they have effect in