EASTERN CARIBBEAN SUPREME COURT

CIVIL PROCEDURE RULES (REVISED EDITION) 2023

EASTERN CARIBBEAN SUPREME COURT
CIVIL PROCEDURE RULES
(REVISED EDITION) 2023

The Chief Justice and two other judges of the Supreme Court, being the authority empowered by Section 17 of the Supreme Court Order, S.I. 1967 No. 223 to make rules regulating the practice and procedure of the Court of Appeal and the High Court, have made the following rules –

1. **Citation and commencement**
   These rules may be cited as the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 and shall come into effect in each of the Member States and Territories of the Eastern Caribbean Supreme Court on 31st July 2023.

2. **Repeal**
   The Eastern Caribbean Supreme Court Civil Procedure Rules 2000 (SRO 24/2001) are repealed, subject to the transitional provisions contained in Part 75 of these Rules.

TABLE OF CONTENTS

Part 1: Overriding Objective

The overriding objective	Rule 1.1
Application of overriding objective by the court	Rule 1.2
Duty of parties	Rule 1.3

Part 2: Application and Interpretation of these Rules

Citation	Rule 2.1
Application of these Rules	Rule 2.2
Application of Interpretation Acts	Rule 2.3
Definitions	Rule 2.4
Who may exercise the powers of the court	Rule 2.5
Court staff	Rule 2.6
Court's discretion as to where, when and how it deals with cases	Rule 2.7

Part 3: Time and Documents

Time – court to state calendar date	Rule 3.1
Time – computation	Rule 3.2
Vacations	Rule 3.3
Hearings in vacations	Rule 3.4
Time – vacations	Rule 3.5
Documents	Rule 3.6
Filing of documents	Rule 3.7
Sealing of documents issued by the court	Rule 3.8
Forms	Rule 3.9
Statements of case – address for service	Rule 3.10
Statements of case – certificate of truth	Rule 3.11
Failure to give certificate of truth	Rule 3.12
Right to inspect, etc. certain documents filed in court office	Rule 3.13

Part 4: Practice Directions and Guides

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Compliance with practice directions	Rule 4.4
Practice guides	Rule 4.5

Date from which practice directions and guides take effect Rule 4.6
Practice Directions and Practice Guides made under Civil Procedure Rules 2000 Rule 4.7

Part 5: Service of Claim Form within Jurisdiction

Service of claim form – normal method Rule 5.1
Statement of claim to be served with claim form Rule 5.2
Method of personal service Rule 5.3
Permitted place of service Rule 5.4
Proof of personal service Rule 5.5
Service on legal practitioner Rule 5.6
Service on limited company Rule 5.7
Service on firm or partnership Rule 5.8
Service on body corporate Rule 5.9
Service on minors and patients Rule 5.10
Proof of postal service Rule 5.11
Proof of service by electronic means Rule 5.12
Alternative methods of service Rule 5.13
Power of court to make order for service by specified method Rule 5.14
Proof of service by specified method Rule 5.15
Service of claim form by contractually agreed method Rule 5.16
Service of claim form on agent of principal who is out of jurisdiction Rule 5.17
Service of claim form for possession of vacant land Rule 5.18
Deemed date of service Rule 5.19

Part 5A: Electronic Litigation Portal Filing and Service Procedure

Scope of this Part Rule 5A.1
Application of this Part Rule 5A.2
Operation of the Electronic Litigation Portal Rule 5A.3
Registration for use of the Electronic Litigation Portal Rule 5A.4
Format of document Rule 5A.5
Electronic Signature Rule 5A.6
Electronic submission of document Rule 5A.7
Filing within and outside hours of business Rule 5A.8
Fees Rule 5A.9
Validity of claim forms filed on the Electronic Litigation Portal Rule 5A.10

Processing by the Court's Registry	Rule 5A.11
Service of document by electronic means	Rule 5A.12
Consent to service by electronic means	Rule 5A.13
Document served by electronic means which cannot be viewed or downloaded	Rule 5A.14
Service by electronic means by or on the Court	Rule 5A.15
Proof of service	Rule 5A.16
Electronic compilation of trial/hearing bundle, core bundle and record of appeal	Rule 5A.17
Use of Electronic Litigation Portal by pro se litigant	Rule 5A.18
Practice Direction and Practice Guides	Rule 5A.19

Part 6: Service of other Documents

Who is to serve documents other than claim form	Rule 6.1
Method of service	Rule 6.2
Address for service	Rule 6.3
Serving documents where no address for service is given	Rule 6.4
Service of documents on person who is not a party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8
Service of notices, etc. on Attorney General	Rule 6.9

Part 7: Service of Court Process out of jurisdiction

Scope of this Part	Rule 7.1
General rule as to service of court process out of jurisdiction	Rule 7.2
Service of court process out of jurisdiction in specified proceedings	Rule 7.3
Service out of jurisdiction with leave	Rule 7.4
Proceedings which include other types of claims	Rule 7.5
Certificate for service out of the jurisdiction	Rule 7.6
Acknowledgement of service and defence where court process served out of jurisdiction	Rule 7.7
Application to set aside service under rule 7.2	Rule 7.8
Mode of service of court process – general provisions	Rule 7.9
Mode of service – alternative procedure	Rule 7.10
Power of court to dispense with service of court process	Rule 7.11
Service of court process through foreign governments, or judicial or consular authorities	Rule 7.12
Procedure where court process is to be served through	Rule 7.13

Foreign governments, etc.
Service of court process on a State Rule 7.14
Translation of court process Rule 7.15
Undertaking to be responsible for expenses of minister with responsibility for foreign affairs Rule 7.16
Service of court documents other than court process Rule 7.17

Part 8: How to Start Proceedings
The claimant – how to start proceedings Rule 8.1
Statement of claim, etc. to be issued and served with claim form Rule 8.2
Where to start proceedings Rule 8.3
Right to make claim which includes two or more claims Rule 8.4
Claim not to fail by adding or failing to add parties Rule 8.5
What must be included in claim form Rule 8.6
Claimant's duty to set out case Rule 8.7
Permission to rely on allegation or factual argument Rule 8.8
Certificate of value (small claims) Rule 8.9
Special requirements applying to claims for personal injuries Rule 8.10
Relator claims Rule 8.11
Service of claim Rule 8.12
Time within which claim may be served Rule 8.13
Extension of time for serving claim Rule 8.14
Defence form, etc. must be served with claim form Rule 8.15
Pre-action protocols Rule 8.16

Part 9: Acknowledgment of Service and Notice of Intention to Defend
Scope of this Part Rule 9.1
Filing acknowledgment of service and consequence of not doing so Rule 9.2
The period for filing acknowledgment of service Rule 9.3
Notice to claimant of filing of acknowledgment of service Rule 9.4
Contents of acknowledgment of service Rule 9.5
Right to dispute jurisdiction of court not taken away by acknowledgment of service Rule 9.6
Procedure for disputing court's jurisdiction Rule 9.7
Procedure for applying for a stay on the basis that the court should not exercise its jurisdiction Rule 9.8

Part 10: Defence and Counterclaim

Scope of this Part	Rule 10.1
The defendant – filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant's duty to set out case	Rule 10.5
Special requirements applying to claims for personal injuries	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Defence of tender	Rule 10.8
Reply to defence	Rule 10.9
Defendant's counterclaim	Rule 10.10
Defendant's counterclaim – service	Rule 10.11
Restrictions on right to make counterclaim in proceedings by or against the Crown	Rule 10.12
Counterclaim may survive claim	Rule 10.13
Defence to counterclaim	Rule 10.14
Claimant's defence to counterclaim – service	Rule 10.15

Part 11: General Rules about Applications for Court Orders

Scope of this Part	Rule 11.1
Applicants and respondents	Rule 11.2
Applications to be dealt with at case management conference	Rule 11.3
Time when application is made	Rule 11.4
Where to make application	Rule 11.5
Application to be in writing	Rule 11.6
What application must include	Rule 11.7
Notice of application and evidence in support	Rule 11.8
Evidence in support of application	Rule 11.9
Contents of notice of application	Rule 11.10
Service of notice of application	Rule 11.11
Response to application	Rule 11.12
Amendments to application	Rule 11.13
Powers of court in relation to conduct of application	Rule 11.14
Power to strike out application	Rule 11.15
Consequence of not asking for order in application	Rule 11.16
Applications which may be dealt with without hearing	Rule 11.17
Service of application where order made on application made without notice	Rule 11.18
Applications to set aside or vary order made on	Rule 11.19

application made without notice
Power of court to proceed in absence of party Rule 11.20
Application to set aside order made in absence of party Rule 11.21

Part 12: Default Judgments
Scope of this Part Rule 12.1
Claims in which default judgment may not be obtained Rule 12.2
Cases in which permission required Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service Rule 12.4
Conditions to be satisfied – judgment for failure to defend Rule 12.5
Conditions to be satisfied – judgment for failure to defend counterclaim Rule 12.6
Admission of part – request for time to pay Rule 12.7
Claim for specified sum of money Rule 12.8
Claim against more than one defendant Rule 12.9
Nature of default judgment Rule 12.10
Procedure for obtaining default judgment Rule 12.11
Interest Rule 12.12
Costs Rule 12.13
Defendant's rights following default judgment Rule 12.14

Part 13: Setting Aside or Varying Default Judgment
Scope of this Part Rule 13.1
Cases where court must set aside default judgment Rule 13.2
Cases where court may set aside or vary default judgment Rule 13.3
Applications to vary or set aside default judgment – procedure Rule 13.4
Court to impose condition as to filing of defence Rule 13.5
Hearing to be treated as case management conference Rule 13.6
Abandoned claims to be restored if default judgment set aside Rule 13.7

Part 14: Judgment on Admissions
Making an admission Rule 14.1
Satisfaction Rule 14.2
Admissions where party a minor or patient Rule 14.3
Admission by notice in writing – application for judgment Rule 14.4
Admission in whole or in part of money claim Rule 14.5
Admission of whole of claim for specified sum of money Rule 14.6
Admission of part of claim for money only Rule 14.7

Admission of liability to pay whole of claim for unspecified sum of money Rule 14.8
Requests for time to pay Rule 14.9
Requests for time to pay – procedure where time and rate agreed Rule 14.10
Requests for time to pay– procedure where lime and rate not agreed Rule 14.11
Right of redetermination Rule 14.12
Variation of order Rule 14.13

Part 15: Summary Judgment
Scope of this Part Rule 15.1
Grounds for summary judgment Rule 15.2
Types of proceedings for which summary judgment is not available Rule 15.3
Procedure Rule 15.4
Evidence for purpose of summary judgment hearing Rule 15.5
Powers of court on application for summary judgment Rule 15.6

Part 16: Assessment of Damages
Scope of this Part Rule 16.1
Assessment of damages after default judgment Rule 16.2
Assessment of damages after admission of liability on claim for unspecified sum of money Rule 16.3
Assessment of damages after direction for trial of issue of quantum Rule 16.4

Part 17: Interim Remedies
Orders for interim remedies Rule 17.1
Time when an order for interim remedy may be made Rule 17.2
How to apply for interim remedy Rule 17.3
Interim injunctions and similar orders Rule 17.4
Interim payments – general procedure Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account Rule 17.6
Powers of court where it has made an order for interim payment Rule 17.7
Power of court to order early trial Rule 17.8

Part 18: Ancillary Claims
Meaning of ancillary claim Rule 18.1
Ancillary claim to be treated as claim for purposes of these Rules Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant Rule 18.3
Procedure for making ancillary claim Rule 18.4

Service of ancillary claim form	Rule 18.5
Defence to ancillary claim	Rule 18.6
Matters relevant to whether ancillary claim should be dealt with separately from main claim	Rule 18.7
Effect of service of ancillary claim	Rule 18.8
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.9
Applications to vary or set aside judgment – procedure	Rule 18.10
Court to impose condition as to filing of defence	Rule 18.11
Procedural steps on service of ancillary claim on person who is not a party	Rule 18.12
Case management where there is defence to ancillary claim	Rule 18.13

Part 19: Addition and Substitution of Parties

Scope of this Part	Rule 19.1
Change of parties – general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding or substituting parties after end of relevant limitation period	Rule 19.4

Part 20: Changes to Statements of Case

Changes to statements of case	Rule 20.1
Changes to statement of case after end of relevant limitation period	Rule 20.2
Filing an amended statement of case	Rule 20.3

Part 21: Representative Parties

Representative claimants and defendants – general	Rule 21.1
Appointment of representative claimant or defendant – procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after party's death	Rule 21.8
Power of court to strike out action after death of claimant	Rule 21.9
Death of defendant	Rule 21.10

Part 22: Miscellaneous Rules about Parties

Partners	Rule 22.1
Person carrying on business in another name	Rule 22.2
Bodies corporate	Rule 22.3

Part 23: Minors and Patients

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5
Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order – supplementary	Rule 23.10
Procedure where appointment as next friend ceases	Rule 23.11
Compromise, etc. by or on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

Part 24: Security for Costs

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against counter-claiming defendant	Rule 24.4
Enforcing order for security for costs	Rule 24.5

Part 25: Case Management – The Objective

Court's duty to actively manage cases	Rule 25.1

Part 26: Case Management –The Court's Powers

Court's general powers of management	Rule 26.1
Courts power to make orders of its own initiative	Rule 26.2
Sanctions - striking out statement of case	Rule 26.3
Court's general power to strike out statement of case	Rule 26.4
Judgment without trial after striking out	Rule 26.5

Setting aside judgment after striking out Rule 26.6
Court's powers in cases of failure to comply with rules, etc. Rule 26.7
Relief from sanctions Rule 26.8
General power of court to rectify matters Rule 26.9

Part 27: Case Management Conferences – Procedure
Scope of this Part Rule 27.1
Fixed date claims – first hearing Rule 27.2
Case management conference Rule 27.3
Attendance at case management conference or pre-trial review Rule 27.4
Orders to be made at case management conference Rule 27.5
Dispensing with case management conference in simple and urgent proceedings Rule 27.6
Adjournment of case management conference Rule 27.7
Variation of case management timetable Rule 27.8
Listing questionnaire Rule 27. 9
Fixing trial date Rule 27.10

Part 28: Disclosure and Inspection of Documents
Scope of this Part Rule 28.1
Duty of disclosure limited to documents which are or have been in party's control Rule 28.2
Disclosure of copies Rule 28.3
Standard disclosure Rule 28.4
Specific disclosure Rule 28.5
Criteria for ordering specific disclosure Rule 28.6
Procedure for disclosure Rule 28.7
Duty of legal practitioner Rule 28.8
Requirement for maker to certify understanding of the duty of disclosure Rule 28.9
Disclosure in stages Rule 28.10
Inspection and copying of listed documents Rule 28.11
Duty of disclosure continuous during proceedings Rule 28.12
Consequence of failure to disclose documents under order for disclosure Rule 28.13
Claim of right to withhold disclosure or inspection document Rule 28.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed Rule 28.15
Documents referred to in statements of case, etc. Rule 28.16

Subsequent use of disclosed documents Rule 28.17
Notice to prove document Rule 28.18

Part 29: Evidence
Power of court to control evidence Rule 29.1
Evidence at trial – general rule Rule 29.2
Evidence by video link or other means Rule 29.3
Requirement to serve witness statements Rule 29.4
Form of witness statements Rule 29.5
Witness summaries Rule 29.6
Procedure where one party does not serve witness statement by date directed Rule 29.7
Witness to give evidence unless court otherwise orders Rule 29.8
Amplifying witness statements at trial Rule 29.9
Cross-examination on witness statement Rule 29.10
Consequence of failure to serve witness statement or summary Rule 29.11
Use of witness statement for other purposes Rule 29.12
Notice to admit facts Rule 29.13

Part 30: Affidavits
Affidavit evidence Rule 30.1
Form of affidavits Rule 30.2
Contents of affidavits Rule 30.3
Documents to be used in conjunction with affidavits Rule 30.4
Making of affidavits Rule 30.5
Service of affidavits Rule 30.6

Part 31: Miscellaneous Rules about Evidence
Use of plans, photographs, etc. as evidence Rule 31.1
Evidence on questions of foreign law Rule 31.2
Evidence of consent of trustee to act Rule 31.3
Translation of documents Rule 31.4

Part 32: Experts and Assessors
Scope of this Part Rule 32.1
General duty of court and of parties Rule 32.2
Expert's overriding duty to court Rule 32.3
Way in which expert's duty to court is to be carried out Rule 32.4
Expert's right to apply to court for directions Rule 32.5

Court's power to restrict expert evidence Rule 32.6
General requirement for expert evidence to be given in written report Rule 32.7
Written questions to experts Rule 32.8
Court's power to direct evidence by single expert Rule 32.9
Cross-examination of court appointed expert Rule 32.10
Instructions to single expert Rule 32.11
Power of court to direct party to provide expert report Rule 32.12
Expert's report to be addressed to court Rule 32.13
Contents of report Rule 32.14
Meeting of experts Rule 32.15
Consequence of failure to disclose expert's report Rule 32.16
Appointment of assessor Rule 32.17

Part 33: Court Attendance by Witnesses and Depositions
Scope of this Part Rule 33.1
Witness summonses Rule 33.2
Issue of witness summons Rule 33.3
Witness summons in aid of inferior court or tribunal Rule 33.4
Time for serving witness summons Rule 33.5
Compensation for loss of time Rule 33.6
Evidence by deposition before examiner Rule 33.7
Conduct of examination Rule 33.8
Evidence without examiner being present Rule 33.9
Enforcing attendance of witness Rule 33.10
Special report Rule 33.11
Fees and expenses of examiner Rule 33.12
Order for payment of examiner's fees Rule 33.13
Use of deposition at hearing Rule 33.14
Where person to be examined is out of the jurisdiction –letter of request Rule 33.15
Early appointment to produce documents Rule 33.16

Part 34: Requests for Information
Right of parties to obtain information Rule 34.1
Orders compelling reply to request for information Rule 34.2
Information obtained under Part 34 not to be used in other proceedings Rule 34.3
Certificate of truth Rule 34.4

Part 35: Offers to Settle

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle covers interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance – generally	Rule 35.11
Effect of acceptance – more than two parties	Rule 35.12
Costs of offeror and offeree where offer is accepted – defendant's offer	Rule 35.13
Costs of offeror and offeree where offer is accepted – claimant's offer	Rule 35.14
Costs where offer not accepted – general rules	Rule 35.15
How costs are to be dealt with	Rule 35.16

Part 36: Payments into Court to Support Offers under Part 35 and under Court Order

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under Fatal Accidents Acts	Rule 36.7

Part 37: Discontinuance

Scope of this Part	Rule 37.1
Right to discontinue claim	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6

Quantification of costs Rule 37.7
Discontinuance and subsequent proceedings Rule 37.8

Part 38: Pre-Trial Review
Scope of this Part Rule 38.1
Direction for pre-trial review Rule 38.2
Rules relating to case management conference to apply Rule 38.3
Who is to conduct pre-trial review Rule 38.4
Parties to prepare pre-trial memorandum Rule 38.5
Directions at pre-trial review Rule 38.6

Part 38A: Judicial Settlement Conferences
Scope of this Part Rule 38A.1
Docketing for judicial settlement conferences Rule 38A.2
Court may assist in negotiating for settlement before a hearing Rule 38A.3
Court may assist in negotiating for settlement during a hearing Rule 38A.4
Directions for mediation or other alternative dispute resolution mechanism Rule 38A.5
Rules relating to case management conference to apply Rule 38A.6
Confidentiality Rule 38A.7
Preparation for judicial settlement conference Rule 38A.8
Attendance at judicial settlement conference Rule 38A.9
Non-attendance at judicial settlement conference and costs consequences Rule 38A.10
Judicial settlement conference directions Rule 38A.11
Conclusion of judicial settlement conference Rule 39A.12
Where judicial settlement conference is unsuccessful Rule 38A.13
Costs Rule 38A.14

Part 39: Trial
Documents for use at trial Rule 39.1
Cross-examination Rule 39.2
Written submissions Rule 39.3
Failure of party to attend trial Rule 39.4
Applications to set aside judgment given in party's absence Rule 39.5
Adjournment of trial Rule 39.6
Inspection Rule 39.7

Part 40: Appointment of Referee to Inquire and Report

Power to order trial before referee	Rule 40.1
Reference to referee to inquire and report	Rule 40.2
Appointment of referee	Rule 40.3
Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6
Restrictions on appointment of referee in a claim by or against Crown	Rule 40.7

Part 41: Accounts and Inquiries

Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Notice of omissions	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7

Part 42: Judgments and Orders

Scope of this Part	Rule 42.1
Parties present when order made or notified of terms to be bound	Rule 42.2
Practice forms to be used where available	Rule 42.3
Standard requirements	Rule 42.4
Drawing of judgments and orders	Rule 42.5
Service of orders	Rule 42.6
Consent judgments and orders	Rule 42.7
Time when judgment or order takes effect	Rule 42.8
Time for complying with judgment or order	Rule 42.9
Correction of errors in judgments or orders	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy order or judgment on person not a party	Rule 42.12

Part 43: Enforcement – General Provisions

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of setting aside judgment or order	Rule 43.5

Court's powers where person ordered to do act fails to comply Rule 43.6
Judgment for sum in foreign currency Rule 43.7
Enforcement by or against person who is not a party Rule 43.8
Enforcement against partnership Rule 43.9
Enforcement of awards, etc. made by outside bodies Rule 43.10
Recognition and enforcement of awards made by foreign bodies Rule 43.11
Application for recognition and enforcement Rule 43.12

Part 44: Oral Examination in Aid of Enforcement
Scope of this Part Rule 44.1
Who may be orally examined Rule 44.2
Procedure to obtain order for oral examination Rule 44.3
Order for oral examination Rule 44.4
Conduct of oral examination Rule 44.5
Order for payment by instalments Rule 44.6
Financial position notice Rule 44.7

Part 45: How Judgments may be Enforced
Scope of this Part Rule 45.1
How money judgments may be enforced Rule 45.2
Enforcement of orders for payment of money into court Rule 45.3
Enforcement of judgments and orders for possession of land Rule 45.4
Enforcement of judgments and orders for delivery of goods Rule 45.5
Enforcement of judgments and orders requiring person to do act within specified time or not to do act Rule 45.6
Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act Rule 45.7

Part 46: General Rules about Writs of Execution
Meaning of "writ of execution" Rule 46.1
Permission required to enforce in certain cases Rule 46.2
Application for permission to enforce Rule 46.3
Amount to be recovered on enforcement Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things Rule 46.5
Enforcement of judgment for payment by instalments Rule 46.7
No writ of execution for goods or payment of assessed value unless court has assessed value Rule 46.8
Order for specific delivery Rule 46.9

Period for which writ of execution valid Rule 46.10
Renewal of writ of execution Rule 46.11
Period for which court may renew writ of execution Rule 46.12
Effective date of renewed writ unchanged Rule 46.13
Claims to goods seized under writ of execution Rule 46.14
Suspension of writ of execution at request of judgment creditor Rule 46.15
Return to writ of execution Rule 46.16

Part 47: Variation of Terms of Judgments and Suspension of Writs

Scope of this Part Rule 47.1
Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery Rule 47.2
Where no objection except as to terms – procedure Rule 47.3
Application for redetermination of court's decision Rule 47.4
Where judgment creditor objects to variation or suspension Rule 47.5
Pre-suspension costs Rule 47.6
Judgment creditor's right to re-issue writ of execution Rule 47.7

Part 48: Charging Orders

Scope of this Part and definitions Rule 48.l
How to apply for charging order Rule 48.2
Evidence in support of application for charging order Rule 48.3
Single charging order for more than one judgment debt Rule 48.4
Procedure for making provisional charging order Rule 48.5
Interested persons Rule 48.6
Service of provisional charging order and of copies Rule 48.7
Making of final charging order Rule 48.8
Effect of provisional or final charging order Rule 48.9
Discharge or variation of final charging order Rule 48.10
Enforcement of charging order by sale Rule 48.11

Part 49: Stop Notices and Stop Orders

Scope of this Part Rule 49.1
Right to apply for stop notice Rule 49.2
Procedure for obtaining stop notice Rule 49.3
Service Rule 49.4
Amendment of stop notice Rule 49.5
Withdrawal or discharge of stop notice Rule 49.6
Stop orders Rule 49.7

Procedure on application for stop order Rule 49.8
Power to vary or discharge stop order Rule 49.9

Part 50: Attachment of Debts
Scope of this Part Rule 50.1
Circumstances in which court may make order for attachment of debts Rule 50.2
Procedure – making of provisional order Rule 50.3
Money in bank accounts, etc. Rule 50.4
Joint funds Rule 50.5
Presumption of equal shares in joint funds Rule 50.6
Attachment of debts owed by firm Rule 50.7
Service of provisional order Rule 50.8
Effect of provisional order Rule 50.9
Obligations of third parties served with provisional order Rule 50.10
Hearing to consider making final order Rule 50.11
Claim to debt by person other than judgment debtor Rule 50.12
Enforcement against garnishee Rule 50.13
Discharge of garnishee's debt to judgment debtor Rule 50.14
Costs of attachment of debts proceedings Rule 50.15
Money in court Rule 50.16

Part 51: Appointment of Receiver
Scope of this Part Rule 51.1
Application for appointment of receiver and injunction Rule 51.2
Conditions for appointment of receiver Rule 51.3
Giving of security by receiver Rule 51.4
Remuneration of receiver Rule 51.5
Receiver's powers Rule 51.6
Accounts of receiver Rule 51.7
Payment of balance into court Rule 51.8
Default by receiver Rule 51.9

Part 52: Judgment Summonses
Scope of this Part Rule 52.1
Hearing to be in open court Rule 52.2
Issue of judgment summons Rule 52.3
Service of judgment summons Rule 52.4
Hearing of judgment summons Rule 52.5

Failure to comply with instalment order Rule 52.6
Restored hearing of judgment summons Rule 52.7

Part 53: Committal and Confiscation of Assets
Scope of this Part Rule 53.1
Order specifying time for act to be done Rule 53.2
When committal order or sequestration order may be made Rule 53.3
Committal order or sequestration order against officer of body corporate Rule 53.4
Making committal order or sequestration order when judgment or order not served Rule 53.5
Undertakings Rule 53.6
Application for committal order or sequestration order Rule 53.7
Service of notice of hearing Rule 53.8
Powers of the court Rule 53.9
Restoration of adjourned hearing Rule 53.10
Application for enforcement of suspended committal order or order for sequestration Rule 53.11
Special provisions relating to order for sequestration Rule 53.12

Part 54: Interpleader
Scope of this Part Rule 54.1
Claim to goods taken in execution Rule 54.2
How to interplead Rule 54.3
Service of interpleader application Rule 54.4
Powers of the court Rule 54.5
Power to order sale of goods taken in execution Rule 54.6

Part 55: Sale of Land by Order of Court
Scope of this Part Rule 55.1
Application for order for sale Rule 55.2
Hearing of application Rule 55.3
Order for sale Rule 55.4
Directions Rule 55.5
Further directions Rule 55.6

Part 56: Administrative Law
Scope of this Part Rule 56.1
Who may apply for judicial review Rule 56.2

How to make application for administrative order Rule 56.3
Delay Rule 56.4
Proceedings by way of claim which should be application for administrative order Rule 56.5
Joinder of claims for other relief Rule 56.6
Service of claim form for administrative order Rule 56.7
Evidence in answer Rule 56.8
First hearing Rule 56.9
Applications Rule 56.10
Hearing of application for administrative order Rule 56.11
Special provisions relating to orders for judicial review Rule 56.12

Part 57: Habeas Corpus
Scope of this Part Rule 57.1
Application for issue of writ of Habeas Corpus Rule 57.2
Power of court Rule 57.3
Service of writ Rule 57.4
Return to writ Rule 57.5
Powers of court on hearing writ Rule 57.6
Bringing up prisoner to give evidence, etc. Rule 57.7

Part 58: Defamation Claims
Scope of this Part Rule 58.1
Claimant's statement of claim Rule 58.2
Defendant's statement of case Rule 58.3
Ruling on meaning Rule 58.4
Payments into court and offers Rule 58.5
Statement in open court Rule 58.6
Requests for information Rule 58.7
Evidence to mitigate damages Rule 58.8

Part 59: Proceedings by and against the Crown
Scope of this Part Rule 59.1
Service of claim form Rule 59.2
Claimant's duty to give particulars Rule 59.3
Applications in certain revenue matters Rule 59.4
Proceedings relating to postal packets Rule 59.5
Applications under section 24 (2) or section 25 (2) of the Act Rule 59.6

Part 60: Appeals to the High Court

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of claim form	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8
Right of minister to be heard	Rule 60.9

Part 61: Appeals to the Court by way of Case Stated

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom application must be served	Rule 61.3
Time within which application must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings in the High Court to determine a case	Rule 61.6
How to commence proceedings in the Court of Appeal to determine a case	Rule 61.7
Determination of Case	Rule 61.8
Time within which case must be stated	Rule 61.9

Part 62: Appeals to the Court of Appeal

Scope of this Part	Rule 62.1
How to obtain leave to appeal	Rule 62.2
How to appeal	Rule 62.3
Method of filing documents in an appeal	Rule 62.4
Contents of notice of appeal	Rule 62.5
Time for filing notice of appeal	Rule 62.6
Summary appeal	Rule 62.7
Expedited appeal	Rule 62.8
Service of notice of appeal	Rule 62.9
Counter notice	Rule 62.10
Respondent's notice	Rule 62.11
Action to be taken on receipt of notice of appeal	Rule 62.12
Interlocutory appeal	Rule 62.13
Skeleton arguments	Rule 62.14

The record – appeals from High Court Rule 62.15
The record – appeals from magistrates' courts Rule 62.16
Case management Rule 62.17
Interlocutory applications to court Rule 62.18
Powers of single judge of the court, master and Chief Registrar to make certain orders Rule 62.19
Variation, discharge or revocation of an order, direction or decision of a single judge Rule 62.20
Security for costs of appeal Rule 62.21
Non-disclosure of payment into court, etc. Rule 62.22
Stay of execution Rule 62.23
General powers of the court Rule 62.24
Failure of party to attend appeal Rule 62.25
Application to set aside a decision made in party's absence Rule 62.26
Adjournment of appeal Rule 62.27
Certificate of result of appeal or application Rule 62.28
Withdrawal or discontinuance Rule 62.29
Liability for costs on withdrawal or discontinuance Rule 62.30

Part 63: Change of Legal Practitioner
Scope of this Part Rule 63.1
Change of legal practitioner Rule 63.2
Notice of appointment of legal practitioner Rule 63.3
Party acting in person Rule 63.4
Application by another party to remove legal practitioner from record Rule 63.5
Application by legal practitioner to be removed from record Rule 63.6
Time when notice or order takes effect Rule 63.7

Part 64: Costs – General
Scope of this Part Rule 64.1
Definitions and application Rule 64.2
Orders about costs Rule 64.3
Costs where there is an appeal Rule 64.4
Entitlement to recover costs Rule 64.5
Successful party generally entitled to costs Rule 64.6
Two or more parties having same interest Rule 64.7
Wasted costs orders Rule 64.8
Court's powers in relation to wasted costs orders Rule 64.9

Costs against person who is not a party Rule 64.10

Part 65: Costs – Quantification

Scope of this Part Rule 65.1
Basis of quantification Rule 65.2
Ways in which costs are to be quantified Rule 65.3
Fixed costs Rule 65.4
Prescribed costs Rule 65.5
Applications to determine value of claim for purpose of prescribed costs Rule 65.6
What is included in prescribed costs Rule 65.7
Budgeted costs Rule 65.8
Client's consent to application for budgeted costs Rule 65.9
What is included in costs budget Rule 65.10
Assessed costs – procedural applications Rule 65.11
Assessed costs – general Rule 65.12
Commencement of detailed assessment proceedings Rule 65.13
Points of dispute Rule 65.14
Assessment of costs Rule 65.15
Administrative fees Rule 65.16
Determination of assessment Rule 65.17
Appeals from assessment Rule 65.18
Procedure where costs are agreed Rule 65.19
Costs of Proceedings in Court of Appeal Rule 65.20
Costs capping orders – General Rule 65.21
Application for a costs capping order Rule 65.22
Application to vary a costs capping order Rule 65.23
Appendix A – Fixed Costs
Appendix B – Prescribed Costs
Appendix C – Prescribed Costs: Percentage to be allowed at various stages of claim

Part 66: Mortgage Claims

Scope of this Part Rule 66.1
Mortgage claim to be by fixed date claim Rule 66.2
Evidence at first hearing Rule 66.3
Claim for possession or payment of mortgage debt Rule 66.4

Part 67: Administration Claims

Scope of this Part	Rule 67.1
Parties	Rule 67.2
Claims by third parties	Rule 67.3
Determination of questions without administration claim	Rule 67.4
Judgments and orders in administration claims	Rule 67.5
Conduct of sale of trust property	Rule 67.6

Part 68: Contentious Probate Proceedings

Scope of this Part	Rule 68.1
How to commence probate proceedings	Rule 68.2
Parties to proceedings for revocation of grant	Rule 68.3
Lodgment of grant in proceedings for revocation	Rule 68.4
Affidavit of testamentary scripts	Rule 68.5
Failure to file acknowledgment of service	Rule 68.6
Counterclaim	Rule 68.7
Contents of statements of case	Rule 68.8
Discontinuance and dismissal	Rule 68.9
Compromise of claim: trial on affidavit evidence	Rule 68.10
Application for order to bring in will, etc.	Rule 68.11
Probate counterclaim in other proceedings	Rule 68.12

Part 69: Commercial Division Rules (Territory of the Virgin Islands)

Scope of this Part and interpretation	Rule 69.1
Commercial list	Rule 69.2
Application of the Civil Procedure Rules	Rule 69.3
Proceedings in the commercial list	Rule 69.4
Statement of value	Rule 69.5
Defence	Rule 69.6
Disclosure – ship's papers	Rule 69.7
Judgments and orders	Rule 69.8

Part 70: Commercial Claims – Procedure

Scope of this Part	Rule 70.1
Allocation to the Commercial List	Rule 70.2
Headings of documents	Rule 70.3
Disapplications and modifications having general effect in commercial matters	Rule 70.4
Ordinary applications in commercial matters	Rule 70.5

Originating applications Rule 70.6
Case management conferences Rule 70.7
Pre-trial review Rule 70.8
Trial bundles Rule 70.9
Costs – general Rule 70.10
Costs – ordinary applications Rule 70.11
Costs – trials Rule 70.12
Payment on account of costs Rule 70.13
Conduct of assessment Rule 70.14

Part 71: Commercial Claims (Commercial Division of Saint Lucia)

Scope of this Part Rule 71.1
Commercial list Rule 71.2
Proceedings in the Commercial Division Rule 71.3
Certificate of value Rule 71.4
Defence Rule 71.5
Judgments and orders Rule 71.6
Headings of documents Rule 71.7
Disapplications and modifications having general effect in commercial claims Rule 71.8
Applications in commercial claims Rule 71.9
Case management conference in commercial claims Rule 71.10
Pre-trial review Rule 71.11
Trial bundles Rule 71.12
Costs - general Rule 71.13
Application for assessment Rule 71.14

Part 72: Admiralty Proceedings

Scope of this Part Rule 72.1
Claims to be dealt with under this Part Rule 72.2
Admiralty claims in rem Rule 72.3
How to make Admiralty claim Rule 72.4
Service of claim form in rem Rule 72.5
Service on ships, etc. – how effected Rule 72.6
Service of claim form out of jurisdiction Rule 72.7
Acknowledgment of service Rule 72.8
Warrant of arrest Rule 72.9
Caveat against arrest Rule 72.10
Committal of legal practitioner for failing to comply with Rule 72.11

undertaking
Execution etc. of warrant of arrest Rule 72.12
Directions with respect to property under arrest Rule 72.13
Release of property under arrest Rule 72.14
Caveat against release etc. Rule 72.15
Duration of caveats Rule 72.16
Bail Rule 72.17
Intervenors Rule 72.18
Preliminary acts Rule 72.19
Failure to file preliminary act: proceedings against party in default Rule 72.20
Special provisions as to statements of case in collision etc. proceedings Rule 72.21
Judgment by default Rule 72.22
Order for sale of ship: determination of priority of claims Rule 72.23
Appraisement and sale of property Rule 72.24
Undertakings as to expenses etc. Rule 72.25
Payment into and out of court Rule 72.26
Case management conferences Rule 72.27
Trial Rule 72.28
Stay of proceedings in collision, etc. proceedings until security given Rule 72.29
Inspection of ship etc. Rule 72.30
Examination of witnesses and other persons: evidence by affidavit Rule 72.31
Proceedings for apportionment of salvage Rule 72.32
Applications in proceedings in rem Rule 72.33
Limitation proceedings: parties Rule 72.34
Limitation proceedings: payments into court Rule 72.35
Application for decree or directions in limitation proceedings Rule 72.36
Limitation proceedings: proceedings under decree Rule 72.37
Limitation proceedings: proceedings to set aside decree Rule 72.38

Part 73: Obtaining Evidence for Foreign Courts
Scope of this Part Rule 73.1
Application for order Rule 73.2
Application by Attorney General in certain cases Rule 73.3
Person to take and manner of taking examination Rule 73.4
Dealing with depositions Rule 73.5
Claim to privilege Rule 73.6

Part 74: Reciprocal Enforcement of Judgments

Scope of this Part	Rule 74.1
Application for registration	Rule 74.2
Security for costs	Rule 74.3
Order for registration	Rule 74.4
Register of judgments	Rule 74.5
Notice of registration	Rule 74.6
Application to set aside registration	Rule 74.7
Issue of execution	Rule 74.8
Certified copy of High Court judgment for enforcement in another country	Rule 74.9

Part 75: Transitional Provisions

Scope of this Part	Rule 75.1
New proceedings	Rule 75.2
Old proceedings	Rule 75.3
Exercise of discretion	Rule 75.4

Appendix

Prescribed Forms

Form 1	Claim Form
Form 1A	Notes for Defendant
Form 2	Fixed Date Claim Form
Form 3	Application to Pay by Instalments
Form 4	Acknowledgment of Service of Claim Form
Form 4A	Acknowledgment of Service of Fixed Date Claim Form
Form 5	Defence and Counterclaim
Form 6	Application
Form 7	Request for Default Judgment
Form 8	Request for Entry of Judgment on Admissions
Form 9	Ancillary Claim Form
Form 10	Listing Questionnaire
Form 11	List of Documents
Form 12	Witness Summons
Form 12A	Judicial Settlement Conference Directions
Form 12B	Report on Outcome of Judicial Settlement Conference
Form 12C	Agreement Following Judicial Settlement Conference
Form 13	Notice to Non-Party Served With Order
Form 14	Order for Oral Examination

Form 15	Notice of Adjourned Examination
Form 16	Financial Position Notice
Form 17	Writ of Execution Against Goods (Fieri Facias)
Form 18	Writ of Possession
Form 19	Writ of Delivery or Value
Form 20	Writ of Specific Delivery
Form 20A	Stop Notice
Form 21	Judgment Summons
Form 22	Writ of Habeas Corpus
Form 23	Notice of Appeal
Form 23A	Respondent's Notice
Form 24	Certificate of Result of Appeal [or Application]
Form 24A	Notice of Commencement of Detailed Assessment
Form 24B	Request for Default Costs Certificate
Form 24C	Default Costs Certificate
Form 24D	Costs Assessment Certificate
Form 25	Admiralty Claim In Rem
Form 26	Admiralty Limitation Claim
Form 27	Warrant of Arrest (Admiralty)
Form 28	Request for Claim to be recorded as satisfied
Form 29	Request for Order for Oral Examination of an individual
Form 30	Request for Order for Oral Examination of an officer of a debtor company
Form 31	Hearing on Assessment of Damages
Form 32:	Form of Judgment for amount to be decided by the Court

PART 1
The Overriding Objective

Contents of this Part

The overriding objective	Rule 1.1
Application of overriding objective by the court	Rule 1.2
Duty of parties	Rule 1.3

The overriding objective

1.1 (1) The overriding objective of these rules is to enable the court to deal with cases justly.

(2) Dealing justly with the case includes –

(a) ensuring, so far as is practicable, that the parties are on an equal footing;

(b) saving expense;

(c) dealing with cases in ways which are proportionate to the –

(i) amount of money involved;

(ii) importance of the case;

(iii) complexity of the issues; and

(iv) financial position of each party;

(d) ensuring that it is dealt with expeditiously; and

(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application of overriding objective by the court

1.2 The court must seek to give effect to the overriding objective when it –

(a) exercises any discretion given to it by the rules; or

(b) interprets any rule.

Duty of parties

1.3 It is the duty of the parties to help the court to further the overriding objective.

- Part 25 deals with the court's duty to further the overriding objective by active case management.

PART 2
Application and Interpretation of these Rules

Contents of this Part

Citation	Rule 2.1
Application of these Rules	Rule 2.2
Application of Interpretation Acts	Rule 2.3
Definitions	Rule 2.4
Who may exercise the powers of the court	Rule 2.5
Court staff	Rule 2.6
Court's discretion as to where, when and how it deals with cases	Rule 2.7

Citation

2.1 (1) These Rules may be cited as the EASTERN CARIBBEAN SUPREME COURT CIVIL PROCEDURE RULES (REVISED EDITION) 2023.

(2) A reference to a rule as CPR 2.7 or rule 2.7 is a reference to a rule so numbered in these rules.

Application of these Rules

2.2 (1) Subject to paragraph (3), these rules apply to all civil proceedings in the Eastern Caribbean Supreme Court in any of the Member States or Territories.

(2) In these rules "civil proceedings" include Judicial Review and applications to the court under the Constitution of any Member State or Territory under Part 56.

(3) These Rules do not apply to the following–

(a) family proceedings;

(b) insolvency proceedings (including winding up of companies);

(c) non-contentious probate proceedings;

(d) proceedings when the High Court is acting as a prize court; or

(e) any other proceedings in the Supreme Court instituted under any enactment, in so far as Rules made under that enactment regulate those proceedings, except that Part 62 shall apply to sub-paragraphs (a) and (b) and criminal appeals, to the extent that the Court of

Appeal Rules 1968 are silent as to procedure in respect of criminal appeals.

(4) Notwithstanding paragraph (3)(d) these rules apply to proceedings when the High Court is acting as a prize court in Saint Vincent and the Grenadines

Application of Interpretation Acts

2.3 The Interpretation Act of the Member State or Territory where a claim proceeds applies to the interpretation of these Rules in those proceedings.

Definitions

2.4 In these Rules, unless otherwise provided for or the context otherwise requires –

"ADR procedure" means any procedure for alternative dispute resolution including, in particular, mediation;

"ancillary claim" has the meaning given in rule 18.1;

"ancillary claimant" has the meaning given in rule 18.1;

"ancillary defendant" and **"second ancillary defendant"** have the meanings given in rule 18.1;

"applicant" has the meaning given in rule 11.2;

"application" has the meaning given in rule 11.2;

"body corporate" means a company or other body corporate wherever or however incorporated, other than a corporation sole, and includes a limited company unless a rule otherwise provides;

"certificate of value" has the meaning given in rule 8.8;

"Chief Justice" includes, in relation to any period in which the office of Chief justice is vacant, the person for the time being performing the functions of the Chief Justice;

"circuit" means –

(a) the Saint Christopher circuit; and

(b) the Nevis circuit,

in the State of Saint Christopher and Nevis;

"claim" is to be construed in accordance with Part 8;

"claim form" is to be construed in accordance with Part 8;

"claim for a specified sum of money" means –

(a) a claim for a sum of money that is ascertained or capable of being ascertained as a matter of arithmetic and is recoverable under a contract; and

(b) for the purposes of Parts 12 (default judgments) and 14 (judgment on admissions), a claim for –

(i) the cost of repairs executed to a vehicle;

(ii) the cost of repairs executed to any property in, on or abutting a road; or

(iii) other actual financial loss other than loss of wages or other income,

claimed as a result of damage which is alleged to have been caused in an accident as a result of the defendant's negligence where the amount of each item in the claim is specified and copies of receipted bills for the amounts claimed are attached to the claim form or statement of claim;

"claim for personal injuries" means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death;

"claimant" means a person who makes a claim and, in relation to any proceedings commenced before these Rules came into force, includes a plaintiff in an action or the petitioner or applicant in any proceedings commenced by petition, originating summons or motion;

"Constitution" means the Constitution of the relevant Member State or Territory;

"court" means the High Court and, where the context so admits and in Part 62, the Court of Appeal;

"court office" refers to –

(a) the place where documents are to be filed, etc. and includes a Registry of the High Court and of the Court of Appeal; and

(b) members of the court staff who carry out work of a formal administrative nature under rule 2.6(1);

"Crown" for the purpose of these Rules includes the Commonwealth of Dominica;

"defendant" means a person against whom a claim is made and, in relation to proceedings commenced before these Rules came into force, includes a respondent to any petition, originating summons or motion;

"external company" means any incorporated body of persons that is formed under the laws of a country other than a Member State or Territory;

"filing" is to be construed in accordance with rule 3.7;

"fixed date claim form" is a claim form in Form 2 upon which there is stated a date, time and place for the first hearing of the claim.

"Hague Convention" means the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965;

"judge" –

(a) includes -

(i) the Chief Justice; and

(ii) in the case of Part 62, a judge of the Court of Appeal;

(b) does not include a master except where required by the context;

"judgment creditor" has the meaning given in rule 43.1;

"judgment debtor" has the meaning given in rule 43.1;

"jurisdiction" means the jurisdiction of the court as extending throughout the Member States and Territories and any part of their territorial waters;

"legal practitioner" includes a King's or Senior Counsel, a barrister at law, a solicitor, an attorney at law and a notary royal;

"limited company" means a body corporate that is incorporated or continued under the relevant legislation relating to companies in each Member State or Territory;

"master" means a master of the Eastern Caribbean Supreme Court;

"Member States" means –

(a) Antigua and Barbuda;

(b) Commonwealth of Dominica;

(c) Grenada;

(d) Saint Christopher and Nevis;

(e) Saint Lucia; and

(f) Saint Vincent and the Grenadines;

"minister with responsibility for foreign affairs" includes in the case of a Territory the person within the Territory who has responsibility for the service of foreign process;

"minor" means a person who has not attained the age of majority in accordance with the relevant enactment of the appropriate Member State or Territory;

"month" means a calendar month;

"next friend" has the meaning given by Part 23;

"order" includes an award, declaration, decree, direction, or judgment;

"overriding objective" means the objective set out in rule 1.1;

"party" includes both the party to the claim and any legal practitioner on record for that part unless any rule specifies or it is clear from the context that it relates to the client or to the legal practitioner only;

"patient" means a person who by reason of mental disorder within the meaning of the relevant mental health legislation in the Member State or Territory where the proceedings are being conducted is incapable of managing his or her own affairs and in Saint Lucia also includes a person to whom a curator has been given under the Civil Code (Cap.4.01);

"period for filing a defence" has the meaning given by rule 10.3;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"statement of case" means –

(a) a claim form, statement of claim, defence, counterclaim, ancillary claim form or defence and a reply; and

(b) any further information given in relation to any statement of case under Part 34 either voluntarily or by order of the court;

"statutory rate of interest" means the rate of interest on judgment debts that may be prescribed for the time being under any relevant enactment of the appropriate Member State or Territory;

"summary appeal" is an appeal in accordance with rule 62.7;

"Supreme Court" means the Eastern Caribbean Supreme Court established under the West Indies Associated States Supreme Court Order 1967;

"Territories" means –

(a) Anguilla;

(b) Montserrat; and

(c) the Virgin Islands.

Who may exercise the powers of the court

2.5 (1) Except where any enactment, rule or practice direction provides otherwise the functions of the High Court may be exercised by –

(a) a master

(b) a registrar;

(c) a single judge of the court whether or not assigned to the Member

State or Territory in which the proceedings are taking place;

(d) the Chief Justice; or

(e) the Chief Registrar,

in accordance with these Rules and any practice direction made by the Chief Justice.

(2) The functions of the Court of Appeal relating to –

(a) an application for leave to appeal;

(b) the case management of an appeal including the giving of directions relating to an appeal; and

(c) interlocutory applications (other than applications for leave to appeal),

may be carried out by any one judge of the Court of Appeal.

(3) The functions of the Court of Appeal relating to –

(a) applications for leave to appeal may also be carried out by the judge of the court below;

(b) the case management of an appeal including the giving of directions relating to an appeal may, where the Chief Justice directs, be carried out by a master or the Chief Registrar; and

(c) interlocutory applications (other than applications for leave to appeal) may, where the Chief Justice so directs, be carried out by a master, the Chief Registrar or the registrar of the court below.

(4) An appeal from a magistrate's court may be heard by any 2 judges of the Court of Appeal.

(5) All other functions of the Court of Appeal may be carried out by any 3 judges of the Court of Appeal.

(6) The Chief Justice may by direction allocate the work of the court between judges, masters Chief Registrar and registrars.

(7) The Chief Registrar may exercise any of the functions of a master.

(8) Where –

(a) a trial has been commenced but not completed by a judge; or

(b) any enactment or rule requires an application to be made to, or jurisdiction exercised by, the judge by whom a claim was tried; then if –

(i) the judge ceases to be a judge of the High Court;

(ii) the judge dies or is incapacitated; or

(iii) for any reason it is impossible or inconvenient for the judge to act in the claim,

the Chief Justice may nominate some other judge to retry or complete the trial of the claim or to hear any application.

Court staff

2.6 (1) Where these rules refer to an act being done by the court office or require or permit the performance of an act of a formal or administrative character, that act may be performed by a member of the court staff authorised generally or individually in writing by the Chief Justice.

(2) Where these rules expressly so provide, any other functions of the court may be carried out by a member of the court staff authorised in writing by the Chief Justice.

(3) If a step may be taken by a member of the court staff –

(a) that person may consult a judge, master or registrar before taking the step; and

(b) that step may be taken by a judge, master or registrar instead of a member of the court staff.

Court's discretion as to where, when and how it deals with cases

2.7 (1) The court may direct that a hearing or any part of it may take place in private or in public.

(2) From the date that this rule comes into effect, a hearing that takes place in chambers shall be treated for the purposes of these rules as being a hearing that took place in public, unless the court otherwise orders.

(3) Where a hearing takes place in public, the court is not required to make any special arrangements to enable the public to enter the hearing.

(4) Unless the court otherwise orders, a hearing shall be deemed to have taken place in private if -

(a) it is concerned with the welfare of a minor or a person under disability;

(b) it is an application by a trustee or a court appointed officer which is concerned with the administration of a trust, asset or an estate; or

(c) it is concerned with an arbitration.

(5) The court may direct that any other hearing, or a part of it, may take place in private if -

(a) publicity would defeat the object of the hearing;

(b) it relates to matters of national security;
(c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
(d) it is the hearing of an application made without notice;
(e) the court considers this to be necessary in the interests of justice.

(6) An order made in chambers shall have the same effect as an order made in open court, and a court sitting in chambers shall have the same power to enforce, vary or deal with any such order, as if sitting in open court.

(7) The court may order that any hearing be conducted in whole or in part by means of a telephone conference call, video conference or any other form of electronic communication and it may take place wholly or in part inside or outside of a relevant Territory or Member State.

(8) The court may give directions to facilitate the conduct of a hearing by the use of any electronic or digital means of communication or storage or retrieval of information, or any other technology it considers appropriate.

PART 3
Time and Documents

Contents of this Part

Time – court to state calendar date	Rule 3.1
Time – computation	Rule 3.2
Vacations	Rule 3.3
Hearings in vacations	Rule 3.4
Time – vacations	Rule 3.5
Documents	Rule 3.6
Filing of documents	Rule 3.7
Sealing of documents issued by the court	Rule 3.8
Forms	Rule 3.9
Statements of case – address for service	Rule 3.10
Statements of case – certificate of truth	Rule 3.11
Failure to give certificate of truth	Rule 3.12
Right to inspect, etc. certain documents filed in court office	Rule 3.13

Time – court to state calendar date

3.1 When making any judgment, order or direction which imposes a time limit for doing any act the court must, wherever practicable, state –

(a) the calendar date; and

(b) the time of day; by which the act must be done.

Time – computation

3.2 (1) This rule shows how to calculate any period of time for doing any act which is fixed by –

(a) any judgment or order of the court;

(b) any practice direction; or

(c) these rules.

(2) All periods of time expressed as a number of days are to be computed as clear days.

(3) In this rule –

"clear days" means that in computing the number of days the day on which the period begins and the day on which the period ends are not included.

- Examples:
  (a) Documents served by post are deemed to be served 14 days after posting: A Document posted on 1st September is deemed to be served on 16th September.
  (b) Document must be filed at least 3 days before the hearing – application is to be heard on Friday 20th October: The last date for filing the document is Monday 16th October.)

(4) When the specified period –

(a) is 7 days or less; and

(b) includes –

(i) a Saturday or Sunday; or

(ii) any other day on which the court office is closed,

that day does not count.

- Example: Notice of application must be given not less than 7 days before a hearing – Hearing on Friday 20th October: Notice must be given not later than Tuesday 10th October.

(5) If the period specified for doing any act at the court office ends on a day on which the court is closed, the act is in time if done before close of business on the next day on which the court is open.

(6) If the period specified for doing any act which does not need to be done at court ends on –

(a) a Saturday or Sunday; or

(b) any public holiday,

the act must be done before 4 p.m. on the next ordinary business day.

Vacations

3.3 There are 3 vacations in each year, that is to say the –

(a) Christmas vacation which begins on 23rd December and ends on 10th January;

(b) Easter vacation which begins on the Thursday before and ends on the Saturday after Sunday; and

(c) long vacation which begins on 1st August and ends on 15th September,

and the dates are inclusive.

Hearings in vacations

3.4 (1) During vacations the –

(a) Court of Appeal may sit to hear and determine appeals and applications as the Court of Appeal may direct; and

(b) High Court may sit to hear and determine trials and applications as a judge of the court may direct.

(2) A party may apply to the Court of Appeal for any appeal or application to be heard in vacation.

(3) Any such application may be determined by a single judge of the Court of Appeal.

(4) A party may apply to the High Court for any trial to take place or application to be heard in vacation.

Time – vacations

3.5 (1) During the long vacation, the time prescribed by these rules or by any practice direction for filing or serving any statement of case (other than a statement of claim) does not run unless the court orders or directs that time shall run.

(2) In this rule "long vacation" has the meaning given by rule 3.3.

Documents

3.6 (1) So far as is practicable, every document prepared for use in the Supreme Court must be on "letter size" paper approximately 11 inches (28 cm) long by 8.5 inches (21.5 cm) wide, and margins of 1" (2.5 cm) must be left at the top and bottom and of 1.5" (3.5 cm) at each side.

(2) The Chief Justice may by practice direction –

(a) require any document filed or to be used at court to be in the format that the Chief Justice prescribes to facilitate electronic recording or filing of that document; and

(b) prescribe the conditions under which documents may be served or filed electronically.

(3) Every document to be filed at the court must –

(a) be headed with the –

(i) full title of the proceedings; and
(ii) title of the document;

(b) state the –

(i) name;
(ii)business address;
(iii) reference (if any);
(iv) telephone number; and
(v) email address (if any);

of the person or persons filing it;

(c) contain its date;

(d) (except in the case of an affidavit) be signed by the person filing it; and

(e) state the name of the party on whose behalf it is filed.

(4) If a document is signed the full name of the signatory must be set out legibly below the signature.

Filing of documents

3.7 (1) A document may be filed by–

(a) delivering it;

(b) posting it; or

(c) transmitting it by an electronic means of communication as authorized by the Chief Justice in a practice direction,

to the court office where the claim is proceeding or intended to proceed.

(2) A document is filed on the day when it is received at the court office or, if it is received at a time when the court office is closed, on the next day on which the court office is open.

(3) If a fee is to be paid, a document is not to be treated as filed until –

(a) the fee is paid; or

(b) an undertaking to pay the fee acceptable to the registrar is received.

Sealing of documents issued by the court

3.8 (1) The court must seal the following documents on issue –

(a) the claim form;

(b) all notices of appeal; and

(c) all judgments, orders or directions of the court.

(2) The court may place the seal on any document by –

(a) hand; or

(b) printing a facsimile of the seal on the document electronically or by any other means.

(3) All judgments and orders and directions of the court must also be signed by the judge, master or registrar.

(4) A document purporting to bear the court's seal is admissible in evidence without further proof.

Forms

3.9 (1) The forms in the Appendix to these rules and, where appropriate, practice forms must be used in the cases to which these apply.

(2) A form may be varied if the variation is required by the circumstances of a particular case.

(3) A form must not be varied so as to leave out any information or guidance which the form in the Appendix or practice form gives to the intended recipient of the form.

(4) If these rules require a party to send a blank form to any other party, the party must send it to the other party without variation except the insertion of the title of the case and the court's address to which that document is to be returned.

(5) A form marked with the word 'Seal' must bear the seal of the Supreme Court.

Statement of case – address for service

3.10 (1) Every statement of case must contain an address within the jurisdiction at which the party filing the statement of case will accept service of documents.

(2) The address for service must also state –

(a) if given by a legal practitioner – the name or reference of the person who is dealing with the matter; and

(b) the telephone number and (if applicable) the email address of the legal practitioner filing the document or of the party if in person.

(3) A party must notify the court and all other parties immediately if the address for service is changed, and any document sent to the original address before notice of such change is received by the party serving the document is regarded as validly served.

- Rule 2.4 defines "statement of case".

Statement of case – certificate of truth

3.11 (1) Every statement of case must be verified by a certificate of truth.

(2) The certificate of truth should be signed by the party personally.

(3) If it is impracticable for the party personally to sign the certificate required by paragraph (1) it may be given by that person's legal practitioner.

(4) A certificate of truth given by the legal practitioner must also certify –

(a) that the certificate is given on the client's instructions; and

(b) the reasons why it is impractical for the client to give the certificate.

(5) If a statement of case is changed under Part 20, the amended statement of case must be verified by a certificate of truth.

(6) Information given under Part 34 (whether voluntarily or following an order of the court) must be verified by a certificate of truth.

(7) A certificate of truth given by a party personally must be in the following form – "I *[name]* certify that I believe that the facts stated in this [name document] are true."

(8) A certificate given by the legal practitioner for a party must be in the following form – "I *[name of the individual legal practitioner giving the certificate]* certify that –

(a) the *[claimant or as the case may be]* believes that the facts stated in this *[name document]* are true; and

(b) this certificate is given on the *[claimant's or as the case may be]* instructions and the *[claimant or as the case may be]* cannot give the certificate *because [state reason]*."

Failure to give certificate of truth

3.12 (1) The court may strike out any statement of case which has not been verified by a certificate of truth.

(2) Any party may apply for an order under paragraph (1).

Right to inspect, etc. certain documents filed in court office

3.13 (1) On payment of the prescribed fee, any person is entitled, during office hours, to inspect and take a copy of any of the following documents filed in the court office, namely —

(a) a claim form, notice of application made under rule 8.1(6) or a statement of case, but not any documents filed with or attached to the statement of case;

(b) a notice of appeal;

(c) a judgment or order given or made in court; and

(d) with the leave of the Court, which may be granted on an application made without notice, any other document.

(2) Where a person who is not a -party wishes to search for, inspect and take a copy of any document filed before this rule came into force, paragraph (1) above does not apply and the rules of court relating to access that were in force prior to the date upon which this amendment came into force shall apply as if they had not been revoked.

(3) Nothing in paragraph (1) prevents a party in any proceedings from -

(a) searching for, inspecting and taking a copy of any affidavit or other document filed in the court office in those proceedings or filed before the commencement of those proceedings but with a view to its commencement; and

(b) obtaining any applicable E-Litigation Portal authorisation code from the court.

(4) Any document filed or in the custody of a court office must not be taken out of the court office without leave of the court unless the document is to be sent to another court office or to a magistrate's court.

(5) Notwithstanding the provisions of paragraph (1), no document shall be made available for inspection -

(a) in proceedings relating to the welfare of a minor, a patient or any other person for whose benefit an order has been made to protect them or their identity;

(b) where the document is a settlement agreement;

(c) where the document is protected by statute from disclosure or inspection; or

(d) where an application has been filed under paragraph (6), pending the determination of that application in respect of documents which are the subject of that application.

(6) The Court may on the application of a party or of a person identified in a statement of case -

(a) order that a person who is not a party may not inspect a court file under paragraph (1);

(b) restrict the persons or classes of persons that may inspect the court file;

(c) order that a person or classes of persons may only inspect documents under paragraph (1) that have been edited in accordance with the directions of the court; or

(d) make such other order as it thinks fit.

PART 4
Practice Directions and Guides

Contents of this Part

Who may issue practice directions	Rule 4.1
Scope of practice directions	Rule 4.2
Publication of practice directions	Rule 4.3
Compliance with practice directions	Rule 4.4
Practice guides	Rule 4.5
Date from which practice directions and guides take effect	Rule 4.6
Practice directions and practice guides made under Civil Procedure Rules 2000	Rule 4.7

Who may issue practice directions

4.1 Practice directions may be issued only by the Chief Justice.

Scope of practice directions

4.2 (1) A practice direction may be issued in any case where provision for such a direction is made by these Rules.

(2) Where there is no express provision in these Rules for such a direction, the Chief Justice may give directions as to the practice and procedure to be followed in the Supreme Court.

Publication of practice directions

4.3 Practice directions and guides must forthwith be –

(a) published in the Official Gazette for each Member State and Territory; and

(b) displayed and made available at each court office.

Compliance with practice directions

4.4 (1) A party must comply with any relevant practice direction unless there are good reasons for not doing so.

(2) The court may make an order under Part 26 (case management – the court's powers) or Part 64 (costs – general) against a party who fails to comply with a practice direction.

Practice guides

4.5 (1) The Chief Justice may issue practice guides to assist parties in the conduct of litigation.

(2) Parties must have regard to any relevant practice guide.

(3) The court may take into account the failure of any party to comply with any practice guide when deciding whether or not to make an order under Part 26 (case management – the court's powers) or Part 64 (costs – general).

Date from which practice directions and guides take effect

4.6 A practice direction or guide takes effect from the date specified in the direction or guide.

Practice directions and practice guides made under Civil Procedure Rules 2000

4.7 All practice directions and practice guides made under the Civil Procedure Rules 2000 shall apply with such modifications as may be necessary until they are amended or replaced by a practice direction or practice guide made under these rules.

PART 5
Service of Claim Form within Jurisdiction

Contents of this Part

Service of claim form – normal method	Rule 5.1
Statement of claim to be served with claim form	Rule 5.2
Method of personal service	Rule 5.3
Permitted place of service	Rule 5.4
Proof of personal service	Rule 5.5
Service on legal practitioner	Rule 5.6
Service on limited company	Rule 5.7
Service on firm or partnership	Rule 5.8
Service on body corporate	Rule 5.9
Service on minors and patients	Rule 5.10
Proof of postal service	Rule 5.11
Proof of service by electronic means	Rule 5.12
Alternative methods of service	Rule 5.13
Power of court to make order for service by specified method	Rule 5.14
Proof of service by specified method	Rule 5.15
Service of claim form by contractually agreed method	Rule 5.16
Service of claim form on agent of principal who is out of jurisdiction	Rule 5.17
Service of claim form for possession of vacant land	Rule 5.18
Deemed date of service	Rule 5.19

Service of claim form – normal method

5.1 (1) The general rule is that a claim form must be served personally on each defendant.

(2) The Chief Justice may by practice direction authorise the use of electronic means of communication for service of a claim form.

- Part 6 deals with service of other documents.

Statement of claim to be served with claim form

5.2 (1) The general rule is that the claimant's statement of claim must be served with the claim form.

(2) The claim form may be served without the statement of claim in accordance with rule 8.2.

(3) In this Part reference to service of the claim form requires that –

(a) the statement of claim; or

(b) if these Rules so require, an affidavit or other document;

(c) a copy of any order that may have been made; and

(d) a copy of any order or application made under rule 8.2,

must be served with the claim form unless the statement of claim is contained in the claim form.

Method of personal service

5.3 A claim form is served personally on an individual by handing it to or leaving it with the person to be served.

Permitted place of service

5.4 Except as permitted by Part 7 (service out of the jurisdiction), a claim form must be served at a place within the jurisdiction.

Proof of personal service

5.5 (1) Personal service of the claim form is proved by an affidavit sworn by the server stating –

(a) the date and time of service;

(b) the precise place or address at which it was served;

(c) the precise manner by which the person on whom the claim form was served was identified; and

(d) precisely how the claim form was served.

(2) If the person served was identified by another person, there must also be filed where practicable an affidavit by that person –

(a) proving the identification of the person served; and

(b) stating how the maker of the affidavit was able to identify the person served.

(3) If the server identified the person to be served by means of a photograph or description there must also be filed an affidavit by a person –

(a) verifying the description or photograph as being of the person intended to be served;

(b) stating how the maker of the affidavit is able to verify the description or photograph as being of the person intended to be served.

Service on legal practitioner

5.6 If a legal practitioner –

(a) is authorised to accept service of the claim form on behalf of a party; and

(b) has notified the claimant in writing that he or she is so authorised,

the claim form must be served on that legal practitioner.

Service on limited company

5.7 Service on a limited company may be effected –

(a) by leaving the claim form at the registered office of the company;

(b) by sending the claim form by courier, prepaid post or authorised electronic means, addressed to the registered office of the company;

(c) by serving the claim form personally on an officer or manager of the company at any place of business of the company which has a real connection with the claim;

(d) by serving the claim form personally on any director, officer, receiver, receiver-manager or liquidator of the company; or

(e) in any other way allowed by any enactment.

Service on firm or partnership

5.8 (1) Service on a firm or partnership may be effected –

(a) by serving the claim form personally on a manager of the firm at any place of business of the firm or firm or partnership which has a real connection with the claim;

(b) serving the claim form personally on any partner of the firm; or

(c) in any other way allowed by any enactment.

(2) If the claimant knows that a partnership has been dissolved when the claim is issued, the claim form must be served personally on every person within the jurisdiction whom the claimant seeks to make liable.

Service on body corporate

5.9 (1) Service on a body corporate (other than a limited company) may be effected –

(a) by sending the claim form by prepaid post to the principal office of the body corporate;

(b) by serving the claim form personally on any principal officer of the body corporate; or

(c) in any other way allowed by any enactment.

(2) In this rule –

"principal officer" means the mayor, chairman or president of the body, or the town clerk, chief executive officer, clerk, secretary, treasurer or other similar officer of the body.

- Rule 59.2 deals with service on the Crown.

Service on minors and patients

5.10 (1) Paragraphs (2) to (5) specify the persons on whom a claim form must be served if it would otherwise be served on a minor or patient.

(2) A claim form which would otherwise be served on a minor who is not also a patient must be served on –

(a) one of the minor's parents or guardians (including in Saint Lucia the tutor appointed under the Civil Code (Cap 4:01)); or

(b) the person with whom the minor resides or in whose care the minor is, if there is no parent or guardian.

(3) If a person is authorised under any relevant enactment to conduct the proceedings in the name of the patient or on the patient's behalf, a claim form must be served on that person.

(4) If there is no person so authorised, a claim form must be served on the person with whom the patient resides or in whose care the patient is.

(5) The court may make an order permitting the claim form to be served on the minor or patient, or on some person other than the person specified in paragraphs (2) to (4).

(6) The court may order that, although paragraphs (2) to (4) have not been complied with, the claim form is to be treated as properly served.

(7) An application for an order under paragraph (5) or (6) may be made without notice but must be supported by evidence on affidavit.

- Part 23 deals generally with parties who are minors or patients.

Proof of postal service

5.11 (1) Service by post is proved by an affidavit of service by the person responsible for posting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of the claim form and state the –

(a) address to which it was sent; and

(b) date and time of posting.

Proof of service by electronic means

5.12 (1) Service by electronic means is proved by an affidavit of service by the person responsible for transmitting the claim form to the person to be served.

(2) The affidavit must exhibit a copy of –

(a) the document served;

(b) any cover sheet or email to that document;

(c) the transmission record; and

(d) proof of electronic service of the document, and must state the –

(i) electronic means by which the document was served;

(ii) e-mail address to which the document was transmitted; and

(iii) date and time of the transmission.

(3) Electronic confirmation of delivery may be treated as proof of service for a document that is served electronically and may include a written e-mail response, a read receipt or an automated response that a document was posted in an online shared drive.

Alternative methods of service

5.13 (1) Instead of personal service a party may choose an alternative method of service.

(2) Where a party –

(a) chooses an alternative method of service; and

(b) the court is asked to take any step on the basis that the claim form has been served,

the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.

(3) An affidavit under paragraph (2) must –

(a) exhibit a copy of the documents served;

(b) give details of the method of service used;

(c) show that –

(i) the person intended to be served was able to ascertain the contents of the documents; or

(ii) it is likely that he or she would have been able to do so; and

(iii) state the time when the person served was or was likely to have been in a position to ascertain the contents of the documents.

(4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must –

(a) consider the evidence; and

(b) endorse on the affidavit whether it satisfactorily proves service.

(5) If the court is not satisfied that the method of service chosen was sufficient to enable the defendant to ascertain the contents of the claim form, the court office must fix a date, time and place to consider making an order under rule 5.14 and give at least 7 days' notice to the claimant.

Power of court to make order for service by specified method

5.14 (1) The court may direct that a claim form served by a method specified in the court's order be deemed to be good service.

(2) An application for an order to serve by a specified method may be made without notice but must be supported by evidence on affidavit –

(a) specifying the method of service proposed; and

(b) showing that that method of service is likely to enable the person to be served to ascertain the contents of the claim form and statement of claim.

Proof of service by specified method

5.15 Service is proved by an affidavit made by the person who served the document showing that the terms of the order have been carried out.

Service of claim form by contractually agreed method

5.16 (1) This rule applies where a contract contains a term specifying how any proceedings under the contract should be served.

(2) A claim form containing a claim in respect of a contract may be served by any method permitted by that contract.

(3) If the claim form is served within the jurisdiction in accordance with the contract, it is to be treated as having been served on the defendant.

(4) If the claim form is served out of the jurisdiction in accordance with the contract, it is not to be treated as having been served on the defendant unless service out of the jurisdiction is permitted under Part 7.

Service of claim form on agent of principal who is out of jurisdiction

5.17 (1) If the conditions specified in paragraph (2) are satisfied, the court may permit a claim form relating to a contract to be served on a defendant's agent.

(2) The court may not make an order under this rule unless it is satisfied that –

(a) at the time of the application –

(i) the agent's authority had not been terminated; or

(ii) the agent is still in business relations with the defendant;

(b) the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent; and

(c) the defendant cannot be served within the jurisdiction.

(3) An application may be made without notice but must be supported by evidence on affidavit.

(4) An order under this rule must state the periods within which the defendant must file –

(a) an acknowledgment of service; and

(b) a defence.

(5) When the court makes an order under this rule, the claimant must serve the agent with the –

(a) claim form;

(b) order; and

(c) statement of claim,

and at the same time send to the defendant at the defendant's address out of the jurisdiction a copy of each document.

Service of claim form for possession of vacant land

5.18 (1) Paragraphs (2) to (3) deal with the service of a claim form for possession of land where –

(a) there is no person in occupation of the land; and

(b) service cannot otherwise be effected on the defendant.

(2) The court may direct that a claim form and statement of claim be served by affixing a copy of the claim form to some conspicuous part of the land and by publishing a notice of the claim at least once in one or more newspapers of general circulation in the Member State or Territory in which the land is situated.

(3) An application for an order under this rule –

(a) may be made without notice; but

(b) must be supported by evidence on affidavit that there is no –

(i) other method of serving the defendant; and

(ii) person in occupation of the land.

Deemed date of service

5.19 (1) A claim form that has been served within the jurisdiction by pre-paid post is deemed to be served, unless the contrary is shown, on the day shown in the table in rule 6.6 and the provisions of rule 6.6(2) and (3) apply.

(2) If a claim is sent to the legal practitioner of a party who certifies that he or she accepts service on behalf of the defendant, the claim is deemed to

have been served on the date on which the legal practitioner certifies that he or she accepts service.

(3) If an acknowledgment of service is filed, whether or not the claim form has been duly served, the claimant may treat –

(a) the date of filing the acknowledgment of service; or

(b) (if earlier) the date shown on the acknowledgment of service for receipt of the claim form,

as the date of service.

(4) A claimant may file evidence on affidavit to prove that service was in fact effected on a date earlier than the date on which it is deemed to be effected.

PART 5A
Electronic Litigation Portal Filing and Service Procedure

Contents of this Part

Scope of this Part	Rule 5A.1
Application of this Part	Rule 5A.2
Operation of the Electronic Litigation Portal	Rule 5A.3
Registration for use of the Electronic Litigation Portal	Rule 5A.4
Format of document	Rule 5A.5
Electronic Signature	Rule 5A.6
Electronic submission of document	Rule 5A.7
Filing within and outside hours of business	Rule 5A.8
Fees	Rule 5A.9
Validity of Claim Forms filed on the Electronic Litigation Portal	Rule 5A.10
Processing by the Court's Registry	Rule 5A.11
Service of document by electronic means	Rule 5A.12
Consent to service by electronic means	Rule 5A.13
Document served by electronic means which cannot be viewed or downloaded	Rule 5A.14
Service by electronic means by or on the Court	Rule 5A.15
Proof of service	Rule 5A.16
Electronic Compilation of Trial/Hearing Bundle, Core Bundle and Record of Appeal	Rule 5A.17
Use of Electronic Litigation Portal by Pro Se Litigant	Rule 5A.18
Practice Direction and Practice Guides	Rule 5A.19

Scope of this Part

5A.1 (1) This Part contains provisions about the use of the Electronic Litigation Portal for electronic filing and service of court documents through electronic means of communication.

(2) In this Part -

"court's registry" means the Court Office of the High Court situated in each of the Member States and Territories and of the Court of Appeal situated at the Eastern Caribbean Supreme Court (ECSC) Headquarters in Saint Lucia, whichever is applicable in the context;

"court's website" means the website of the Eastern Caribbean Supreme Court;

"Electronic Litigation Portal" means the web-based application which has been developed and implemented to offer stakeholders in the judicial system of the Eastern Caribbean a single point of access for the electronic filing of documents into case files, and for the electronic management of documents and case files within the Court's Registry in the Eastern Caribbean Supreme Court in accordance with this Part;

"electronic mail" means a form of electronic communication of the contents of a document and includes the use of an online application, e-mail, e-messages, e-certification, online shared drives, CD ROMs, USB Drives, or Facsimile.

Application of this Part

5A.2 (1) This Part applies to all -

(a) High Court civil proceedings, including Commercial, Non-Contentious Probate and Administration of Estates, Family (including matrimonial and adoption matters), Admiralty and Bankruptcy or Insolvency Proceedings;

(b) High Court criminal proceedings; and

(c) Court of Appeal proceedings.

(2) Notwithstanding paragraph (1), rule 3.6(2) and Parts 5 and 6 apply in civil proceedings in the High Court and Court of Appeal.

(3) This Part applies to proceedings when made available on the Electronic Litigation Portal and notice is provided by the Chief Registrar as directed by the Chief Justice.

(4) The rules under this Part apply to new proceedings filed on or after the date of the notice provided under paragraph (3) and must be used to file a document to commence and continue proceedings before the court through the Electronic Litigation Portal unless the Chief Justice in exceptional circumstances directs otherwise.

(5) In existing cases, this Part applies, without exception, if the case is made available on the Electronic Litigation Portal and electronic or other notification is given to the parties by the court's registry.

(6) This Part applies to procedural rules of the Eastern Caribbean Supreme Court and applicable Practice Directions.

Operation of the Electronic Litigation Portal

5A.3 (1) The Electronic Litigation Portal makes provision for the electronic filing and service of court documents through the use of electronic means of communication.

(2) A document must be submitted through the Electronic Litigation Portal to enable electronic filing to the court's registry.

(3) The Electronic Litigation Portal enables a party to file a document online to commence proceedings or in the case of ongoing proceedings at a time during or outside normal court office hours of business including weekends, public holidays and during the court's vacation.

(4) The Electronic Litigation Portal must contain a payment facility including an escrow account, credit card payment facility or other payment facility.

Registration for use of the Electronic Litigation Portal

5A.4 (1) A party to proceedings shall register on the Electronic Litigation Portal to have access to it.

(2) A party shall provide a valid electronic mail address to the court's registry at the time of registering under paragraph (1).

(3) On approval of a request for the creation of an account, the court shall provide a user with a means to create a username and password to be used for signing into the Electronic Litigation Portal for filing and service by electronic means.

(4) Subject to this rule, a party shall comply with the procedure, the process for registration and instructions published on the court's website, and as may be updated from time to time.

Format of the document

5A.5 (1) A document which is submitted for electronic filing using the Electronic Litigation Portal must be converted into Portable Document Format (PDF), or other specified format (including MS Word for draft orders) as approved by the court, before uploading by -

(a) using the applicable software; or
(b) scanning hard copies of the document.

(2) Where a document is not available electronically, it must be scanned using the image resolution specified by the court and saved as a legible Portable Document Format (PDF) document.

(3) A document submitted for electronic filing using the Electronic Litigation Portal must not be -
(a) more than the file size specified by the court;
(b) encrypted; or
(c) password protected.

(4) A document submitted through the Electronic Litigation Portal must comply with the requirements of applicable procedural rules of the Eastern Caribbean Supreme Court.

(5) There are no limits on the number of documents that can be submitted in the process of electronic filing using the Electronic Litigation Portal.

(6) An electronic document or image must be uploaded and submitted as a single file, unless paragraph (7) applies.

(7) Where a document or image exceeds the file size specified by the court, the party must upload the document or image in separate volumes or parts using numbers and letters wo identify the various volumes or parts e.g. “Exhibit YH-Part A” or “YH-Part1” together with an index to the document setting out the page numbering of the various volumes or parts.

Electronic signature

5A.6 (1) A document which is submitted for electronic filing using the Electronic Litigation Portal is not required to bear the electronic image of the handwritten or physical signature of the party who is filing, however, the name of the person or entity filing the document must be legibly printed or legibly endorsed at the bottom of the document.

(2) A party may insert a signature on a document for electronic filing through the Electronic Litigation Portal or via any appropriate software or hardware device which may be available to them.

(3) Where a party files a document using the Electronic Litigation Portal, scanned original documents that are signed with a handwritten or physical signature must be kept by the party filing the document so that it can be made available for inspection if required by another party to the proceedings or by order of the court.

Electronic submission of document

5A.7 For electronic filing of a document using the Electronic Litigation Portal, a party must -

(a) access the Electronic Litigation Portal either by visiting the court's website and clicking on the link to the Electronic Litigation Portal or by directly entering the address of the webpage for the Electronic Litigation Portal site, and then logging into the account created under rule 5A.4(3).

(b) enter information for new proceedings or information on existing proceedings;

(c) upload the document associated with the proceedings;

(d) pay the fees using the payment facility available on the Electronic Litigation Portal under rule 5A.3(4); and

(e) submit the document.

Filing within and outside hours of business

5A.8 (1) The hours of business for electronic filing using the Electronic Litigation Portal are from 8:30 a.m. - 4:00 p.m. from Monday to Friday, excluding weekends and holidays.

(2) A document to which the court's stamp or seal and the date of filing information has been applied by the Electronic Litigation Portal is deemed to be filed on the date and time that the document was submitted to the Electronic Litigation Portal, if the date and time of filing is within the hours of business for electronic filing.

(3) A document submitted through the Electronic Litigation Portal for filing outside the hours of business for such filing or on a weekend or public holiday is deemed to have an effective filing time of 8:30 a.m. on the date when the court's registry is next open.

(4) The provisions of Part 3 of these rules relating to public holidays and computation of time apply to documents filed using the Electronic Litigation Portal.

(5) Notwithstanding paragraph (4), a period during which the service is not available through the facility hosting the Electronic Litigation Portal shall be excluded from the computation of time by notice from the Chief Registrar or Registrar, as the case may be.

Fees

5A.9 The fee payable in respect of a document submitted for electronic filing using the Electronic Litigation Portal is -

(a) the fee set out in the Eastern Caribbean Supreme Court (Court Proceedings Fees) Rules; and

(b) the fee specified in Schedule 1.

Validity of Claim Forms filed on the Electronic Litigation Portal

5A.10 (1) For matters filed on the Electronic Litigation Portal where Form 1 (Claim Form) and Form 2 (Fixed Date Claim Form) are being used, the endorsement as to the validity of the claim form should be adjusted to provide as follows:

"*This claim form has no validity if it is not served within 6 months of the date of Filing unless it is accompanied by an order extending that time or is a claim form filing pursuant to rule 8.12(2).*
The court office is at [xxx-xxx-xxx] telephone number [xxx-xxx-xxx] FAX [xxx-xxx-xxxx].
The office is open between [..... a.m.] and [..... p.m] ..... to ..... except
public holidays.
The claimant's address for service is: ....."

(2) For the purposes of rule 8.1(2), the date of filing of the claim form on the Electronic Litigation Portal is deemed to be the date the claim form is issued by the court office.

(3) Forms 1 and 2 are no longer required to be dated after the notice to the defendant at the end of the document and the date shall be deemed to be the date of filing on the Electronic Litigation Portal.

Proceedings by the Court's Registry

5A.11 (1) The court's registry, through the Electronic Litigation Portal, shall accept all documents submitted for electronic filing.

(2) Where a document has been filed using the Electronic Litigation Portal -

(a) an automated notification is generated in the notification section of the Electronic Litigation Portal, and will be available to all the legal practitioners on the matter, other than the filing legal practitioner, once the other legal practitioners have logged into the system; and

(b) the notification under paragraph (a) will be sent by electronic mail to the electronic mail address of the other legal practitioners to the proceedings who are registered on the Electronic Litigation Portal.

(3) Notwithstanding paragraphs (2)(a) and (b), where a document is filed ex parte, an automated notification will not be sent to the parties in the notification section of the Electronic Litigation Portal or by electronic mail.

(4) A filed document must be stamped and dated and by electronic means linked to the associated proceedings by the Electronic Litigation Portal.

(5) The court's stamp and date of filing information once applied to an electronically filed document by the Electronic Litigation Portal validates the authenticity of the document as being filed in the court's registry.

(6) On payment of the fees using the payment facility provided by the Electronic Litigation Portal, a paid stamp denoting payment must be applied to the document and the electronic filing fees paid under rule 5A.9 must be printed on the document.

(7) A document shall be deemed to be properly filed only when the requisite filing fees have been paid as required by rule 5A.9 unless payment is exempted by these rules or an enactment.

Service of document by electronic means

5A.12 (1) A document may be served by electronic means unless a rule or order of the court provides that the document is to be served personally or by other means.

(2) A document filed using the Electronic Litigation Portal that is required to be served must be served by the relevant party and not by the court, unless the court or an enactment requires otherwise.

(3) Where proceedings have commenced -

(a) service must be effected in accordance with the applicable rules of court; and

(b) the filing party must serve, together with the document commencing the proceedings, the appropriate authorisation code for the specific party which is generated by the Electronic Litigation Portal in the form set out in Schedule 2.

(4) Where the correct authorisation code generated by the Electronic Litigation Portal is not served on a party in accordance with paragraph (3)(b) or is not served at all, service is deemed not to have been effected until the authorisation code generated by the Electronic Litigation Portal in the form set out in Schedule 2 has been served on the party and the time of service shall be deemed to be the time when service of the authorisation code has been effected in accordance with this rule unless service is effected in accordance with directions given by the court.

(5) After proceedings have commenced, any other document filed in the proceedings and to which the court's stamp or seal and date of filing information has been applied by the Electronic Litigation Portal is deemed to be served on the date and time that the document was filed on the Electronic Litigation Portal in accordance with rule 5A.8.

(6) Notwithstanding the provisions of this rule, service of a document on a pro se or self-represented litigant is governed by the provisions of rule 5A.18.

Consent to service by electronic means

5A.13 (1) A party who furnishes an electronic mail address under rule 5A.4(2) consents to accept service by electronic means through the electronic mail address provided.

(2) An electronic mail address furnished by a party under rule 5A.4(2) is presumed valid for a party if the party has not filed with the court's registry

notice that the address is no longer valid and at the time that the notice is filed provided an alternative electronic mail address which would now become the valid electronic mail address for the party.

Document served by electronic means which cannot be viewed or downloaded

5A.14 A party that receives a document served by electronic means and is unable to view or download the document shall immediately notify the serving party and the serving party shall take reasonable steps to ensure that the document can be viewed and downloaded.

Service by electronic means by or on the Court

5A.15 The court may, by electronic means, serve a notice, order, judgment, decree or other document issued by the court on a party to proceedings by uploading the document to the Electronic Litigation Portal.

Proof of Service

5A.16 (1) An electronic notification of a filing of a document serves as proof of service of that document by electronic means.

(2) An electronic notification under paragraph (1) includes:

(a) electronic mail delivery or read receipt;

(b) confirmation from an electronic legal service provider that the document was delivered to the recipient party's account by that service provider;

(c) confirmation that the notification or an imbedded hyperlink in the notifications section of the Electronic Litigation Portal was accessed;

(d) acknowledgement of receipt by the recipient party, counsel, paralegal or member of staff of chambers of a legal practitioner; or

(e) other means sufficient to satisfy the court that the document came to the notice of the recipient party.

(3) If a dispute arises as to whether service of a document has occurred, the dispute shall be resolved by the Chief Registrar, the Registrar of the High Court, a Master or Judge of the High Court or a single Judge of the Court of Appeal.

Electronic Compilation of Trial/Hearing Bundle, Core Bundle and Record of Appeal

5A.17 (1) A party shall prepare an electronic bundle of documents and provide an index of the documents compiled in the said bundles to be used as -

(a) the trial bundle and core bundle for the trial;

(b) the record of appeal and core bundle for an appeal; or

(c) the hearing bundle for a trial, an appeal or an application.

(2) An electronic compilation under paragraph (1) is deemed to be the trial bundle for the purposes of Part 39 and the record of appeal for the purposes of Part 62 of these rules or other applicable rules or Practice Directions.

Use of the Electronic Litigation Portal by Pro se Litigant

5A.18 (1) Pro se or self-represented litigants must use the "service bureau" arrangement at the court office to obtain assistance with filing their documents.

(2) All documents filed against a party who at the time of filing appears as self-represented within the Electronic Litigation Portal must be served manually by the filing party unless the self-represented party consents, by written notice in the form set out in Schedule 3, to service on him or her by electronic means through the use of an electronic mail address or other electronic address furnished for that purpose by the party.

(3) Any document required to be served by the court on a party who is self-represented must be served manually unless a party furnishes to the court office an electronic address at which he or she may be served.

(4) A self-represented party may serve a document on the court electronically.

(5) The Registrar shall create and maintain a register which shall be accessible on the information section of the Electronic Litigation Portal and contains the electronic addresses of all parties who have submitted to the Registrar a written notice of their consent to be served with any legal process electronically, using the electronic address stated in the notice.

Practice Directions and Practice Guides

5A.19 The Chief Justice may issue Practice Directions and Practice Guides under this Part to supplement the rules in relation to the practice and procedure to be followed.

APPENDIX TO PART 5A

SCHEDULE 1

(Rule 5A.9)

USER FEES FOR FILING ON THE ELECTRONIC LITIGATION PORTAL

Description	Fee
Facilitation	$2.00 per filing

SCHEDULE 2

AUTHORISATION CODE

(Rule 5A.12(3)(b))

The Eastern Caribbean Supreme Court
In the High Court of Justice/Court of Appeal
[State/Territory]
[Case No.]
Between

A.B.

Claimant/Appellant

and

C.D.

Defendant/Respondent

TAKE NOTICE that the Claimant/Appellant/Applicant has filed the attached proceedings on The Eastern Caribbean Supreme Court Electronic Litigation Portal. The authorisation code to access these proceedings is [insert authorisation code].

These proceedings can only be accessed through the Electronic Litigation Portal. If you do not have an Attorney-at-Law and need assistance in accessing the Electronic Litigation Portal, please contact the Service Bureau at the High Court office.

Dated:
Signed by:
Print Name .....

The court office is at [xxx xxx xxxx] telephone number [xxx xxx xxxx]. The office is open between [….a.m.] and […..p.m.] ….....to ….....
except public holidays.

SCHEDULE 3

CONSENT/AUTHORISATION FOR SERVICE BY ELECTRONIC MEANS

(Rule 5A.18(2))

Date:
To: The Registrar of the High Court
Name of Person Granting Authorisation: _____
Name of Company (if applicable): _____
Address:
_____
Telephone Contact - Landline _____
Mobile _____
Primary Email Address:
Secondary Email Address (if available):

I hereby [consent/withdraw consent] to accept service of documents by electronic means for matters which are commenced or are ongoing before the Courts in the jurisdiction of the Eastern Caribbean Supreme Court.

This applies to documents which are required to be served on me personally [or to my company (name of company) in which I serve as the (name of position) and for whom I am authorised to consent or withdraw consent to accepting service by electronic means].

The service of documents by electronic means can be effected by sending the documents to the primary or secondary (if available) electronic mail address specified above.

I understand that the electronic mail address which I have provided above is presumed valid unless or until I complete this form to provide a new electronic mail address or to withdraw consent for service by electronic means.

Signature
Print Name…….

PART 6
Service of other Documents

Contents of this Part

Who is to serve documents other than claim form	Rule 6.1
Method of service	Rule 6.2
Address for service	Rule 6.3
Serving documents where no address for service is given	Rule 6.4
Service of documents on person who is not a party	Rule 6.5
Deemed date of service	Rule 6.6
Proof of service	Rule 6.7
Power of court to dispense with service	Rule 6.8
Service of documents on Attorney General	Rule 6.9

Who is to serve documents other than claim form

6.1 (1) Subject to paragraph (2) any judgment or order which requires service must be served by the court, unless –

(a) a rule provides that a party must serve the document in question; or

(b) the court orders otherwise.

(2) The following orders must be served by the party obtaining the order –

(a) a freezing order under rule 17.1(j);

(b) an injunction;

(c) any order listed in rule 17.1 (c), (d), (k) or (l);

(d) an order under rule 17.1(g); and

(e) a search order under rule 17.1(h).

(3) Any other document must be served by a party, unless –

(a) a rule otherwise provides; or

(b) the court orders otherwise.

Method of service

6.2 If these Rules require a document other than a claim form to be served on any person it may be served by any of the following methods –

(a) any means of service in accordance with Part 5 and Part 5A;

(b) leaving it at or sending it by prepaid post to any address for service in accordance with rule 6.3(1); or

(c) other means of electronic communication if permitted by a relevant rule or practice direction,

unless a rule otherwise provides or the court orders otherwise.

Address for service

6.3 (1) Documents must be delivered or posted to a party at any address for service within the jurisdiction given by that party.

(2) If a party to be served has not given an address within the jurisdiction at which documents for that party may be served, documents must be served at the address indicated in rule 6.4.

Serving documents where no address for service is given

6.4 (1) If no address is given for service the document may be served by leaving it or posting it at or to –

(a) in the case of a firm or partnership – either –

(i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the claim; or

(ii) the usual or last known place of residence of one of the partners;

(b) in the case of an individual – that person's usual or last known place of residence;

(c) in the case of a proprietor of a business – that person's –

(i) usual or last known place of residence; or

(ii) place of business or last known place of business; or

(iii) the business address of any legal practitioner who purports to act for the party in the proceedings.

(2) The provisions of Part 5 and Part 5A may apply to such a document as if it were a claim form.

Service of documents on person who is not a party

6.5 If the court or a party is to serve documents on a person who is not a party, such documents must be served by one of the methods specified in Part 5.

Deemed date of service

6.6 (1) A document which is served within the jurisdiction in accordance with these Rules is deemed to be served on the day shown in the following table -

Method of Service	Deemed date of service
(2) Post	14 days after posting
(2) Registered Post	10 days after the date indicated on the Post Office or courier receipt
(2) Leaving document at permitted address	The day after leaving the document
(2) Electronic methods of service	(a) If it is transmitted on a business day before 4 p.m. – the day of the transmission (b) In any other case – the business day after the day of the transmission

Any document served after 4 p.m. on a business day or at any time on a day other than a business day is treated as having been served on the next business day.

(3) In this rule **"business day"** means any –

(a) day other than a Saturday, Sunday or Bank Holiday; or

(b) other day on which the court office is closed,

and is to be determined by reference to the relevant enactment of the Member State or Territory in which the document is to be served.

Proof of service

6.7 If proof of service of any document is required, it may be proved by any method of proving service set out in Part 5.

Power of court to dispense with service

6.8 (1) The court may dispense with service of a document if it is appropriate to do so.

(2) An application for an order to dispense with service may be made without notice.

Service of documents on Attorney General

6.9 (1) This rule applies where any document has to be served on the Attorney General of any Member State or Territory in connection with any proceedings of which notice has to be given to the Attorney General and where express provision as to service is not made by any enactment or rule.

(2) Any such document must be served in accordance with rule 59.2.

PART 7
Service of Court Process Out of Jurisdiction

Contents of this Part

Scope of this Part	Rule 7.1
General rule as to service of court process out of jurisdiction	Rule 7.2
Service of court process out of jurisdiction in specified proceedings	Rule 7.3
Service out of the jurisdiction with leave	Rule 7.4
Proceedings which include other types of claims	Rule 7.5
Certificate for service out of jurisdiction	Rule 7.6
Acknowledgment of service and defence where court process served out of jurisdiction	Rule 7.7
Application to set aside service under rule 7.2	Rule 7.8
Mode of service of court process– general provisions	Rule 7.9
Mode of service - alternative procedure	Rule 7.10
Power of court to dispense with service of court process	Rule 7.11
Service of court process through foreign governments, or judicial or consular authorities	Rule 7.12
Procedure where court process is to be served through foreign governments, etc.	Rule 7.13
Service of court process on a State	Rule 7.14
Translation of court process	Rule 7.15
Undertaking to be responsible for expenses of minister with responsibility for foreign affairs	Rule 7.16
Service of court documents other than court process	Rule 7.17

Scope of this Part

7.1 (1) This Part contains provisions about the –

(a) circumstances in which court process may be served out of the jurisdiction; and

(b) procedure for serving court process out of the jurisdiction.

(2) In this Part, references to service or filing copies of court process include –

(a) a claim form and a statement of claim (unless contained in the claim form);

(b) a notice of application;

(c) an affidavit in support of the claim, if these rules so require;

(d) if the court has made an order for an interim remedy before a claim has been made under rule 17.2 – a copy of the order; and

(e) if permission has been given under rule 8.2 to serve a court process without the statement of claim – a copy of the order giving permission.

General rule as to service of court process out of jurisdiction

7.2 (1) Court process may be served out of the jurisdiction without the permission of the court provided that –

(a) service is effected in compliance with rule 7.9 or pursuant to rule 7.17;

(b) the court process is listed in rule 7.3; and

(c) the claimant complies with rule 7.6.

(2) If service is not to be effected in compliance with rule 7.9 or pursuant to rule 7.17, the court's permission is required to serve by alternative procedure under rule 7.10.

Service of court process out of jurisdiction in specified proceedings

7.3 (1) The court may set aside service of a court process if the proceedings are not listed in this rule.

Features which may arise in any type of claim

(2) Court process may be served out of the jurisdiction if a claim is made –

(a) against someone on whom the court process has been or will be served, and -

(i) there is between the claimant and that person a real issue which it is reasonable for the court to try; and

(ii) the claimant now wishes to serve the court process on another person who is outside the jurisdiction and who is a necessary or proper party to process;

(b) for an injunction ordering the defendant to do or refrain from doing some act within the jurisdiction; or

(c) for a remedy against a person domiciled or ordinarily resident within the jurisdiction.

Claims about contracts

(3) Court process may be served out of the jurisdiction if –

(a) a claim is made in respect of a breach of contract committed within the
jurisdiction;

(b) a claim is made in respect of a contract where the contract –

(i) contains a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract;

(ii) is by its terms or by implication governed by the law of any Member State or Territory;

(iii) was made by or through an agent trading or residing within the jurisdiction; or

(iv) was made within the jurisdiction; or

(c) the claim is for a declaration that no contract exists, where, if the contract did exist, it would fulfil one or more of the conditions in subparagraph (b).

Claims in tort

(4) Court process may be served out of the jurisdiction if a claim in tort is made and the act causing the damage was committed within the jurisdiction or the damage was sustained within the jurisdiction.

Enforcement

(5) Court process may be served out of the jurisdiction if a claim is made to enforce any judgment or arbitral award which was made by a foreign court or tribunal and is amenable to be enforced in the jurisdiction.

Claims about property within the jurisdiction

(6) Court process may be served out of the jurisdiction if the whole subject matter of a claim relates to property within the jurisdiction.

Claims about companies

(7) Court process may be served out of the jurisdiction if the subject matter of a claim relates to –

(a) the constitution, administration, management or conduct of the affairs;

(b) the ownership or control; or

(c) the insolvency,

of a company incorporated within the jurisdiction.

Claims about trusts

(8) Court process may be served out of the jurisdiction if –

(a) a claim is made for a remedy against the defendant as constructive trustee and the defendant's alleged liability arises out of acts committed within the jurisdiction;

(b) a claim is made –

(i) for any remedy which might be obtained in proceedings for the
administration of the estate of; or

(ii) in probate proceedings as defined in Part 68 relating to, a person who died domiciled within the jurisdiction; or

(c) a claim is made for any remedy which might be obtained in proceedings to execute the trust of a written instrument and the -

(i) trusts ought to be executed according to the law of any Member State or Territory; and

(ii) person on whom the claim is to be served is a trustee of the trusts.

Claims of restitution

(9) Court process may be served out of the jurisdiction if a claim is made for restitution where the defendant's alleged liability arises out of acts committed within the jurisdiction or out of acts which, wherever committed, were to the detriment of a person domiciled within the jurisdiction.

Claims under an enactment conferring jurisdiction on the court

(10) Court process may be served out of the jurisdiction if a claim is made under an enactment where, by virtue of an enactment, the court has power to hear and determine any claim or proceeding.

Relief in aid of foreign proceedings

(11) Court process may be served out of the jurisdiction if an application is made for interim relief where proceedings have been or are about to be commenced in a foreign jurisdiction.

Claims for costs orders against a non-party

(12) Court process may be served out of the jurisdiction if a claim is made by a party to proceedings for an order that the court exercise its power to make a costs order against a person who is not a party to those proceedings.

Service out of jurisdiction with leave

7.4 (1) In any proceeding where service is not allowed under rule 7.2 or when the claimant desires to serve the court process out of the jurisdiction with leave of the court, he may apply to the court without notice for leave to serve the process out of the jurisdiction.

(2) An application for leave under this rule must be supported by an affidavit stating any facts or matters relating to the desirability of the court assuming jurisdiction under this rule, including the place or country in which the person to be served is or possibly may be found, and whether the case is a proper one for the court's jurisdiction.

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) The court may grant an application for leave if the claimant establishes that -

(a) the claimant has a good cause of action;

(b) the claim on which the claimant relies is listed in rule 7.3; and

(c) the court is the appropriate forum for the trial.

(5) Where the court makes an order under this rule it must also specify the date by which the defendant is required to acknowledge service and defend the claim.

Proceedings which include other types of claims

7.5 If the claimant makes a claim which falls within –

(a) rule 7.3(3) (claims about contracts);

(b) rule 7.3(4) (claims in tort); or

(c) rule 7.3(8)(a) (claims against the defendant as a constructive trustee), the court may grant any claim for a remedy which –

(i) does not fall within rule 7.3; but

(ii) arises out of the same facts or substantially the same facts as the claim in respect of which the order is made.

Certificate for service out of jurisdiction

7.6 Where court process is to be served out of the jurisdiction the claimant must, at the same time as filing that court process, file and serve a certificate signed by the claimant or the claimant's legal practitioner stating -

(a) that, in the belief of the person signing the certificate, the claimant has a good cause of action;

(b) the case or cases listed in rule 7.3 on which the claimant relies;

(c) that, in the belief of the person signing the certificate, the court is the appropriate forum for the trial; and

(d) that, in the belief of the person signing the certificate, the proposed method of service does not infringe the law of that foreign state.

Acknowledgment of service and defence where court process served out of jurisdiction

7.7 (1) A claim form to be served out of the jurisdiction must be amended to state the period within which the -

(a) acknowledgement of service; and

(b) defence,

must be filed.

(2) The periods for filing a document under paragraph (1) are to be determined by reference to the relevant practice direction.

Application to set aside service under rule 7.2

7.8 (1) Any person on whom court process has been served out of the jurisdiction under rule 7.2 may apply to set aside service of the court process.

(2) The court may set aside service under this rule if –

(a) the claimant does not have a good cause of action;

(b) the proceedings are not listed in rule 7.3; or

(c) the court is not the appropriate forum for the trial.

(3) This rule does not limit the court's power to make an order under rule 9.7 (procedure for disputing the court's jurisdiction).

(4) On the hearing of an application to set aside service the claimant must satisfy the court that –

(a) the claimant has a good cause of action;

(b) the proceedings are listed in rule 7.3; and

(c) the court is the appropriate forum for the trial.

Mode of service of court process– general provisions

7.9 (1) Subject to the following paragraphs of this rule, and rule 7.10, if a court process is to be served out of the jurisdiction, it may be served –

(a) by a method provided for by –

(i) rule 7.12 (service through foreign governments, etc.); or

(ii) rule 7.14 (service on a State);

(b) in accordance with the law of the country in which it is to be served; or

(c) personally by the claimant or the claimant's agent.

(2) Nothing in this Part or in any court order may authorise or require any person to do anything in the country where the court process is to be served which is against the law of that country.

Mode of service – alternative procedure

7.10 (1) Where service under rule 7.9 cannot be effected on the defendant for good reason, the claimant may apply for an order under this rule that the court process be served by a method specified by the court.

(2) An order made under this rule shall specify the date on which service shall be deemed to have been effected as well as the period prescribed under any Practice Direction within which the defendant is required to acknowledge service of that process.

(3) Where an order is made under this rule, service by the method specified in the court's order shall be deemed to be good service.

(4) An application for an order under this rule may be made without notice but must be supported by evidence on affidavit –

(a) specifying the method of service proposed;

(b) providing full details as to why service under rule 7.9 cannot reasonably be effected;

(c) showing that such method of service is likely to enable the person to be served to ascertain the contents of the court process; and

(d) certifying that the method of service proposed is not contrary to the law of the country in which court process is to be served.

(5) Where any method of service specified in an order made under this rule is subsequently shown to be contrary to the law of the country in which the claim was purportedly served, such service shall be invalid.

(6) Where the court makes an order under this rule, it must also specify the date by which the defendant is required to file an acknowledgment of service and a defence to the claim.

Power of court to dispense with service of court process

7.11 (1) The court may dispense with service of a court process in exceptional circumstances.

(2) An application for an order to dispense with service may be made at any time and –

(a) must be supported by evidence on affidavit; and

(b) may be made without notice.

(3) Where the court makes an order under this rule, and the defendant has not already filed a defence to the claim or challenged the jurisdiction of the court, it must at the same time specify the date by which the defendant is required to file an acknowledgment of service and a defence to the claim.

Service of court process through foreign governments, or judicial or consular authorities

7.12 (1) This rule does not apply to service in –

(a) any independent Commonwealth country;

(b) the Republic of Ireland; or

(c) the United Kingdom, the Isle of Man or the Channel Islands,

unless the court process is to be served in accordance with paragraph (2).

(2) The methods of service permitted by this rule are in addition to any method of service permitted under rule 7.9(1)(b) or (c).

Service under the Hague Convention

(3) Court process to be served on a defendant in any country which is a party to the Hague Convention may be served –

(a) through the authority designated under the Hague Convention in respect of that country; or

(b) if the law of that country permits –

(i) in the case of court process issued in a Member State, through its consular authority in that country;

(ii) in the case of court process issued in a Territory, through the British consular authority in that country; or

(iii) through the judicial authorities of that country.

Service under other Conventions

(4) Court process to be served on a defendant in any country which is a party to a Civil Procedure Convention (to which the relevant Member State or Territory is also a party or which has been extended to the relevant Member State or Territory) other than the Hague Convention providing for service of court process in that country, may be served, if the law of that country permits –

(a) in the case of court process issued in a Member State, through its consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served);

(b) in the case of court process issued in a Territory, through the British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served); or

(c) through the judicial authorities of that country.

Service where there is no applicable Convention

(5) Court process to be served on a defendant in any country with respect to which there is no relevant Civil Procedure Convention providing for service of court process in that country may be served, if the law of that country so permits –

(a) in the case of court process issued in a Member State, through its consular authority in that country;

(b) in the case of court process issued in a Territory, through the British consular authority in that country; or

(c) through the government of that country, if that government is willing to serve it.

Procedure where court process is to be served through foreign governments, etc.

7.13 (1) This rule applies where the claimant wishes to serve court process through the –

(a) authority designated under the Hague Convention or any other relevant Civil Procedure Convention in respect of that country;

(b) consular authority of a Member State or, in the case of a Territory, the British consular authority in that country;

(c) government of that country; or

(d) judicial authorities of the country where the court process is to be served.

(2) If this rule applies, the claimant must file –

(a) a copy of the court process;

(b) an additional copy of the court process for each person to be served;

(c) a request for service of the court process by the claimant's chosen method; and

(d) any translation required by rule 7.15.

(3) When the claimant files the documents specified in paragraph (2) the court office must –

(a) seal the copy of the court process; and

(b) send the documents filed to the minister with responsibility for foreign affairs with a request that the minister arrange for the court process to be served –

(i) by the method indicated in the request for service filed under paragraph (2); or

(ii) if the request indicates alternative methods, by the most convenient method.

(4) An official certificate which –

(a) is made by –

(i) a consular authority of a Member State or a British consular authority in the country where the court process was served;

(ii) the government or judicial authorities in that country; or

(iii) any other authority designated in respect of that country under the Hague Convention or any other relevant Civil Procedure Convention;

(b) states that the court process has been served in accordance with this rule either personally or in accordance with the law of the country in which service was effected; and

(c) specifies the date on which the court process was served,

is evidence of the facts stated in the certificate.

(5) A document purporting to be an official certificate under paragraph (4) is to be treated as such a certificate, unless it is proved not to be.

Service of court process on a State

7.14 (1) This rule applies where a claimant wishes to serve court process on a State.

(2) If the State has agreed to a method of service other than a method permitted by this Part, the court process may be served either by the method agreed or in accordance with the other rules in this Part.

(3) The claimant must file at the court office –

(a) a copy of the court process;

(b) any translation required by virtue of rule 7.15; and

(c) a request for service to be arranged by the minister with responsibility for foreign affairs.

(4) The court office must send documents filed under this rule to the minister with responsibility for foreign affairs with a request that the minister arrange for the court process to be served.

(5) If a Member State or Territory has under any enactment relating to state immunity agreed to a method of service, the court process may be served either by the method agreed or in accordance with this rule.

(6) An official certificate by the minister with responsibility for foreign affairs stating that court process has been duly served on a specified date in accordance with a request made under this rule is evidence of that fact.

(7) A document purporting to be such a certificate is to be treated as such a certificate, unless it is proved not to be.

Translation of court process

7.15 (1) Except where paragraph (4) or (5) applies, every copy of the court process to be served under this Part must be accompanied by a translation of the claim form, statement of claim or any other document that originates the court's process.

(2) The translation must be –

(a) in the official language of the country in which it is to be served; or

(b) if there is more than one official language of that country, in any official language which is appropriate to the place in the country where the court process is to be served.

(3) Every translation filed under this rule must be certified by the person making it to be a correct translation, and the certificate must state –

(a) the name of the person making the translation; and

(b) his or her –

(i) address; and

(ii) qualifications for making the translation.

(4) If the court process is to be served –

(a) in a country of which English is an official language; or

(b) by a consular authority of a Member State or, in the case of a Territory, a British consular authority on a citizen of a Member State or Territory,

the claimant is not required to file a translation of the court process filed under rule 7.12 (service through foreign governments, etc.) unless a relevant Civil Procedure Convention expressly requires a translation.

(5) The claimant is not required to file a translation of a court process filed under rule 7.14 (service on a State) if English is an official language of the State where the court process is to be served.

Undertaking to be responsible for expenses of minister with responsibility for foreign affairs

7.16 (1) A person filing a request for service under rule 7.12 (service through foreign governments, etc.) or rule 7.14 (service on a State) must undertake in the request –

(a) to be responsible for all expenses incurred by the minister with responsibility for foreign affairs; and

(b) on being informed of the amount of those expenses to –

(i) pay that amount to the Accountant General or other financial officer for the Member State or Territory concerned; and

(ii) produce a receipt for the payment to the court office.

(2) The claimant may take no further step in the proceedings until the claimant produces the receipt required by paragraph (1)(b)(ii).

Service of court documents other than court process

7.17 (1) An application (other than an application originating a claim under rule 8.1(6)), order or notice issued, made or given in any proceedings may be served out of the jurisdiction without the court's permission if it is served in proceedings in which court process has been served out of the jurisdiction pursuant to rule 7.2.

(2) The procedure by which a document specified in paragraph (1) is to be served is the same as that applicable to the service of court process and accordingly rules 7.9 to 7.16 apply.

PART 8
How to Start Proceedings

Contents of this Part

The claimant – how to start proceedings	Rule 8.1
Statement of claim, etc. to be issued and served with claim form	Rule 8.2
Where to start proceedings	Rule 8.3
Right to make claim which includes two or more claims	Rule 8.4
Claim not to fail by adding or failing to add parties	Rule 8.5
What must be included in claim form	Rule 8.6
Claimant's duty to set out case	Rule 8.7
Permission to rely on allegation or factual argument	Rule 8.8
Certificate of value (small claims)	Rule 8.9
Special requirements applying to claims for personal injuries	Rule 8.10
Relator claims	Rule 8.11
Service of claim	Rule 8.12
Time within which claim may be served	Rule 8.13
Extension of time for serving claim	Rule 8.14
Defence form, etc. must be served with claim form	Rule 8.15
Pre-action protocols	Rule 8.16

The claimant – how to start proceedings

8.1 (1) A claimant starts proceedings by filing in the court office the original and one copy (for sealing) of –

(a) the claim form; and (subject to rule 8.2)

(b) the statement of claim; or

(c) if any rule or practice direction so requires – an affidavit or other document.

(2) A claim is issued on the date entered on the claim form by the court office.

(3) For the purpose of any enactment relating to the limitation of proceedings, a claim is brought on the day on which the claim form is filed at the court office.

- Rule 3.7(2) defines when a document is filed.

(4) A claim form must be in Form 1 except in the circumstances set out in paragraph (5).

(5) Form 2 (fixed date claim form) must be used –

(a) in claims between landlord and tenant;

(b) whenever its use is required by any enactment, rule or practice direction;

(c) where by any enactment proceedings are required to be commenced by originating summons or motion;

(d) in matters involving questions of law only; and

(e) where by any enactment provision is made for an application to be made to the court where the effect of the application commences proceedings in the court.

- Rule 27.2 deals with the procedure under a fixed date claim.

(6) A person who seeks a remedy –

(a) before proceedings have been started;

(b) in relation to proceedings which are taking place, or will take place, in another jurisdiction;

(c) by an application for disclosure orders against a non-party (also known as Norwich Pharmacal Orders); or

(d) by an application to enforce an arbitration award under rule 43.10,

must seek that remedy by an application under Part 11.

Statement of claim, etc. to be issued and served with claim form

8.2 (1) A claim form may be issued and served without the statement of claim or affidavit or other document required by rule 8.1 (1) (b) or (c) only if the –

(a) claimant has included in the claim form all the information required by rules 8.6, 8.7, 8.9 and 8.10; or

(b) court gives permission.

(2) In a case of emergency when it is not practicable to obtain the permission of the court a claimant may issue and serve the claim form without a statement of claim or affidavit or other document required by rule 8.1(1) (b) or (c) provided that the claimant –

(a) certifies in writing that the issue and service of the claim form is a matter of emergency, stating why; and

(b) serves a copy of the –

(i) certificate; and

(ii) application for permission,

with the claim form.

(3) If a claim form is issued under paragraph (2), the claimant may take no further steps except to serve the claim form until permission is given.

(4) The court may give permission under paragraph (1) only if it is satisfied that –

(a) a relevant limitation period is about to expire and the claimant has obtained legal advice relating to the claim for the first time within the 28 days prior to the date that the claimant wishes to file the claim; or

(b) the claim form must be issued as a matter of urgency and it is not practicable for the claimant to prepare a statement of claim or affidavit.

(5) An application for permission may be made without notice but must be supported by evidence on affidavit.

(6) Any order giving permission for the claim form to be served without a statement of claim or affidavit or other document required by rule 8.1(1)(b) or (c) must state a date by which that document must be served.

(7) Such date must in no case be more than 56 days from the date of issue of the claim form.

(8) A copy of the order or the certificate and application under paragraph (2) must be served with the claim form.

(9) The claimant must file a copy of the statement of claim or affidavit or other document required by rule 8.1(1) (b) or (c), served in accordance with paragraph (6), endorsed with a certificate stating the date of service and the address at which and the manner in which it was served.

Where to start proceedings

8.3 (1) This rule identifies the court office at which a claim form may be issued.

(2) Proceedings in relation to land may only be commenced in the court office for the Member State, Territory or Circuit in which the land is situated.

(3) Any other proceedings may only be commenced in the court office for the Member State, Territory or Circuit where either the –

(a) cause of action arose; or

(b) defendant resides or carries on business.

Right to make claim which includes two or more claims

8.4 A claimant may use a single claim form to include all or any other claims which can be conveniently disposed of in the same proceedings.

Claim not to fail by adding or failing to add parties

8.5 (1) The general rule is that a claim will not fail because a person –

(a) who should have been made a party was not made a party to the proceedings; or

(b) was added as a party to the proceedings who should not have been added.

(2) However –

(a) where a claimant claims a remedy to which some other person is jointly entitled, all persons jointly entitled to the remedy must be parties to the proceedings, unless the court orders otherwise; and

(b) if any such person does not agree to be a claimant, that person must be made a defendant, unless the court orders otherwise.

(3) This rule does not apply in probate or administration proceedings.

- Rules 67.2 and 68.3 deal with parties in such proceedings.

What must be included in claim form

8.6 (1) The claimant must in the claim form –

(a) include a short description of the nature of the claim;

(b) specify any remedy that the claimant seeks; and

(c) give an address for service in accordance with rule 3.10.

(2) Notwithstanding paragraph (1) (b) the court may grant any other remedy to which the claimant may be entitled.

(3) A claimant who seeks aggravated damages and/or exemplary damages must say so in the claim form.

(4) A claimant who is seeking interest must –

(a) say so expressly in the claim form; and

(b) include, in the claim form or statement of claim, details of the –

(i) basis of entitlement;

(ii) rate; and

(iii) period for which it is claimed.

(5) If the claim is for a specified sum of money, the total amount of interest claimed to the date of the claim and the daily rate at which interest will accrue after the date of the claim must be expressly stated in the claim form.

(6) A claimant who claims in a representative capacity under Part 21 must state what that capacity is.

(7) A claimant suing a defendant in a representative capacity under Part 21 must state what that capacity is.

- Rule 3.11 requires the statement of case to be verified by a certificate of truth.

Claimant's duty to set out case

8.7 (1) The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

(2) The statement must be as short as practicable.

(3) The claimant must identify in or annex to the claim form or the statement of claim any document which is considered to be necessary to the claimant's case.

(4) If the claimant seeks recovery of any property, the claimant's estimate of the value of that property must be stated.

(5) The statement of claim must include a certificate of truth in accordance with rule 3.11.

Permission to rely on allegation or factual argument

8.8 The claimant may not rely on any allegation or factual argument which is not set out in the claim, but which could have been set out there, unless the court gives permission or the parties agree.

- Rule 20.1 contains provisions about amendments to statements of case.

Certificate of value (small claims)

8.9 In any case in which the quantum of damages alone determines in which court the claim is to be brought but the amount of any damages claimed is not specified, the claim form must include a certificate by the claimant that the damages claimed exceed the civil jurisdiction of the District or Magistrate's Court in the Member State or Territory in which the claim form is issued.

Special requirements applying to claims for personal injuries

8.10 (1) This rule sets out additional requirements with which a claimant making a claim for personal injuries must comply.

(2) The claimant's date of birth or age must be stated in the claim form or statement of claim.

(3) If the claimant intends to rely at trial on the evidence of a medical practitioner, the claimant must attach to the statement of claim a report from the medical practitioner on the personal injuries alleged in the claim.

(4) Paragraph (3) does not displace the claimant's obligation to comply with the provisions of Part 29 or Part 32 as applicable to call a witness or rely on the evidence of the medical practitioner at the trial of the claim.

(5) Paragraph (3) does not restrict the right of the claimant to call other or additional medical evidence at the trial of the claim.

(6) The claimant must include in, or attach to the claim form or statement of claim a schedule of any special damages claimed.

Relator claims

8.11 A person's name may not be used in any claim as a relator unless that person has given written authority to that effect and the authority is filed at the court office before the claim is issued.

Service of claim

8.12 After the claim has been issued it may be served on the defendant in accordance with Part 5 (service of claim form within jurisdiction), Part 5A (Electronic Litigation filing and service procedure) or Part 7 (service of court process out of the jurisdiction), as applicable.

Time within which claim may be served

8.13 (1) The general rule is that a claim must be served within 6 months after the date when the claim was issued.

(2) The period for –

(a) service of a claim out of the jurisdiction; or

(b) service of an admiralty claim in rem,

is 12 months.

(3) If a claimant fails to serve a filed claim the defendant may apply for an order compelling the claimant to do so.

- Part 7 deals with service out of the jurisdiction.
- Part 72 deals with Admiralty proceedings.

Extension of time for serving a claim

8.14 (1) The claimant may apply for an order extending the period within which a claim may be served.

(2) The period by which the time for serving a claim is extended may not be longer than 6 months on any one application.

(3) An application under paragraph (1) –

(a) must be made within the period –

(i) for serving a claim specified by rule 8.13; or

(ii) of any subsequent extension permitted by the court; and

(b) may be made without notice but must be supported by evidence on affidavit.

(4) The court may make an order under paragraph (1) only if it is satisfied that –

(a) the claimant has taken all reasonable steps to –

(i) trace the defendant; and

(ii) serve the claim;

but has been unable to do so; or

(b) there is some other special reason for extending the period.

(5) If an order is made extending the validity of the claim –

(a) the claim must be marked with an official stamp showing the period for which its validity has been extended; and

(b) a sealed copy of any order made must be served with the claim.

(6) No more than one extension may be allowed unless the court is satisfied that –

(a) the defendant is deliberately avoiding service; or

(b) there is some other compelling reason for so doing.

Defence form, etc. must be served with claim form

8.15 (1) When a claim form is served on a defendant, it must be accompanied by -

(a) a copy of any order made under rule 8.2 or 8.14;

(b) a defence form (Form 5);

(c) a form of acknowledgment of service (Form 4 or 4A);

(d) if the claim is for money – an application to pay by instalments (Form 3);

(e) the prescribed notes for defendants (Form 1A); and

(f) for matters filed electronically on the Electronic Litigation Portal, the authorization code form required to be served under Part 5A.

(2) There must be inserted on each form the –

(a) address of the court office to which the defendant is to return the forms;

(b) claim number (for example, SLUHCV2021/0000); and

(c) title of the claim.

(3) If there is a standard defence form appropriate to the particular case set out in a practice guide, the form sent to the defendant must be in a standard form of that type.

Pre-action protocols

8.16 The Chief Justice may, by practice direction, prescribe any pre-action protocols, including mediation, with which the parties are required to comply in relation to any prospective legal claim.

PART 9

Acknowledgment of Service and Notice of Intention to Defend

Contents of this Part

Scope of this Part	Rule 9.1
Filing acknowledgment of service and consequence of not doing so	Rule 9.2
The period for filing acknowledgment of service	Rule 9.3
Notice to claimant of filing of acknowledgment of service	Rule 9.4
Contents of acknowledgment of service	Rule 9.5
Right to dispute jurisdiction of court not taken away by acknowledgment of service	Rule 9.6
Procedure for disputing court's jurisdiction	Rule 9.7
Procedure for applying for a stay on the basis that the court should not exercise its jurisdiction	Rule 9.8

Scope of this Part

9.1 (1) This Part deals with the procedure to be used by a defendant who wishes to contest proceedings and avoid a default judgment being entered.

• Part 12 deals with default judgments.

(2) The defendant does so –

(a) by filing –

(i) a defence in accordance with Part 10; and

(ii) an acknowledgment of service in Form 4 or 4A containing a notice of intention to defend within the time limit under rule 9.3; or

(b) by filing a defence in accordance with Part 10 within the time limit under rule 9.3.

(3) The filing of an acknowledgment of service is to be treated as the entry of an appearance for the purpose of any enactment referring to the entry of such an appearance.

- Part 14 deals with the case where the defendant wishes to admit all or part of the claim and enables the defendant to make an offer as to the time and rate of payment.

Filing acknowledgment of service and consequence of not doing so

9.2 (1) A defendant who wishes to –

(a) dispute the claim; or

(b) dispute the court's jurisdiction,

must file at the court office at which the claim was issued an acknowledgment of service in Form 4 or 4A containing a notice of intention to defend.

(2) A defendant files an acknowledgment of service by completing the form of acknowledgment of service and handing it in at, or sending it by post or by electronic means, including by the Electronic Litigation Portal, to the court office.

(3) An acknowledgment of service has no effect until it is filed at the court office.

(4) A defendant need not file an acknowledgment of service if a defence is filed within the period specified in rule 9.3.

(5) A defendant may –

(a) amend an acknowledgement of service once, without leave of the court, before the expiration of the time for filing a defence and thereafter with leave of the court; or

(b) withdraw an acknowledgement of service with leave of the court.

(6) If a defendant fails to file an acknowledgement of service or a defence or withdraw an acknowledgement of service, judgment may be entered if Part 12 allows it.

The period for filing acknowledgment of service

9.3 (1) The general rule is that the period for filing an acknowledgment of service is the period of 14 days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or Circuit and served in another the period is 28 days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing an acknowledgment of service is to be calculated from the date when the statement of claim is served.

(4) A defendant may file an acknowledgment of service at any time before a request or application, as the case requires, for default judgment is filed at the court office out of which the claim form was issued.

(5) Paragraph (1) does not apply where the claim is served –

(a) outside the jurisdiction in accordance with Part 7; or

(b) on an agent of an overseas principal under rule 5.17.

- Rules 7.5(2) and 5.17(4) deal with the time for filing an acknowledgment of service in those cases.
- Rule 59.3 makes special provision for extending the time for the Crown to acknowledge service.

Notice to claimant of filing of acknowledgment of service

9.4 (1) The court office must forthwith notify the claimant in writing that an acknowledgment of service has been filed.

(2) A copy of the acknowledgment of service must be annexed to the notice.

Contents of acknowledgment of service

9.5 (1) A defendant acknowledging service –

(a) may state in the acknowledgment of service that all or part of the claim is admitted;

(b) must state in the acknowledgment of service the date on which the defendant received the claim form;

(c)who admits all or part of a claim for a specified sum of money – may file with the acknowledgment of service –

(i) details of the defendant's financial circumstances; and

(ii) proposals for payment of any sums admitted;

(d) who admits part of the claim under paragraph (a) – must state the amount admitted.

- Part 14 deals with the way in which proposals referred to in this paragraph are decided.

(2) A defendant who admits part of the claim must also file a defence as to the disputed part of the claim within the time for filing a defence.

- Rule 10.3 sets out the time for filing a defence.

(3) The defendant or the defendant's legal practitioner must sign the acknowledgment of service.

(4) The defendant must include in the acknowledgment of service an email address and physical address for service in a Member State or Territory within the jurisdiction to which documents may be sent.

Right to dispute jurisdiction of court not taken away by acknowledgment of service

9.6 A defendant who files an acknowledgment of service does not by doing so lose any right to dispute the court's jurisdiction.

Procedure for disputing court's jurisdiction

9.7 (1) A defendant who disputes the court's jurisdiction to try the claim may apply to the court for a declaration to that effect.

(2) A defendant who wishes to make an application under paragraph (1) must first file an acknowledgement of service.

(3) An application under paragraph (1) of this rule must be made within the period for filing a defence; the period for making an application under this rule includes any period by which the time for filing a defence has been extended where the court has made an order, or the parties have agreed, to extend the time for filing a defence.

- Rule 10.3 sets out the period for filing a defence.

(4) An application under this rule must be supported by evidence on affidavit.

(5) A defendant who –

(a) files an acknowledgement of service; and

(b) does not make an application under this rule within the period for filing a defence,

is treated as having accepted that the court has jurisdiction to try the claim.

(6) An order under this rule may also –

(a) discharge an order made before the claim was commenced or the claim form served;

(b) set aside service of the claim form; and

(c) strike out a statement of claim.

(7) If on application under this rule the court does not make a declaration, it –

(a) may –

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence.

- Part 26 sets out powers which the court may exercise at a case management conference.

(8) Where a defendant makes an application under this rule, the period for filing a defence is extended until the time specified by the court under paragraph (7) (b) and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

Procedure for applying for a stay on the basis that the court should not exercise its jurisdiction

9.8 (1) A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings may apply to the court for a declaration to that effect and for a stay of the proceedings.

(2) Except where a defendant also disputes service, a defendant who wishes to make an application under paragraph (1) must first file an acknowledgment of service if one has not been previously filed.

(3) An application under paragraph (1) of this rule may be made at any time.

(4) An application under this rule must be supported by evidence on affidavit.

(5) If on application under this rule the court does not make a declaration, it -

(a) may-

(i) fix a date for a case management conference; or

(ii) treat the hearing of the application as a case management conference; and

(b) must make an order as to the period for filing a defence if none has yet been filed.

- Part 26 sets out powers which the court may exercise at a case management conference.

(6) Where a defendant makes an application under this rule, the period for filing a defence (where none has yet been filed) is extended until the time specified by the court under paragraph (5)(b) and such period may be extended only by an order of the court.

- Rule 10.3(4) deals with an application to stay proceedings where there is a binding agreement to arbitrate.

PART 10
Defence and Counterclaim

Contents of this Part

Scope of this Part	Rule 10.1
The defendant – filing defence and consequences of not doing so	Rule 10.2
The period for filing defence	Rule 10.3
Service of copy of defence	Rule 10.4
Defendant's duty to set out case	Rule 10.5
Special requirements applying to claims for personal injuries	Rule 10.6
Consequences of not setting out defence	Rule 10.7
Defence of tender	Rule 10.8
Reply to defence	Rule 10.9
Defendant's counterclaim	Rule 10.10
Defendant's counterclaim – service	Rule 10.11
Restrictions on right to make counterclaim in proceedings by or against the Crown	Rule 10.12
Counterclaim may survive claim	Rule 10.13
Defence to counterclaim	Rule 10.14
Claimant's defence to counterclaim – service	Rule 10.15

Scope of this Part

10.1 The rules in this Part set out the procedure for disputing the whole or part of a claim and the procedure for making a counterclaim.

The defendant – filing defence and the consequences of not doing so

10.2 (1) A defendant who wishes to defend all or part of a claim must file a defence (which may be in Form 5).

(2) If -

(a) a claim is commenced by a fixed date claim form in Form 2 and there is served with that claim form an affidavit instead of a statement of claim; or

(b) any rule requires the service of an affidavit,

the defendant may file an affidavit in answer instead of a defence.

(3) In this Part the expression "defence" includes an affidavit filed under paragraph (2).

(4) If a defendant fails to file a defence within the period for filing a defence, judgment for failure to defend may be entered if Part 12 allows it.

- Part 14 deals with the procedure to admit all or part of the claim.

The period for filing defence

10.3 (1) The general rule is that the period for filing a defence is the period of 28 days after the date of service of the claim form.

(2) If a claim form is issued in one Member State, Territory or Circuit and served in another, the period for filing a defence is 42 days after the date of service of the claim form.

(3) If permission has been given under rule 8.2 for a claim form to be served without a statement of claim, the period for filing a defence is the period of 28 days after the service of the statement of claim.

(4) If the defendant within the period set out in paragraph (1), (2) or (3) makes an application under any relevant legislation relating to arbitration to stay the claim on the grounds that there is a binding agreement to arbitrate, the period for filing a defence is extended to 14 days after the determination of that application.

(5) The parties may agree to extend the period for filing a defence specified in paragraph (1), (2), (3) or (4).

(6) The parties may not make more than two agreements under paragraph (5).

(7) The maximum total extension of time that may be agreed is 56 days.

(8) The defendant must file details of such an agreement.

(9) Where the time limited for filing a defence either by the rules or by agreement has not expired, a defendant may apply for an order extending time to file a defence.

(10) Where the time limited for filing a defence either by the rules or by agreement has expired, a defendant must apply for an order extending time to file a defence.

Service of copy of defence

10.4 (1) On filing a defence, the defendant must also serve a copy on every other party.

(2) The general rule is subject to -

(a) rule 5.17(4) (service of claim form on agent of overseas principal);
(b) rule 7.7(1) (service of claim form outside the jurisdiction);
(c) rule 9.7 (procedure for disputing court's jurisdiction); and
(d) rule 59.3 (claims against the Crown).

Defendant's duty to set out case

10.5 (1) The defence must set out all the facts on which the defendant relies to dispute the claim.

(2) Such statement must be as short as practicable.

(3) In the defence the defendant must say which (if any) allegations in the claim form or statement of claim –

(a) are admitted;
(b) are denied;
(c) are neither admitted nor denied, because the defendant does not know whether they are true; and
(d) the defendant wishes the claimant to prove.

(4) If the defendant denies any of the allegations in the claim form or statement of claim –

(a)the defendant must state the reasons for doing so; and
(b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.

(5) If, in relation to any allegation in the claim form or statement of claim, the defendant does –

(a) admit it; or

(b) deny it and put forward a different version of events,

the defendant must state the reasons for resisting the allegation.

(6) The defendant must identify in or annex to the defence any document which is considered to be necessary to the defence.

(7) A defendant who defends in a representative capacity must say –

(a) what that capacity is; and

(b) whom the defendant represents.

(8) The defendant must verify the facts set out in the defence by a certificate of truth in accordance with rule 3.11.

Special requirements applying to claims for personal injuries

10.6 (1) This rule sets out additional requirements with which a defendant to a claim for personal injuries must comply.

(2) If the claimant has attached to the claim form or statement of claim a report from a medical practitioner on the personal injuries which the claimant is alleged to have suffered, the defendant must state in the defence –

(a) whether all or any part of the medical report is agreed; and

(b) if any part of the medical report is disputed, the nature of the dispute.

(3) If the defendant intends to rely on a report from a medical practitioner to dispute any part of the claimant's claim for personal injuries and the defendant has obtained such a report, the defendant must attach that report to the defence.

(4) Paragraph (3) does not displace the claimant's and defendant's obligation to comply with the provisions of Part 29 or Part 32 as applicable to call a witness or to rely on the evidence of the medical practitioner at the trial of the claim.

Consequences of not setting out defence

10.7 The defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

- Rule 20.1 contains provisions about amendments to statements of case.

Defence of tender

10.8 (1) The defence of tender is not available unless the defendant pays into –

(a) an interest-bearing account with the agreement of the claimant or the permission of the court; or

(b) court,

the amount alleged to have been tendered within the period for filing a defence.

(2) If the claimant does not give notice accepting the payment into court within 28 days of service of the defence, the defendant may apply for payment out of the monies.

- Rule 10.3 states the period for filing a defence.
- Part 36 deals with payments into court.

Reply to defence

10.9 (1) A claimant may file and serve a reply to a defence –

(a) 14 days after the date of service of the defence; or

(b) at any time with the permission of the court.

(2) Where the defence contains a counterclaim, rules 10.10 to 10.15 shall apply.

Defendant's counterclaim

10.10 (1) A counterclaim by a defendant against the claimant or against the claimant and an existing party to the claim may be in Form 5.

(2) The claimant or an existing party to the claim is not required to file an acknowledgment of service and therefore Part 9 (acknowledgment of service) does not apply to the claimant or an existing party to the claim.

Defendant's counterclaim – service

10.11 The defendant must also serve a copy of the counterclaim on all parties to the claim.

Restrictions on right to make counterclaim in proceedings by or against the Crown

10.12 (1) A counterclaim may not be made or set-off pleaded in proceedings brought by the Crown if the –

(a) proceedings are for the recovery of; or

(b) counterclaim or set-off arises out of,

a right or claim to repayment in respect of any tax, duty or penalty.

(2) A counterclaim may not be made or set-off pleaded in any other proceedings brought by or against the Crown without the permission of the court or the consent of the Attorney General.

Counterclaim may survive claim

10.13 The defendant may continue a counterclaim if the –

(a) court gives judgment on the claim for the claimant and does not dismiss the counterclaim; or

(b) claim is stayed, discontinued or dismissed.

Defence to counterclaim

10.14 (1) A person against whom a counterclaim is made may file a defence to the counterclaim.

(2) The period for filing a defence to a counterclaim is 28 days after the date of service of the counterclaim.

(3) The rules relating to a defence to a claim apply to a defence to a counterclaim.

(4) A defence to a counterclaim must include a certificate of truth in accordance with rule 3.11.

Claimant's defence to counterclaim - service

10.15 On filing a defence to a counterclaim, the claimant must serve a copy on every other party.

PART 11

General Rules about Applications for Court Orders

Contents of this Part

Scope of this Part	Rule 11.1
Applicants and respondents	Rule 11.2
Applications to be dealt with at case management conference	Rule 11.3
Time when application is made	Rule 11.4
Where to make application	Rule 11.5
Application to be in writing	Rule 11.6
What application must include	Rule 11.7
Notice of application and evidence in support	Rule 11.8
Evidence in support of application	Rule 11.9
Contents of notice of application	Rule 11.10
Service of notice of application	Rule 11.11
Response to application	Rule 11.12
Amendments to application	Rule 11.13
Powers of court in relation to conduct of application	Rule 11.14
Power to strike out application	Rule 11.15
Consequence of not asking for order in application	Rule 11.16
Applications which may be dealt with without hearing	Rule 11.17
Service of application where order made on application made without notice	Rule 11.18
Applications to set aside or vary order made on application made without notice	Rule 11.19
Power of court to proceed in absence of party	Rule 11.20
Application to set aside order made in absence of party	Rule 11.21

Scope of this Part

11.1 This Part deals with applications for court orders made before, during or after the course of proceedings.

Applicants and respondents

11.2 In this Part –

"**applicant**" means a person who seeks a court order by making an application;

"**respondent**" means –

(a) the person against whom the order is sought and any other person on whom the applicant considers it just to serve the application; and

(b) any other person whom the court directs is to be served with the application.

Applications to be dealt with at case management conference

11.3 (1) So far as is practicable all applications relating to pending proceedings must be listed for hearing at a case management conference or pre-trial review.

(2) If an application is made which could have been dealt with at a case management conference or pre-trial review, the court must order the applicant to pay the costs of the application unless there are special circumstances.

Time when application is made

11.4 If an application must be made within a specified period, it is so made if it is received by the court office or made orally to the court within that period.

Where to make application

11.5 (1) The general rule is that an application must be made to the court office where the claim was issued.

(2) If the claim has been transferred to another court office the application must be made to that court office.

(3) An application made before a claim has been issued must be made to the court office where it is likely that the claim to which the application relates will be made.

Application to be in writing

11.6 (1) The general rule is that an application must be in writing in Form 6.

(2) An application may be made orally if –

(a) the court dispenses with the requirement for the application to be made in writing; or

(b) this is permitted by a rule or practice direction.

(3) A party who seeks an urgent hearing of an application shall file a certificate of urgency setting out succinctly the grounds on which an urgent hearing is sought and where necessary, must serve the certificate of urgency on the other party/parties to the application.

What application must include

11.7 (1) An application must state –

(a) briefly, the grounds on which the applicant is seeking the order; and

(b) what order the applicant is seeking.

(2) The applicant must file with the application, or not less than 3 days before the hearing of the application, a draft of the order sought and serve a copy on all respondents to whom notice is given.

(3) If the application is made without notice, the draft order must be filed with the application.

Notice of application and evidence in support

11.8 (1) The general rule is that the applicant must give notice of the application to each respondent.

(2) An applicant may make an application without giving notice if this is permitted by a –

(a) practice direction; or

(b) rule.

(3) The applicant need not give evidence in support of an application unless it is required by a –

(a) court order;

(b) practice direction; or

(c) rule.

(4) Notice of the application must be included in the form used to make the application.

Evidence in support of application

11.9 Evidence in support of an application must be contained in an affidavit unless a —

(a) court order;
(b) practice direction; or
(c) rule,

otherwise provides.

- Part 30 deals with affidavit evidence.

Contents of notice of application

11.10 (1) The notice must state the date, time and place when the application is to be heard.

(2) If there is not going to be a hearing but notice of the application is required, the notice must state how the court will deal with the application.

- Rule 11.17 sets out the circumstances in which there may not be a hearing.

Service of application

11.11 (1) The general rule is that an application must be served as soon as practicable after the day on which it is filed.

(2) If –

(a) notice of an application has been given; but
(b) the period of notice is shorter than the period required,

the court may nevertheless direct that, in all the circumstances of the case, sufficient notice has been given and may accordingly deal with the application.

(3) The notice must be accompanied by –

(a) a copy of any draft order which the applicant has attached to the application; and
(b) any evidence in support.

(4) The application must be served in accordance with Part 6 unless any respondent is not a party, in which case the application must be served in accordance with Part 5.

Response to application

11.12 (1) A respondent who wishes to oppose an application must file and serve a notice of opposition not more than 7 days after the date of service of the

application setting out succinctly the grounds on which the application is opposed.

(2) A respondent may file and serve evidence in response to an application not more than 14 days after the date of service of the application.

(3) An applicant may file and serve any evidence in reply to the evidence filed under paragraph (2) not more than 7 days after the date of service of the response.

(4) The hearing of an application shall take place not less than 7 days after the expiration of the time fixed for filing a reply under paragraph (3).

Amendments to application

11.13 (1) An applicant may amend an application once, without the permission of the court, not less than 7 days before the date fixed for hearing.

(2) Any amendment to an application made within 7 days of the date fixed for the hearing of the application must be made with the permission of the court.

Powers of court in relation to conduct of application

11.14 (1) The court may –

(a) issue a witness summons requiring a party or other person to attend the court on the hearing of the application;

(b) question any party or witness at the hearing; and

(c) require a party to produce documents or things at the hearing.

(2) The court may question a party or witness –

(a) by putting written questions and asking the witness to give written answers; or

(b) orally.

(3) Any party may then cross-examine the witness.

(4) The court may exercise any power which it might exercise at a case management conference.

Power to strike out application

11.15 (1) In addition to any other power under these rules, the court may strike out an application if it appears to the court that –

(a) the application does not disclose a reasonable ground for bringing the application; or

(b) the application is an abuse of process of the court or is likely to obstruct the just disposal of the proceedings.

Consequence of not asking for order in application

11.16 An applicant may not ask at any hearing for an order which was not sought in the application unless the court gives permission.

Applications which may be dealt with without hearing

11.17 The court may deal with an application without a hearing if –

(a) no notice of the application is required;

(b) the court considers that the application can be dealt with over the telephone or by other means of communication;

(c) the court does not consider that a hearing would be necessary or appropriate;

(d) the parties agree and the court considers it appropriate; or

(e) the parties have agreed to the terms of an order –

(i) which does not come within rule 27.8(1); and

(ii) the application (or a copy of the application) is signed by the legal practitioners for all parties to the application.

- Rules 2.7(3) and (4) contain powers to enable the court to deal with applications by electronic means.
- Rule 42.7 deals with consent orders.

Service of application where order made on application made without notice

11.18 After the court has disposed of an application made without notice, the applicant must serve a copy of -

(a) the application;

(b) any evidence in support of the application; and

(c) the order made by the court,

on all other parties.

Applications to set aside or vary order made on application made without notice

11.19 (1) A respondent to whom notice of an application was not given may apply to the court for any order made on the application to be set aside or varied and for the application to be dealt with again.

(2) A respondent must make such an application not more than 14 days after the date on which the order was served on the respondent.

(3) An order made on an application of which notice was not given must contain a statement telling the respondent of the right to make an application under this rule.

Power of the court to proceed in absence of party

11.20 If the applicant or any person on whom the notice of application has been served fails to attend the hearing of the application, the court may proceed in the absence of that party.

Application to set aside order made in absence of party

11.21 (1) A party who was not present when an order was made may apply to set aside or vary the order.

(2) The application must be made not more than 14 days after the date on which the order was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing –

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended some other order might have been made.

(4) In any event, the court may set aside an order made in the absence of a party if the applicant satisfies the court that there are exceptional circumstances.

Part 12
Default Judgments

Contents of this Part

Scope of this Part	Rule 12.1
Claims in which default judgment may not be obtained	Rule 12.2
Cases in which permission required	Rule 12.3
Conditions to be satisfied – judgment for failure to file acknowledgment of service	Rule 12.4
Conditions to be satisfied – judgment for failure to defend	Rule 12.5
Conditions to be satisfied – judgment for failure to defend counterclaim	Rule 12.6
Admission of part – request for time to pay	Rule 12.7
Claim for specified sum of money	Rule 12.8
Claim against more than one defendant	Rule 12.9
Nature of default judgment	Rule 12.10
Procedure for obtaining default judgment	Rule 12.11
Interest	Rule 12.12
Costs	Rule 12.13
Defendant's rights following default judgment	Rule 12.14

Scope of this Part

12.1 (1) This Part contains provisions under which a claimant may obtain judgment without trial where the defendant has failed to file –

(a) a defence in accordance with Part 10; or

(b) an acknowledgment of service giving notice of intention to defend in accordance with Part 9.

(2) Such a judgment is called a "default judgment".

Claims in which default judgment may not be obtained

12.2 A claimant may not obtain default judgment if the claim is-

(a) a claim in probate proceedings;

(b) a fixed date claim; or

(c) an admiralty claim in rem.

- Rule 68.6 deals with probate proceedings.
- Rule 72.22 makes special provision for default judgment in admiralty cases for personal injury arising out of a collision between two ships.

Cases in which permission required

12.3 (1) A claimant who wishes to obtain a default judgment on any claim which is a claim against a –

(a) minor or patient as defined in rule 2.4; or

(b) State as defined in any relevant enactment relating to state immunity,

must obtain the court's permission.

- Part 59 deals with proceedings against the Crown.
- Part 23 deals with proceedings involving a minor or patient.

(2) A claimant who wishes to obtain judgment in default of acknowledgment of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges must obtain the court's permission.

(3) An application under paragraph (1) or (2) must be supported by evidence on affidavit.

- Rule 12.9(2) contains restrictions on a default judgment where it is sought against some but not all defendants.

Conditions to be satisfied – judgment for failure to file acknowledgment of service

12.4 The court office at the request of the claimant must enter judgment for failure to file an acknowledgment of service if –

(a) the claimant proves service of the claim form and statement of claim;

(b) the defendant has not filed –

(i) an acknowledgment of service; or

(ii) a defence to the claim or any part of it;

(c) the defendant has not satisfied in full the claim on which the claimant seeks judgment;

(d) (if the only claim is for a specified sum of money, apart from costs and interest), the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;

(e) the period for filing an acknowledgment of service under rule 9.3 has expired;

(f) the claimant has the permission of the court to enter judgment (if necessary); and

(g) the claim is not a claim listed under rule 12.2 in which default judgment may not be obtained.

- Rules 5.5, 5.11, 5.12 and 5.15 deal with how to prove service of the claim form and statement of claim.

Conditions to be satisfied – judgment for failure to defend

12.5 The court office at the request of the claimant must enter judgment for failure to defend if –

(a) (i) the claimant proves service of the claim form and statement of claim or proves that service is dispensed with; or

(ii) an acknowledgment of service has been filed by the defendant against whom judgment is sought;

(b) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;

(c) the defendant has not –

(i) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out under rule 22.1(6)); or

(ii) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or

(iii) satisfied the claim on which the claimant seeks judgment;

(d) (where necessary) the claimant has the permission of the court to enter judgment; and

(e) the claim is not a claim listed under rule 12.2 in which default judgment may not be obtained.

Conditions to be satisfied – judgment for failure to defend counterclaim

12.6 The court office at the request of the defendant must enter judgment for failure to defend the counterclaim if -

(a) the defendant proves service of the counterclaim;

(b) the period for filing a defence to counterclaim and any extension agreed by the parties or ordered by the court has expired;

(c) the claimant has not filed a defence to the counterclaim or any part of it (or the defence to counterclaim has been struck out or is deemed to have been struck out under rule 22.1(6));

(d) (where necessary) the defendant has the permission of the court to enter judgment; and

(e) the claim is not a claim listed under rule 12.2 in which default judgment may not be obtained.

Admission of part – request for time to pay

12.7 (1) This rule deals with the situation where the –

(a) defendant has admitted liability to pay either –

(i) a specified sum towards a claim for an unspecified sum of money; or

(ii) part only of a claim for a specified sum;

(b) defendant has not filed a defence; and

(c) claimant does not accept the sum admitted.

(2) Subject to any restriction imposed by this Part, the claimant may apply for judgment to be entered for –

(a) the whole amount of the claim for a specified sum together with interest and fixed costs under rule 65.4; or

(b) if the claim is for an unspecified sum – the payment of an amount to be decided by the court.

(3) If the defendant has requested time to pay, that request must be dealt with, if the claim is for –

(a) a specified sum in accordance with rules 14.9 and 14.10 or 14.11;

(b) an unspecified sum when damages are assessed in accordance with rule 16.3.

Claim for specified sum of money

12.8 (1) The fact that the claimant also claims costs and interest at a specified rate does not prevent a claim from being a claim for a specified sum of money.

(2) A claimant who claims a specified sum of money together with interest at an unspecified rate may apply to have judgment entered for either the sum of money claimed –

(a) and for interest to be assessed; or

(b) together with interest at the statutory rate from the date of the claim to the date of entering judgment.

(3) If a claim is partly for a specified sum and partly for an unspecified sum the claimant may abandon the claim for the unspecified sum and enter default judgment for the specified sum.

- Rule 2.4 defines "claim for a specified sum of money".

Claim against more than one defendant

12.9 (1) A claimant may apply for default judgment on a claim for money or a claim for delivery of goods against one of two or more defendants and proceed with the claim against the other defendants.

(2) If a claimant applies for a default judgment against one of two or more defendants, then if the claim –

(a) can be dealt with separately from the claim against the other defendants –

(i) the court may enter judgment against that defendant; and

(ii) the claimant may continue the proceedings against the other defendants;

(b) cannot be dealt with separately from the claim against the other defendants, the court –

(i) may not enter judgment against that defendant; and

(ii) must deal with the application at the same time as it disposes of the claim against the other defendants.

(3) If a claim for delivery of goods is made against more than one defendant (with or without any other claim), the claimant may not enforce any judgment for delivery entered under this Part against a defendant unless the –

(a) claimant has obtained a judgment for delivery (whether or not obtained under this Part) against all the defendants to the claim; or

(b) court gives permission.

Nature of default judgment

12.10 (1) Default judgment on a claim for –

(a) a specified sum of money must be judgment for payment of that amount or, if a part has been paid, the amount certified by the claimant as outstanding –

(i) if the defendant has applied for time to pay under Part 14, at the time and rate ordered by the court; or

(ii) in all other cases, at the time and rate specified in the request for judgment;

- Rule 2.4 defines "a claim for a specified sum of money" and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.
- Part 65 deals with the quantification of costs.

(b) an unspecified sum of money must be judgment for the payment of an amount to be decided by the court and must be in Form 32.

- Rule 16.2 deals with the procedure for assessment of damages where judgment is entered under this paragraph.

(c) goods must be —

(i) judgment requiring the defendant either to deliver the goods or pay their value as assessed by the court;

(ii) judgment requiring the defendant to pay the value of the goods as assessed by the court; or

(iii) (if the court gives permission) a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value.

(2) Default judgment where the claim is for some other remedy shall be in such terms as the court considers the claimant to be entitled to on the statement of claim.

(3) The court shall not have regard to any steps taken by a defendant after –

(a) a request for default judgment; or

(b) an application for default judgment for some other remedy,

has been made.

Procedure for obtaining default judgment

12.11 (1) A claimant applies for default judgment in respect of-

(a) claims for a specified sum of money;

(b) claims for an unspecified sum of money;

(c) claims for goods or delivery of goods; or

(d) any combination of these claims,

by filing a request in Form 7.

(2) Where the claim is for some other remedy, the claimant applies for a default judgment by filing an application in Form 6 for the court to determine the terms of the judgment.

(3) The application must be supported by evidence on affidavit.

- Rule 16.2 sets out additional information that must be provided where the claim is for an unspecified sum of money.

(4) A claimant who wishes to abandon a remedy for the purpose of requesting default judgment must state so in the request for entry of default judgment in Form 7.

Interest

12.12 (1) A default judgment must include judgment for interest for the period claimed if the –

(a) claim form includes a claim for interest;

(b) claim form or statement of claim includes the details required by rule 8.6(4); and

(c) request for default judgment states the amount of interest to the date it was filed.

(2) If the claim form includes any other claim for interest, the default judgment must include judgment for an amount of interest to be decided by the court.

Costs

12.13 (1) A default judgment must include fixed costs under rule 65.4 unless the court assesses the costs or the court orders costs to be assessed.

(2) Where the court orders costs to be assessed, an application to assess costs must be on notice to the defendant.

- Rule 65.11 deals with the assessment of costs.

Defendant's rights following default judgment

12.14 Unless the defendant applies for and obtains an order for the judgment to be set aside, the only matters on which a defendant against whom a default judgment has been entered may be heard are -

(a) the assessment of damages, provided that he or she has indicated that he or she wishes to be heard by filing a notice in Form 31 within 14 days after service of the claimant's submissions and witness statements on the defendant pursuant to rule 16.2(2);
(b) costs;
(c) enforcement of the judgment; and
(d) the time of payment of the judgment debt.

- Part 13 deals with setting aside or varying default judgments.

PART 13
Setting Aside or Varying Default Judgment

Contents of this Part

Scope of this Part	Rule 13.1
Cases where court must set aside default judgment	Rule 13.2
Cases where court may set aside or vary default judgment	Rule 13.3
Applications to vary or set aside default judgment – procedure	Rule 13.4
Court to impose condition as to filing of defence	Rule 13.5
Hearing to be treated as case management conference	Rule 13.6
Abandoned claims to be restored if default judgment set aside	Rule 13.7

Scope of this Part

13.1 The Rules in this Part set out the procedure for setting aside or varying a default judgment entered under Part 12 (default judgments).

- Part 47 deals with variation of the terms of a judgment as to time and method of payment.

Cases where court must set aside default judgment

13.2 (1) The court must set aside a judgment entered under Part 12 if judgment was wrongly entered because in the case of –

(a) a failure to file an acknowledgment of service – any of the conditions in rule 12.4 was not satisfied; or

(b) judgment for failure to defend – any of the conditions in rule 12.5 was not satisfied.

(2) The court may set aside judgment under this rule on or without an application.

Cases where court may set aside or vary default judgment

13.3 (1) The court may set aside a judgment entered under Part 12 only if the defendant has a real prospect of successfully defending the claim.

(2) In determining whether to set aside under paragraph (1), the court may consider if the defendant –

(a) applied to the court as soon as reasonably practicable after finding out that judgment has been entered; and

(b) gives a good explanation for the failure to file an acknowledgement of service or a defence, as the case may be.

(3) In any event, the court may set aside a judgment entered under Part 12 if the defendant satisfies the court that there are exceptional circumstances.

(4) Where this rule gives the court power to set aside a judgment, the court may instead vary it.

- Rule 26.1(3) enables the court to attach conditions to any order.

Applications to vary or set aside default judgment – procedure

13.4 (1) An application may be made by any person who is directly affected by the entry of judgment.

(2) The application must be supported by evidence on affidavit.

(3) The affidavit must exhibit a draft of the proposed defence.

Court to impose condition as to filing of defence

13.5 If the default judgment is set aside, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

Hearing to be treated as case management conference

13.6 (1) If the default judgment is set aside the court must treat the hearing as a case management conference unless it is not possible to deal with the matter justly at that time.

(2) If it is not possible to deal with the matter justly at that time, the court office must fix a date, time and place for a case management conference and give notice to the parties.

- Part 26 deals with the powers of the court on a case management conference.
- Part 27 deals with the procedure for case management conferences.

Abandoned claims to be restored if default judgment set aside

13.7 If the claimant has abandoned any remedy sought in the claim form in order to enter a default judgment, the abandoned claim is restored if judgment is set aside.

PART 14
Judgment on Admissions

Contents of this Part

Making an admission	Rule 14.1
Satisfaction	Rule 14.2
Admissions where party a minor or patient	Rule 14.3
Admission by notice in writing – application for judgment	Rule 14.4
Admission in whole or in part of money claim	Rule 14.5
Admission of whole of claim for specified sum of money	Rule 14.6
Admission of part of claim for money only	Rule 14.7
Admission of liability to pay whole of claim for unspecified sum of money	Rule 14.8
Requests for time to pay	Rule 14.9
Requests for time to pay – procedure where time and rate agreed	Rule 14.10
Requests for time to pay– procedure where time and rate not agreed	Rule 14.11
Right of redetermination	Rule 14.12
Variation of order	Rule 14.13

Making an admission

14.1 (1) A party may admit the truth of the whole or any part of any other party's case.

(2) A party may do this by giving notice in writing (such as in a statement of case or by letter) before or after the issue of proceedings.

(3) A defendant may admit the whole or part of a claim for money by filing an acknowledgment of service containing the admission.

(4) The defendant may do this in accordance with the following rules –

(a) rule 14.6 (admission of whole of claim for specified sum of money);

(b) rule 14.7 (admission of part of claim for money only); or

(c) rule 14.8 (admission of liability to pay whole of claim for unspecified sum of money).

(5) A defendant may file an admission under paragraph (4) at any time before a default judgment is entered, but the claimant may apply for assessed

costs if the admission is filed after the time for filing an acknowledgment of service has expired.

- Rule 9.3 specifies the time for filing an acknowledgment of service.
- Rules 65.11 and 65.12 deal with assessed costs.

Satisfaction

14.2 (1) If the defendant pays the claimant the sum claimed, together with interest at the specified rate (if claimed) and the fixed costs as set out on the claim form, within the period for filing an acknowledgment of service under rule 9.3 the –

(a) claim is stayed; and

(b) claimant must forthwith file and serve a notice of discontinuance.

(2) Rule 37.6 (liability for costs) does not apply to a notice of discontinuance served under this rule.

(3) If the claimant does not file and serve a notice of discontinuance in accordance with paragraph (1) within 7 days of payment, the defendant may file and serve a notice in the form specified in Form 28 to request that the claim be recorded as satisfied.

(4) The claimant may by application dispute satisfaction within 14 days of service of the statement of satisfaction and the court office must fix a hearing to consider the application and give not less than 7 days' notice of the hearing to the claimant and defendant.

(5) If there is no dispute the court office must record that the claim has been satisfied.

Admissions where party a minor or patient

14.3 Judgment may not be entered on an admission if the –

(a) defendant is a minor or patient; or

(b) claimant is a minor or patient and the admission is made under rule 14.7 or 14.8.

- Rule 23.12 deals with compromise of claims made by or against a minor or patient.

Admission by notice in writing – application for judgment

14.4 (1) If a party makes an admission under rule 14.1(2) (admission by notice in writing), any other party may apply for judgment on the admission.

(2) The terms of the judgment must be such as it appears to the court the applicant is entitled to on the admission.

Admission in whole or in part of money claim

14.5 On receipt of an admission of the whole or part of a claim for money under rule 14.1(3), the court office must send a copy of the admission and any request for time to pay under rule 14.9 to the claimant.

Admission of whole of claim for specified sum of money

14.6 (1) This rule applies where the –

(a) defendant admits the whole of the claim in the acknowledgment of service;

(b) defendant has not requested time to pay; and

(c) only remedy which the claimant is seeking is payment of a specified sum of money.

(2) The claimant may file a request for judgment in Form 8 for the amount claimed, interest and fixed costs under rule 65.4 and may specify the –

(a) date on which the judgment debt is to be paid; or

(b) time and rate at which it is to be paid if by instalments.

(3) The court office must enter judgment in accordance with the request.

- Rule 2.4 defines "a claim for a specified sum of money" and sets out the circumstances under which a claim for the cost of repairing property damaged in a road accident can be treated as such a claim.

Admission of part of claim for money only

14.7 (1) This rule applies where –

(a) the only remedy which the claimant is seeking is the payment of money;

(b) the defendant admits a specified –

(i) sum of money; or

(ii) proportion of a claim for an unspecified sum of money,

in acknowledgment of service or defence; and

(c) the defendant has filed a defence as to the amount not admitted.

- Note: If the defendant does not file a defence the claimant will be entitled to default judgment in accordance with rule 12.5.

(2) The claimant must serve a notice on the defendant stating that –

(a) the amount or proportion admitted in satisfaction of the claim is accepted; or

(b) the claimant intends to continue the claim.

(3) The claimant must –

(a) file the notice under paragraph (2); and

(b) serve a copy on the defendant,

within 14 days after service of the defendant's acknowledgment of service or defence, as the case may be.

(4) If the claimant does not file the notice within 14 days after service of the defendant's acknowledgment of service or defence –

(a) the claim is stayed until the notice is filed; and

(b) any party may apply for the stay to be lifted.

(5) If the defendant has not requested time to pay under rule 14.9, the claimant may file a request for judgment in Form 8 for the amount admitted, interest and fixed costs and may specify –

(a) the date on which the judgment debt is to be paid; or

(b) the time and rate at which it is to be paid by instalments.

(6) The court office must enter judgment in accordance with the request.

(7) If the claimant gives notice that he accepts the defendant's admission of a specified proportion of a claim for an unspecified sum of money, the court must enter judgment for that proportion of an amount to be decided by the court and costs.

(8) If the claimant files a notice under paragraph (2)(b) the court office must fix a date, time and place for a case management conference.

- Part 27 sets out the procedure relating to a case management conference.
- Rule 65.4 deals with fixed costs.

Admission of liability to pay whole of claim for unspecified sum of money

14.8 (1) This rule applies where the –

(a) amount of the claim is not specified;

(b) defendant admits liability in the acknowledgment of service to pay the whole of the claim and does not offer to pay a specified sum of money or proportion of the claim in satisfaction of the claim;

(c) defendant has not requested time to pay under rule 14.9; and

(d) only remedy the claimant seeks is the payment of money.

(2) The claimant may file a request for judgment in Form 7.

(3) The court office must enter judgment in accordance with the request.

(4) Judgment will be for an amount to be decided by the court and costs.

- Rule 16.3 deals with how the court decides the amount of the judgment.
- Part 65 deals with the quantification of costs.

Requests for time to pay

14.9 (1) A defendant who –

(a) makes an admission under rules 14.6, 14.7 or 14.8; and

(b) is an individual,

may make a request for time to pay.

(2) A request for time to pay is a proposal –

(a) about the date of payment; or

(b) to pay by instalments at a rate specified in the request.

(3) The defendant's request for time to pay must be –

(a) accompanied by a statement of his or her financial position in the appropriate practice form; and

(b) filed with the admission.

(4) The statement under paragraph (3) (a) must be certified by the defendant as being correct and may be used as evidence of the defendant's financial position at the date it was signed in any subsequent proceedings with regard to enforcement of the judgment.

(5) If the –

(a) request for time to pay relates to a claim for an unspecified sum of money; and

(b) court must assess damages under rule 14.8(4),

the court must deal with the request for time to pay when it assesses damages.

Requests for time to pay – procedure where time and rate agreed

14.10 (1) This rule applies where the –

(a) only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;

(b) defendant –

(i) admits the whole of a claim for a specified sum of money; or

(ii) offers to pay a specified sum; and

(iii) requests time to pay or makes an offer to pay by instalments; and

(c) claimant in the request for judgment on the admission in Form 7 accepts the defendant's offer as to the amount, time and rate of payment.

(2) If this rule applies, judgment on the admission must be judgment for the specified sum of money admitted (less any payments made), interest and fixed costs under rule 65.4, to be paid at the agreed time and rate.

Requests for time to pay – procedure where time and rate not agreed

14.11 (1) This rule applies where –

(a) the only remedy which the claimant seeks is the payment of a sum of money together with interest and costs;

(b) the defendant –

(i) admits the whole of a claim for a specified sum of money; or

(ii) offers to pay a specified sum; and

(iii) requests time to pay or makes an offer to pay by instalments; and

(c) the claimant accepts the sum admitted but does not accept the defendant's offer as to the amount, time and rate of payment.

(2) If this rule applies, the claimant must state in the request for judgment in Form 7 the reasons for objecting to the defendant's proposals as to payment.

(3) The court must consider the defendant's request and the claimant's objections and enter judgment for the amount of the claim, interest and fixed costs under rule 65.4 on such terms as it sees fit.

(4) The general rule is that the court should enter judgment under paragraph (3) without a hearing.

(5) If the court decides to deal with the matter at a hearing, it must give the parties at least 7 days' notice of the hearing.

(6) If there is a hearing, the court must determine whether to make an order for the costs of the application and by whom the costs should be paid and assess such costs under rule 65.11.

- The claimant is entitled to fixed costs on the judgment in accordance with Part 65, Appendix A.

Right of redetermination

14.12 (1) If the court has determined the time and rate of payment under rule 14.11 without a hearing, either party may apply for the decision to be redetermined by the court at a hearing.

(2) An application for redetermination must be made within 14 days after service of the judgment on the applicant.

(3) At the hearing the court may confirm the judgment or make such other order as to the time and rate of payment as it considers just.

(4) The court must determine whether to make an order for costs and by whom the costs should be paid and assess such costs under rule 65.11.

Variation of order

14.13 (1) Either a claimant or a defendant may apply to vary an order made under this Part.

(2) An application by a defendant must be made in accordance with Part 47.

PART 15
Summary Judgment

Contents of this Part

Scope of this Part	Rule 15.1
Grounds for summary judgment	Rule 15.2
Types of proceedings for which summary judgment is not available	Rule 15.3
Procedure	Rule 15.4
Evidence for purpose of summary judgment hearing	Rule 15.5
Powers of court on application for summary judgment	Rule 15.6

Scope of this Part

15.1 This Part sets out a procedure by which the court may decide a claim or a particular issue without a trial.

Grounds for summary judgment

15.2 The court may give summary judgment on the claim or on a particular issue if it considers that the –

(a) claimant has no real prospect of succeeding on the claim or the issue; or

(b) defendant has no real prospect of successfully defending the claim or the issue.

- Rule 26.3 gives the court power to strike out the whole or part of a statement of case if it discloses no reasonable ground for bringing or defending the claim.

Types of proceedings for which summary judgment is not available

15.3 The court may give summary judgment in any type of proceedings except –

(a) admiralty proceedings in rem;

(b) probate proceedings;

(c) proceedings by way of fixed date claim;

(d) proceedings for –

(i) claims against the Crown;

(ii) defamation;

(iii) false imprisonment;

(iv) malicious imprisonment; and

(v) redress under the Constitution of any Member State or Territory.

Procedure

15.4 (1) Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application.

(2) The notice under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.

(3) The court may exercise its powers without such notice at any case management conference.

- Part 11 contains general rules about applications.

(4) If a claimant applies for summary judgment before a defendant against whom the application is made has filed a defence, that defendant need not file a defence before the hearing.

Evidence for purpose of summary judgment hearing

15.5 (1) An applicant seeking summary judgment must –

(a) file an application in Form 6;

(b) file evidence on affidavit in support of the application; and

(c) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought, not less than 14 days before the date fixed for hearing the application.

(2) A respondent who wishes to oppose an application for summary judgment may –

(a) file evidence on affidavit; and

(b) serve copies of the affidavit evidence on the applicant and any other respondent to the application not less than 7 days before the date fixed for the summary judgment hearing.

(3) The application under paragraph (1) must identify the issues which it is proposed that the court should deal with at the hearing.

(4) The court may exercise its powers without an application being made at any case management conference convened to give directions on the application.

Powers of court on application for summary judgment

15.6 (1) The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end.

(2) If the proceedings are not brought to an end the court must also treat the hearing as a case management conference.

PART 16
Assessment of Damages

Contents of this Part

Scope of this Part	Rule 16.1
Assessment of damages after default judgment	Rule 16.2
Assessment of damages after admission of liability on claim for unspecified sum of money	Rule 16.3
Assessment of damages after direction for trial of issue of quantum	Rule 16.4

Scope of this Part

16.1 This Part deals with the procedure by which a hearing to assess damages is fixed.

Assessment of damages after default judgment

16.2 (1) An application for a default judgment to be entered under rule 12.10(1)(b) must state –

(a) whether the claimant is in a position to prove the amount of the damages; and, if so

(b) the claimant's estimate of the time required to deal with the assessment; or

(c) that the claimant is not yet in a position to prove the amount of the damages.

(2) Unless the application states that the claimant is not in a position to prove the amount of damages -

(a) the court office must fix a date for the assessment of damages and give the claimant and the defendant at least 60 days' notice of the date, time and place fixed for the hearing;

(b) the claimant shall file and serve on the defendant all evidence and written submissions on which he or she intends to rely within 14 days of service of the notice of assessment;

(c) the defendant shall be at liberty to file and serve evidence and written submissions on which he or she intends to rely within 14 days of service of the claimant's evidence and written submissions on him or her.

- Rules 29.8 to 29.12 deal with Witness Statements.

(3) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(4) The court office must then fix either –

(a) a case management conference and give notice to the parties; or

(b) a date on which the assessment of damages will take place.

(5) (a) The claimant shall be entitled to rely on the evidence of all witnesses called by him or her pursuant to the witness statements filed and served by him or her and to make submissions to the court.

(b) The defendant is entitled to cross-examine any witness called on behalf of the claimant, call evidence as disclosed in his or her Notice filed in Form 31 and in respect of witness statements which have been filed and served pursuant to rule 16.2(2)(c) and to make submissions to the court.

Assessment of damages after admission of liability on claim for unspecified sum of money

16.3 (1) This rule applies where the defendant has admitted liability for the whole or a specified proportion of a claim for an unspecified sum of money.

(2) An application for judgment to be entered for damages to be assessed on an admission under Part 14 must –

(a) state whether the claimant is in a position to prove the amount of damages; and, if so

(b) give an estimate of the time required to deal with the assessment; or

(c) state that the claimant is not yet in a position to prove the amount of damages.

(3) Unless the application states that the claimant is not in a position to prove the amount of damages -

(a) the court office must fix a date for the assessment of damages and give the claimant and the defendant at least 60 days' notice of the date, time and place fixed for the hearing;

(b) the claimant shall file and serve on the defendant all evidence, and written submissions on which he or she intends to rely within 14 days of service of the notice of assessment;

(c) the defendant shall file a Notice in Form 31 within 14 days of service of the claimant's evidence and written submissions on the defendant;

(d) the defendant shall be at liberty to file and serve evidence and written submissions on which he or she intends to rely within 14 days of service of the claimant's evidence and written submissions on him or her.

- Rules 29.8 to 29.12 deal with Witness Statements.

(4) A claimant who is not in a position to prove damages must state the period of time that will elapse before this can be done.

(5) The court office must then fix either –

(a) a case management conference and give notice to the parties; or

(b) a date on which the assessment of damages will take place.

(6) (a) The claimant shall be entitled to rely on the evidence of all witnesses called by him or her pursuant to the witness statements filed and served by him or her and to make submissions to the court.

(b) The defendant is entitled to cross-examine any witness called on behalf of the claimant, call evidence as disclosed in his Notice filed in Form 31 and in respect of witness statements which have been filed and served pursuant to rule 16.3(3)(d) and to make submissions to the court.

(7) The court must also deal with any request under Part 14 for time to pay.

Assessment of damages after direction for trial of issue of quantum

16.4 (1) This rule applies where the court makes a direction for the trial of an issue of quantum.

(2) The direction may be given at –

(a) a case management conference;

(b) the hearing of an application for summary judgment; or

(c) the trial of the claim or of an issue, including the issue of liability.

(3) On making such a direction the court must exercise the powers of a case management conference and in particular may give directions about –

(a) disclosure under Part 28;

(b) service of witness statements under Part 29; and

(c) service of expert reports under Part 32.

(4) The court must –

(a) fix a date on which the court office is to send a listing questionnaire to the parties; and

(b) give notice of the date, time and place fixed for the hearing of the assessment.

- Rules 27.9 and 27.10 deal with listing questionnaires and the fixing of a date for trial.

PART 17
Interim Remedies

Contents of this Part

Orders for interim remedies	Rule 17.1
Time when an order for interim remedy may be made	Rule 17.2
How to apply for interim remedy	Rule 17.3
Interim injunctions and similar orders	Rule 17.4
Interim payments – general procedure	Rule 17.5
Interim payments – conditions to be satisfied and matters to be taken into account	Rule 17.6
Powers of court where it has made an order for interim payment	Rule 17.7
Power of court to order early trial	Rule 17.8

Orders for interim remedies

17.1 (1) The court may grant interim remedies including-

(a) an interim declaration;

(b) an interim injunction;

(c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (h);

(d) an order directing a party to prepare and file accounts relating to the dispute;

(e) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing order;

(f) an order for a specified fund to be paid into court or otherwise secured where there is a dispute over a party's right to the fund;

(g) an order for interim costs;

(h) an order for the –

(i) carrying out of an experiment on or with relevant property;

(ii) detention, custody or preservation of relevant property;

(iii) inspection of relevant property;

(iv) payment of income from relevant property until a claim is decided;

(v) sale of relevant property (including land) which is of a perishable nature or which for any other good reason it is desirable to sell quickly;

(vi) taking of a sample of relevant property;

(i) an order permitting a party seeking to recover personal property to pay a specified sum of money into court pending the outcome of the proceedings and directing that, if the party does so, the property must be given up to the party;

(j) an order (referred to as a "freezing order") restraining a party from –

(i) dealing with any asset whether located within the jurisdiction or not;

(ii) removing from the jurisdiction assets located there;

(k) an order to deliver up goods;

(l) an order (referred to as a "search order") requiring a party to admit another party to premises for the purpose of preserving evidence, etc.;

(m) an order (referred to as an "order for interim payment") under rules 17.5 and 17.6 for payment by a defendant on account of any damages, debt or other sum which the Court may find the defendant liable to pay.

(2) In paragraph (1)(e) and (h), **"relevant property"** means property which is the subject of a claim or in relation to which any question may arise on a claim.

(3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

(4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

(5) The Chief Justice may issue a practice direction as to the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

(6) The Chief Justice may issue a practice direction setting out the standard form for a freezing order.

Time when an order for interim remedy may be made

17.2 (1) An order for an interim remedy may be made at any time, including –

(a) after judgment has been given; or

(b) before a claim has been made.

(2) Paragraph (1) is subject to any rule which provides otherwise.

(3) The court may grant an interim remedy before a claim has been made only if –

(a) the matter is urgent; or

(b) it is otherwise necessary to do so in the interests of justice.

(4) Unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgment of service under Part 9.

(5) If the court grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and, unless the court otherwise directs, serve a claim form by a specified date before the date fixed for further consideration of the application.

(6) If no claim has been issued and the applicant wishes to serve the order out of the jurisdiction, the applicant must set out the basis of the claim and file a copy of the signed certificate pursuant to rule 7.6.

(7) If no claim has been issued, the application must be made in accordance with the general rules about applications contained in Part 11.

How to apply for interim remedy

17.3 (1) An application for an interim remedy must be supported by evidence on affidavit unless the court otherwise orders.

(2) Where, in support of any application under this rule, it is not practicable to produce evidence on affidavit then the application may be supported by evidence given by witness statement and, in due course, by evidence on affidavit.

(3) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.

(4) The evidence in support of an application made without giving notice must state the reasons why notice has not been given.

Interim injunctions and similar orders

17.4 (1) This rule deals with applications for —

(a) an interim injunction under rule 17.1(1) (b);

(b) a freezing order under rule 17.1 (1) (j);

(c) a search order under rule 17.1(1)(1);

(d) an order authorising a person to enter any land or building for the purpose of carrying out an order under paragraph (e); and

(e) an order for the detention, custody or preservation of relevant property under rule 17.1(1) (h) (ii).

(2) Unless the court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.

(3) An application for an interim order under this rule may in the first instance be made on 3 days' notice to the respondent.

(4) The court may grant an interim order under this rule on an application made without notice for a period of not more than 28 days (unless any of these rules permits a longer period) if it is satisfied that –

(a) in a case of urgency no notice is possible; or

(b) that to give notice would defeat the purpose of the application.

(5) On granting an order under paragraph (4) the court must –

(a) fix a date for further consideration of the application; and

(b) fix a date (which may be later than the date under paragraph (a)) on which the injunction will terminate unless a further order is made on the further consideration of the application.

(6) When an order is made under paragraph (4), the applicant must, not less than 7 days before the date fixed for further consideration of the application, serve the respondent personally with –

(a) the application for an interim order;
(b) the evidence on affidavit in support of the application;
(c) any interim order made without notice; and
(d) notice of the date and time on which the court will further consider the application.

(7) An application to extend an interim order under this rule must be made on notice to the respondent unless the court otherwise orders.

Interim payments – general procedure

17.5 (1) The claimant may not apply for an order for an interim payment before the end of the period for entering an acknowledgment of service applicable to the defendant against whom the application is made.

- Rule 9.3 sets out the period for filing an acknowledgment of service.

(2) The claimant may make more than one application for an order for an interim payment even though an earlier application has been refused.

(3) Notice of an application for an order must be –
(a) served at least 14 days before the hearing of the application; and
(b) supported by evidence on affidavit.

(4) The affidavit must –
(a) exhibit any documentary evidence relied on by the claimant in support of the application;
(b) set out the grounds of the application;
(c) state the claimant's assessment of the amount of damages or other monetary judgment that are likely to be awarded; and
(d) (if the claim is made under any relevant enactment in respect of injury resulting in death) contain full particulars of the –
(i) nature of the claim in respect of which the damages are sought to be recovered; and
(ii) person or persons for whom and on whose behalf the claim is brought.

(5) If the respondent to an application for an interim payment wishes to rely on evidence or the claimant wishes to rely on evidence in reply, that party must –

(a) file the evidence on affidavit; and

(b) serve copies on every other party to the application,

at least 7 days before the hearing of the application.

(6) The court may order an interim payment to be made in one sum or by instalments.

Interim payments – conditions to be satisfied and matters to be taken into account

17.6 (1) The court may make an order for an interim payment only if –

(a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;

(b) the claimant has obtained an order for an account to be taken as between the claimant and the defendant and for judgment for any amount certified due on taking the account;

(c) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (including costs) to be assessed;

(d) (except where paragraph (3) applies), it is satisfied that, if the claim went to trial, the claimant would obtain judgment against the defendant from whom an order for interim payment is sought for a substantial amount of money or for costs; or

(e) the following conditions are satisfied –

(i) the claimant is seeking an order for possession of land (whether or not any other order is also being sought); and

(ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for rent or for the defendant's use and occupation of the land while the claim for possession was pending.

(2) In addition, in a claim for personal injuries, the court may make an order for the interim payment of damages only if the defendant is –

(a) a person whose means and resources are such as to enable that person to make the interim payment;

(b) insured in respect of the claim; or

(c) a public authority.

(3) In a claim for damages for personal injuries where there are two or more defendants, the court may make an order for the interim payment of damages against any defendant if –

(a) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for substantial damages against at least one of the defendants (even if the court has not yet determined which of them is liable); and

(b) paragraph (2) is satisfied in relation to each defendant.

(4) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(5) The court must take into account –

(a) contributory negligence (where applicable); and

(b) any relevant set-off or counterclaim.

Powers of court where it has made an order for interim payment

17.7 (1) If a defendant has been ordered to make an interim payment, or has voluntarily made an interim payment, the court may make an order to adjust the interim payment.

(2) The court may in particular –

(a) order a defendant to reimburse, either in whole or in part, another defendant who has made an interim payment;

(b) order all or part of the interim payment to be repaid; and

(c) vary or discharge the order for interim payment.

(3) The court may make an order under this rule –

(a) on an application by a party made at any time; or

(b) without an application by a party, if it makes the order when it disposes of the claim or any part of it.

Power of court to order early trial

17.8 On hearing any application under this Part, the court may exercise any of its case management powers under Parts 26 and 27 and may, in particular, give directions for an early trial of the claim or any part of the claim.

PART 18
Ancillary Claims

Contents of this Part

Meaning of ancillary claim	Rule 18.1
Ancillary claim to be treated as claim for purposes of these Rules	Rule 18.2
Defendant's claim for contribution or indemnity from co-defendant	Rule 18.3
Procedure for making ancillary claim	Rule 18.4
Service of ancillary claim form	Rule 18.5
Defence to ancillary claim	Rule 18.6
Matters relevant to whether ancillary claim should be dealt with separately from main claim	Rule18.7
Effect of service of ancillary claim	Rule 18.8
Special provisions relating to judgment on failure to file defence to ancillary claim	Rule 18.9
Applications to vary or set aside judgment – procedure	Rule 18.10
Court to impose condition as to filing of defence	Rule 18.11
Procedural steps on service of ancillary claim form on person who is not a party	Rule 18.12
Case management where there is defence to ancillary claim	Rule 18.13

Meaning of ancillary claim

18.1 (1) An **"ancillary claim"** is any claim other than a claim by a claimant against a defendant, a counterclaim or a claim for a set off contained in a defence and includes a –

(a) claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and

(b) claim by an ancillary defendant against any other person (whether or not already a party).

(2) In this Part –

"ancillary claimant" means a person who makes an ancillary claim; and

"ancillary defendant" means the defendant to that claim.

(3) If an ancillary defendant makes an ancillary claim against a further person that person is to be called the **"second** (or as the case may be) **ancillary defendant"**.

Ancillary claim to be treated as claim for purposes of these Rules

18.2 (1) An ancillary claim is to be treated as if it were a claim for the purposes of these Rules except as provided by this rule.

(2) Particulars of an ancillary claim must be contained in or served with the ancillary claim form in Form 9.

(3) An ancillary claim form must include –

(a) the ancillary claimant's address for service in accordance with rule 3.10; and

(b) a certificate of truth in accordance with rule 3.11.

(4) The following rules do not apply to ancillary claims –

(a) rules 8.13 and 8.14 (time within which a claim may be served);

(b) Part 12 (default judgments); and

(c) Part 14 (admissions) other than rules 14.1(1) and (2) and 14.3.

Defendant's claim for contribution or indemnity from co-defendant

18.3 (1) A defendant who has filed an acknowledgment of service or a defence may make an ancillary claim for contribution or indemnity against another defendant by –

(a) filing a notice containing a statement of the nature and grounds of the claim; and

(b) serving the notice on the other defendants.

(2) Rule 18.4 does not apply to an ancillary claim under this rule.

- Part 9 deals with filing an acknowledgment of service.
- Part 10 deals with filing a defence.

Procedure for making ancillary claim

18.4 (1) A defendant may make an ancillary claim (other than a claim falling within rule 18.3) without the court's permission if the ancillary claim form is filed before the date fixed for the first case management conference.

(2) Where paragraph (1) does not apply an ancillary claim may be made only if the court gives permission.

(3) An application for permission under paragraph (2) may be made without notice unless the court directs otherwise.

(4) The applicant must file evidence on affidavit in support of the application and attach a draft of the proposed ancillary claim form and ancillary statement of claim.

(5) The court may give permission at the case management conference.

(6) The court may not give permission after the first case management conference to any person who was a party at the time of that conference unless it is satisfied that there has been a significant change in circumstances which became known after the case management conference.

(7) The ancillary claim is made when the court issues the ancillary claim form.

Service of ancillary claim form

18.5 (1) An ancillary claim which may be made without the court's permission must be served on the person against whom it is made within 14 days of the filing of the ancillary claim.

(2) If the court gives permission to make an ancillary claim it must at the same time give directions as to the service of the ancillary claim.

(3) A copy of the ancillary claim form and ancillary statement of claim (if any) must be served on all other parties.

Defence to ancillary claim

18.6 (1) A person against whom an ancillary claim is made may file a defence.

(2) The period for filing a defence is the period of 28 days after the date of service of the ancillary claim.

(3) The rules relating to a defence to a claim apply to a defence to an ancillary claim except Part 12 (default judgments).

(4) An ancillary defence must include –

(a) a certificate of truth in accordance with rule 3.11; and

(b) the ancillary defendant's address for service in accordance with rule 3.10.

Matters relevant to question whether ancillary claim should be dealt with separately from main claim

18.7 (1) This rule applies when the court is considering whether to –

(a) dismiss an ancillary claim;

(b) permit an ancillary claim to be made; or

(c) require the ancillary claim to be dealt with separately from the claim.

- Rules 26.1(d) and (e) deal with the court's power to decide the order in which issues are to be tried or to order that part of the proceedings be dealt with separately.

(2) The court must have regard to all the circumstances of the case including –

(a) the connection between the ancillary claim and the claim;

(b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;

(c) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings –

(i) not only between the existing parties but also between existing parties and the proposed ancillary defendant; or

(ii) to which the proposed ancillary defendant is already a party but also in some further capacity; and

(d) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim.

Effect of service of ancillary claim

18.8 (1) A person on whom an ancillary claim is served becomes a party to the proceedings if that person is not already a party.

(2) When an ancillary claim is served on an existing party for the purpose of requiring the court to decide a question against that party in a further capacity, that party also becomes a party in the further capacity specified in the notice.

Special provisions relating to judgment on failure to file defence to ancillary claim

18.9 (1) This rule applies if the party against whom an ancillary claim is made fails to file a defence in respect of the ancillary claim within the permitted time.

- Rule 18.6(2) deals with the time for filing a defence to an ancillary claim.

(2) The party against whom the ancillary claim is made –

(a) is deemed to admit the ancillary claim, and is bound by any judgment or decision in the main proceedings in so far as it is relevant to any matter arising in the ancillary claim;

(b) subject to paragraph (5), if judgment under Part 12 is given against the ancillary claimant, may apply to enter judgment in respect of the ancillary claim.

(3) Paragraph (2) does not apply in ancillary proceedings against the Crown unless the court gives permission.

(4) An application for the court's permission under paragraph (3) may be made without notice unless the court directs otherwise.

(5) The ancillary claimant may not enter judgment under paragraph (2) (b) if the ancillary claimant wishes to obtain judgment for any remedy other than a contribution or indemnity for a sum not exceeding that for which judgment has been entered against the ancillary claimant.

(6) The court may at any time set aside or vary a judgment entered pursuant to paragraph (2)(a) or (b) if it is satisfied that the ancillary defendant –

(a) applied to set aside or vary the judgment as soon as reasonably practicable after finding out that the judgment was binding or had been entered;

(b) gives a good explanation for the failure to file a defence; and

(c) has a real prospect of successfully defending the ancillary claim.

(7) In any event, the court may set aside a judgment mentioned in paragraph (2)(a) or (b) if the ancillary defendant satisfies the court that there are exceptional circumstances.

Applications to vary or set aside judgment – procedure

18.10 (1) An application may be made by any person who is directly affected by the entry of judgment to vary or set aside the judgment.

(2) The application must be supported by evidence on affidavit.

(3) The affidavit must exhibit a draft of the proposed defence.

Court to impose condition as to filing of defence

18.11 If judgment is set aside under rule 18.9, the general rule is that the order must be conditional upon the defendant filing and serving a defence by a specified date.

Procedural steps on service of ancillary claim on person who is not a party

18.12 An ancillary claimant who serves an ancillary claim on a person who is not already a party must also serve on that person a copy of –

(a) every statement of case which has already been served in the proceedings; and

(b) such other documents as the court may direct.

Case management where there is defence to ancillary claim

18.13 (1) If a defence is filed to an ancillary claim the court must consider the future conduct of the proceedings and give appropriate directions.

(2) The court must fix a case management conference for all parties unless it is satisfied that such further directions as are required can be given in written form.

(3) In giving directions under this rule the court must ensure that, so far as is practicable, the ancillary claim and the main claim are managed together.

PART 19
Addition and Substitution of Parties

Contents of this Part

Scope of this Part	Rule 19.1
Change of parties – general	Rule 19.2
Procedure for adding and substituting parties	Rule 19.3
Special provisions about adding or substituting parties after end of relevant limitation period	Rule 19.4

Scope of this Part

19.1 This Part deals with the addition or substitution of parties after proceedings have been commenced.

Change of parties – general

19.2 (1) A claimant may add a new defendant to proceedings without permission at any time before the date fixed by the court for the first case management conference or at any time on an application to the court.

(2) The claimant does so by filing at the court office an amended claim form and statement of claim, and Parts 5 (service of claim within jurisdiction), 7 (service of court process out of jurisdiction), 9 (acknowledgment of service and notice of intention to defend), 10 (defence and counterclaim) and 12 (default judgments) apply to an amended claim form as they do to a claim form.

- Part 18 deals with the adding of parties by a defendant.

(3) The court may without an application add a new party to proceedings if –

(a) it is desirable to add the new party so that the court can resolve all the matters in dispute in the proceedings; or

(b) there is an issue involving the new party which is connected to the matters in dispute in the proceedings and it is desirable to add the new party so that the court can resolve that issue.

(4) The court may order any person to cease to be a party if it considers that it is not desirable for that person to be a party to the proceedings.

(5) The court may order a new party to be substituted for an existing one if the –

(a) court can resolve the matters in dispute more effectively by substituting the new party for the existing party; or

(b) existing party's interest or liability has passed to the new party.

(6) The court may add, remove or substitute a party at the first or any subsequent case management conference.

(7) The court may not add a party (except by substitution) after the first case management conference on the application of an existing party unless that party can satisfy the court that the addition is necessary because of some change in circumstances which became known after the first case management conference.

Procedure for adding and substituting parties

19.3 (1) The court may add, substitute or remove a party on or without an application.

(2) An application for permission to add, substitute or remove a party may be made by –

(a) an existing party; or

(b) a person who wishes to become a party.

(3) An application for an order under rule 19.2(5) (substitution of new party where existing party's interest or liability has passed) may be made without notice but must be supported by evidence on affidavit.

(4) A person may not be added or substituted as a claimant unless that person's written consent is filed with the court office.

(5) An order for the addition, substitution or removal of a party must be served on –

(a) all parties to the proceedings;

(b) any party added or substituted; and

(c) any other person affected by the order.

(6) If the court makes an order for the removal, addition or substitution of a party, it must consider whether to give consequential directions about –

(a) filing and serving the claim form and any statements of case on any new defendant;

(b) serving relevant documents on the new party; and

(c) the management of the proceedings; and subject to such directions, rule 19.2(2) applies.

(7) If the –

(a) court makes an order for the addition or substitution of a new defendant; and

(b) claim form is served on the new defendant,

these rules apply to the new defendant as they apply to any other defendant.

Special provisions about adding or substituting parties after end of relevant limitation period

19.4 (1) This rule applies to a change of parties after the end of a relevant limitation period.

(2) The court may add or substitute a party only if the –

(a) addition or substitution is necessary; and

(b) relevant limitation period was current when the proceedings were started.

(3) The addition or substitution of a party is necessary only if the court is satisfied that the –

(a) claim cannot properly be carried on by or against an existing party unless the new party is added or substituted as claimant or defendant;

(b) interest or liability of the former party has passed to the new party; or

(c) new party is to be substituted for a party who was named in the claim form in mistake for the new party.

PART 20
Changes to Statements of Case

Contents of this Part

Changes to statement of case	Rule 20.1
Changes to statement of case after end of relevant limitation period	Rule 20.2
Filing an amended statement of case	Rule 20.3
Amendments to statements of case and time for service	Rule 20.4

Changes to statement of case

20.1 (1) A statement of case may be amended once, without the court's permission, at any time prior to the date fixed by the court for the first case management conference.

(2) The court may give permission to amend a statement of case at a case management conference or at any time on an application to the court.

(3) When considering an application to amend a statement of case pursuant to rule 20.1(2), the factors to which the court must have regard shall include –

(a) how promptly the applicant has applied to the court after becoming aware that the change was one which he or she wished to make;
(b) the prejudice to the applicant if the application were refused;
(c) the prejudice to the other parties if the change were permitted;
(d) whether any prejudice to any other party can be compensated by the payment of costs and or interest;
(e) whether the trial date or any likely trial date can still be met if the application is granted; and
(f) the administration of justice.

(4) A statement of case may not be amended without permission under this rule if the change is one to which any of the following applies –

(a) rule 19.4 (special provisions about adding or substituting parties after end of relevant limitation period); and
(b) rule 20.2 (changes to statement of case after end of relevant limitation period).

(5) An amended statement of case must include a certificate of truth under rule 3.11.

(6) The Chief Justice may, by practice direction, set out the procedure for –

(a) making an application to change a statement of case where the court's permission is required; and

(b) setting out changes to an amended statement of case.

- Rule 27.3(1) deals with the fixing of case management conference.

Changes to statement of case after end of relevant limitation period

20.2 (1) This rule applies to a change in a statement of case after the end of a relevant limitation period.

(2) The court may allow an amendment the effect of which will be to add or substitute a new claim but only if the new claim arises out of the same or substantially the same facts as a claim in respect of which the party wishing to change the statement of case has already claimed a remedy in the proceedings.

(3) The court may allow an amendment to correct a mistake as to the name of a party but only where the mistake was –

(a) genuine; and

(b) not one which would in all the circumstances cause reasonable doubt as to the identity of the party in question.

(4) The court may allow an amendment to alter the capacity in which a party claims.

- Rule 19.4 specifies the circumstances in which the court may allow a new party to be added or substituted after the end of a relevant limitation period.

Filing an amended statement of case

20.3 A party who amends his statement of case must –

(a) file in the court office the original amended statement of case; and

(b) after filing, serve a copy of it on every other party.

Amendments to statements of case and time for service

20.4 (1) Where an amended statement of claim is served on a defendant –

(a) the defendant, if he or she has already served a defence on the claimant, may file and serve an amended defence;

(b) the period for filing and serving an amended defence is the period of 28 days after the date of service of the amended statement of claim;

(c) if the defendant has not already served a defence on the claimant, the period for filing and serving a defence is the period of 28 days after the date of service of the amended statement of claim.

(2) Where an amended defence is served on the claimant by a defendant –

(a) the claimant, if he or she has already served a reply on that defendant, may amend his or her reply; and

(b) the period of service of his or her reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him or her.

(3) In paragraphs (1) and (2), references to a defence and a reply include references to a counterclaim and a defence to a counterclaim respectively.

(4) Where a party has filed a statement of case in answer to another statement of case which is subsequently amended and served on him or her under this rule, then, if that party does not amend his or her statement of case in accordance with this rule, he or she shall be taken to rely on it in answer to the amended statement of case.

(5) This rule shall apply to an amended ancillary claim.

PART 21
Representative Parties

Contents of this Part

Representative claimants and defendants – general	Rule 21.1
Appointment of representative claimant or defendant – procedure	Rule 21.2
Consequence of order appointing representative party	Rule 21.3
Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments	Rule 21.4
Compromise in proceedings to which rule 21.4 applies	Rule 21.5
Representation of beneficiaries by trustees	Rule 21.6
Proceedings against estate of deceased person	Rule 21.7
Power of court to give directions to enable proceedings to be carried on after party's death	Rule 21.8
Power of court to strike out action after death of claimant	Rule 21.9
Death of defendant	Rule 21.10

Representative claimants and defendants – general

21.1 (1) This rule applies to any proceedings, other than proceedings falling within rule 21.4, in which 5 or more persons have the same or a similar interest.

(2) The court may appoint –

(a) a body having a sufficient interest in the proceedings; or

(b) one or more of those persons, to represent all or some of the persons with the same or similar interest.

(3) A representative under this rule may be either a claimant or a defendant.

Appointment of representative claimant or defendant – procedure

21.2 (1) An application for an order appointing a representative party may be made at any time, including before proceedings have been started.

(2) An application for such an order may be made by any –

(a) party;

(b) person or body who wishes to be appointed as a representative party; or

(c) person who is likely to be a party to proceedings.

(3) An application for such an order must –

(a) be supported by affidavit evidence; and

(b) identify every person to be represented, either -

(i) individually; or

(ii) by description, if it is not practicable to identify a person individually.

(4) An application to appoint a representative defendant must be on notice to the claimant.

(5) An application to appoint a representative claimant may be made without notice.

(6) The court may direct that notice of an application be given to such other persons as it thinks fit.

(7) If the court directs that a person not already a party is to be a representative defendant, it must make an order adding that person as a defendant.

Consequence of order appointing representative party

21.3 (1) If there is a representative claimant or defendant, an order of the court binds everyone whom that party represents.

(2) It may not however be enforced against a person who is not a party to the proceedings unless the person wishing to enforce it obtains permission from the court.

(3) An application for permission must be supported by evidence on affidavit and must be served on the person against whom it is wished to enforce the judgment.

Representation of persons who cannot be ascertained, etc. in proceedings about estates, trusts and construction of written instruments

21.4 (1) This rule applies only to proceedings about –

(a) the construction of a written instrument;

(b) the estate of someone who is deceased; or

(c) property subject to a trust.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether presently or for any future, contingent or unascertained interest) where –

(a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;

(b) the person, or the class or some member of it, though ascertained cannot be found; or

(c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by any –

(a) party; or

(b)person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

(5) A decision of the court binds everyone whom a representative claimant or representative defendant represents in that capacity.

Compromise in proceedings to which rule 21.4 applies

21.5 (1) If –

(a) a compromise is proposed in proceedings to which rule 21.4 applies;

(b) some of the persons who are interested in, or who may be affected by the compromise are not parties to the proceedings;

(c) those persons are represented by a representative appointed under rule 21.4 when the court considers the proposed compromise; and

(d) the court is satisfied that the compromise will be for the benefit of those absent persons,

the court may approve the compromise.

(2) The persons for whose benefit the court may approve a compromise may be unborn or unascertained.

(3) The court's order approving the compromise binds those absent persons unless it has been set aside by the court.

Representation of beneficiaries by trustees

21.6 (1) A claim may be made by or against a person in that person's capacity as a trustee, executor or administrator.

(2) If a claim is so made, there is no need for a beneficiary also to be a party.

(3) The court may direct that notice of the proceedings be given to any beneficiary.

(4) A decision of the court in such proceedings binds a beneficiary unless the court otherwise orders.

(5) The only grounds for an order that a decision is not binding on a beneficiary is that the trustee, executor or administrator –

(a) could not or did not in fact, represent the interest of the beneficiary; or

(b) has acted fraudulently.

Proceedings against estate of deceased person

21.7 (1) If in any proceedings it appears that a deceased person was interested in the proceedings but the deceased person has no personal representatives, the court may make an order appointing someone to represent the deceased person's estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if that person –

(a) can fairly and competently conduct proceedings on behalf of the estate, whether or not an application for a grant of representation has been made or is likely to be made; and

(b) has no interest adverse to that of the estate of the deceased person.

(3) The court may make such an order on or without an application either with the consent of the person to be appointed or on notice to that person where there is no consent.

(4) Until the court has appointed someone to represent the deceased person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.

(5) A decision in proceedings in which the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate.

Power of court to give directions to enable proceedings to be carried on after party's death

21.8 (1) If a party to proceedings dies, the court may give directions to enable the proceedings to be carried on.

(2) An order under this rule may be made on or without an application.

Power of court to strike out claim after death of claimant

21.9 (1) If a claimant dies and the claimant's personal representatives do not apply for an order under rule 19.3 to be substituted as claimants, the defendant may apply for the claim to be struck out.

(2) Notice of the application must be given to the personal representatives of the claimant (if any) and such other persons as the court directs.

(3) The general rule is that if the court makes an order on an application under this rule it will be that unless the personal representatives or some other persons on behalf of the estate apply to be substituted under rule 19.3 or for directions under rule 21.8 by a specified date, the claim is to be struck out.

(4) The court may give directions under rule 21.8 at the hearing of an application under this rule.

Death of defendant

21.10 Where a defendant against whom a claim could have been brought has died and –

(a) a grant of probate or administration has been made, the claim must be brought against the persons who are the personal representatives of the deceased;

(b) a grant of probate or administration has not been made –

(i) the claim must be brought against 'the estate of' the deceased; and

(ii) the claimant must apply to the court for an order appointing a person to represent the estate of the deceased in the claim.

PART 22

Miscellaneous Rules about Parties

Contents of this Part

Partners	Rule 22.1
Person carrying on business in another name	Rule 22.2
Bodies corporate	Rule 22.3

Partners

22.1 (1) Persons claiming to be entitled, or alleged to be liable as partners may sue or be sued in the firm's name if –

(a) the firm's name is the name of the firm in which they were partners; and

(b) they carried on business in that name within the jurisdiction, when the right to claim arose.

(2) If partners sue or are sued in the firm's name, they must, if any other party so demands in writing, immediately –

(a) deliver to that party; and

(b) file,

a statement of the names and residential addresses of all the persons who were partners in the firm when the right to claim arose.

(3) If they do not comply, the court on application by any other party may order them to provide such a statement and to certify it to the court.

(4) An application under paragraph (3) may be made without notice.

(5) The party making the application must –

(a) certify that the other party has not complied;

(b) certify that the party has made a demand in writing; and

(c) state the date of the demand.

(6) If the partners do not comply within 21 days after service of the order any claim or defence brought by them is deemed to be struck out.

- Rule 26.5 deals with the procedure for striking out a statement of case.

(7) A duly authorised employee of a partnership or firm may –

(a) conduct proceedings on behalf of the partnership or firm; or

(b) represent it in court with the court's permission.

(8) Permission under paragraph (7) (b) is to be given or refused at a case management conference.

- Rule 43.9 deals with enforcement of a judgment against a partnership or by a firm against one of its members.

Person carrying on business in another name

22.2 (1) A claim may be made by or against a person -

(a) carrying on business within the jurisdiction; or

(b) who was carrying on business within the jurisdiction when the right to claim arose –

(i) in that person's own name;

(ii) in that person's own name, followed by the words "trading as X.Y.";

(iii) "X.Y." followed by the words "a trading name"; or

(iv) as "X.Y." followed by the words "a firm".

(2) If a claim is made by or against a person in his or her business name, the rules about claims by or against partners apply as if that person had been a partner in a firm when the right to claim arose and the business name were the firm's name.

Bodies corporate

22.3 (1) A body corporate must be represented by a legal practitioner in all proceedings before the court, unless the court permits it to be represented by a duly authorised director or other officer.

(2) Permission to represent the body corporate should, wherever practicable, be sought at a case management conference or pre-trial review.

(3) In considering whether to give permission the court must take into account all the circumstances including the complexity of the case.

(4) In paragraph (1) –

"**duly authorised**" means authorised by the body corporate to conduct the proceedings on its behalf.

PART 23
Minors and Patients

Contents of this Part

Scope of this Part	Rule 23.1
Requirement of next friend in proceedings by or against minors or patients	Rule 23.2
Stage of proceedings at which next friend becomes necessary	Rule 23.3
Who may be minor's next friend	Rule 23.4
Who may be patient's next friend	Rule 23.5
Conditions for being next friend	Rule 23.6
How person becomes next friend without court order	Rule 23.7
How person becomes next friend by court order	Rule 23.8
Court's power to terminate appointment of and substitute next friend	Rule 23.9
Appointment of next friend by court order – supplementary	Rule 23.10
Procedure where appointment as next friend ceases	Rule 23.11
Compromise, etc. by or on behalf of minor or patient	Rule 23.12
Control of money recovered by or on behalf of minor or patient	Rule 23.13

Scope of this Part

23.1 (1) This Part –

(a) contains special provisions which apply in proceedings involving minors and patients; and

(b) sets out how a person becomes a minor's or patient's next friend.

- Rule 5.10 contains provisions about the service of documents on minors and patients.
- Rule 14.3 contains restrictions on entering judgment on an admission where a party is a minor or patient.

(2) In this Part –

"Act" means any relevant enactment relating to Mental Health and in Saint Lucia includes the relevant provisions of the Civil Code (Cap. 4.01).

Requirement of next friend in proceedings by or against minors or patients

23.2 (1) The general rule is that a minor or patient must have a next friend to conduct proceedings on his or her behalf.

(2) The court may, on the application of a minor, make an order permitting the minor to conduct proceedings without a next friend.

(3) An application for an order under paragraph (2) –

(a) may be made by the minor;

(b) if the minor has a next friend, must be on notice to that next friend; and

(c) if there is no next friend, may be made without notice.

(4) If –

(a) the court has made an order under paragraph (2); and

(b) it subsequently appears to the court that it is desirable for a next friend to conduct the proceedings on behalf of the minor,

the court may appoint a person to be the minor's next friend.

(5) A next friend must act by a legal practitioner unless the court otherwise orders.

(6) The next friend must sign any certificate of truth under rule 3.11 on behalf of the minor or patient.

Stage of proceedings at which next friend becomes necessary

23.3 (1) A minor or patient must have a next friend in order to issue a claim except where the court has made an order under rule 23.2(2).

(2) A person may not –

(a) make any application against a minor or patient before proceedings have started; or

(b) take any step in proceedings except –

(i) applying for the appointment of a next friend under rule 23.8, until the minor or patient has a next friend; or

(ii) issuing and serving a claim against a minor or patient.

(3) If a person other than a minor becomes a patient during proceedings, any party may not take any step in the proceedings apart from applying to the court for the appointment of a next friend until the patient has a next friend.

(4) Any step other than an application under –

(a) rule 23.2(2); or

(b) paragraph (2)(b),

taken before a minor or patient has a next friend is of no effect unless the court otherwise orders.

Who may be minor's next friend

23.4 (1) A person who satisfies the conditions set out in rule 23.6 may act as a minor's next friend without a court order, unless the court –

(a) has already appointed a next friend; or

(b) makes or has made an order under rule 23.9 (court's power to terminate appointment of and substitute next friend).

(2) In Saint Lucia, the tutor under the Civil Code (Cap. 4.01) is to act as the next friend of a minor unless the court otherwise orders.

Who may be patient's next friend

23.5 (1) Unless the court appoints some other person, a person authorised under the Act to conduct legal proceedings in the name of the patient or on the patient's behalf is entitled to be the next friend of the patient in any proceedings to which the authority extends.

(2) Where nobody has been appointed by the court or authorised under the Act, a person who satisfies the conditions set out in rule 23.6 may be a patient's next friend without a court order.

(3) In Saint Lucia, the curator appointed under the Civil Code (Cap. 4.01) is to act as the next friend of a patient unless the court otherwise orders.

Conditions for being next friend

23.6 A person may act as a next friend if that person –

(a) can fairly and competently conduct proceedings on behalf of the minor or patient; and

(b) has no interest adverse to that of the minor or patient.

How person becomes next friend without court order

23.7 (1) Where the court has not appointed a next friend, a person who wishes to act as next friend must follow the procedure set out in this rule.

(2) A person authorised under the Act must file an official copy of the order or other document which constitutes that person's authorisation to act.

(3) Any other person must file a certificate that that person satisfies the conditions specified in rule 23.6.

(4) A person who is to act as a next friend for a claimant must file the –

(a) authorisation; or

(b) certificate under paragraph (3),

at the time when the claim is made.

(5) A person who is to act as a next friend for a defendant must file the –

(a) authorisation; or

(b) certificate under paragraph (3),

at the time when the next friend first takes a step in the proceedings on behalf of the defendant.

(6) The next friend must –

(a) serve a copy of the certificate under paragraph (3) on every person on whom in accordance with rule 5.10 (service on minors and patients) the claim should be served; and

(b) file an affidavit of service.

How person becomes next friend by court order

23.8 (1) The court may make an order appointing a next friend with or without an application.

(2) An application for an order appointing a next friend may be made by a –

(a) party; or

(b) person,

who wishes to be a next friend.

(3) If –

(a) a person makes a claim against a minor or patient;

(b) the minor or patient has no next friend; and

(c) either –

(i) someone who is not entitled to be a next friend files a defence; or

(ii) the claimant wishes to take some step in the proceedings,

the claimant must apply to the court for an order appointing a next friend for the minor or patient.

(4) An application for an order appointing a next friend must be supported by evidence on affidavit.

(5) The court may not appoint a next friend under this rule, unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

Court's power to terminate appointment of and substitute next friend

23.9 (1) The court may –

(a) appoint a new next friend in substitution for an existing one;

(b) direct that a person may not act as a next friend; or

(c) terminate a next friend's authority to act.

(2) The court may make an order under paragraph (1) with or without an application.

(3) An application for an order under paragraph (1) must be supported by evidence on affidavit.

(4) The court may not appoint a next friend under this rule, unless it is satisfied that the person to be appointed complies with the conditions specified in rule 23.6.

Appointment of next friend by court order – supplementary

23.10 (1) An application for an order under rule 23.8 or 23.9 must be served on every person on whom, in accordance with rule 5.10 (service on minors or patients) the claim should have been served.

(2) An application for an order under rule 23.9 (courts power to terminate appointment of and substitute next friend) must also be served on the person who –

(a) is or purports to act as next friend; and

(b) it is proposed should act as next friend if that person is not the applicant.

(3) On an application for an order under rule 23.8 or 23.9, the court may appoint the person proposed or any other person.

Procedure where appointment as next friend ceases

23.11 (1) The appointment of a minor's next friend ceases when a minor who is not a patient reaches the age of majority.

(2) When a party, other than a minor, ceases to be a patient during the course of proceedings, the next friend's appointment continues until it is ended by court order.

(3) An application for an order under paragraph (2) may be made by –

(a) a party;

(b) the former patient; or

(c) the next friend,

and must be supported by evidence on affidavit.

(4) The minor or patient in respect of whom the appointment to act has ceased must serve notice on the other parties –

(a) giving an address for service;

(b) stating that the appointment of the next friend has ceased; and

(c) stating whether or not he or she chooses to carry on the proceedings.

(5) If the notice is not served within 28 days after the appointment of the next friend ceases the court may, on application, strike out any claim or defence brought or filed by the minor or patient.

(6) The liability of a next friend for costs continues until –

(a) the minor or patient serves the notice referred to in paragraph (4); or

(b) the next friend serves notice on the other parties that the appointment has ceased.

Compromise, etc. by or on behalf of minor or patient

23.12 (1) If a claim is made –

(a) against a minor or patient; or

(b) by or on behalf of a minor or patient,

any settlement, compromise or payment and any acceptance of money is not valid, so far as it relates to the claim by, on behalf of, or against the minor or patient, without the approval of the court.

(2) If –

(a) before proceedings in which a claim is to be made by or on behalf of a minor or patient (whether alone or with any other person) are begun, an agreement is reached for the settlement of the claim; and

(b) the sole purpose of proceedings on that claim is to obtain the approval of the court to a settlement or compromise of the claim, the claim may be made by a fixed date claim form (Form 2) which may -

(i) be issued jointly by the claimant and defendant; and

(ii) include a request to the court for approval of the settlement.

Control of money recovered by or on behalf of minor or patient

23.13 (1) If in any proceedings money –

(a) is recovered by or on behalf of or for the benefit of a minor or patient; or

(b) paid into court is accepted by or on behalf of a minor or patient,

that money must be dealt with in accordance with directions given by the court under this rule and not otherwise.

(2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

PART 24
Security for Costs

Contents of this Part

Scope of this Part	Rule 24.1
Application for order for security for costs	Rule 24.2
Conditions to be satisfied	Rule 24.3
Security for costs against counter-claiming defendant	Rule 24.4
Enforcing order for security for costs	Rule 24.5

Scope of this Part

24.1 This Part deals with the power of the court to require a claimant to give security for the costs of the defendant.

- Note: Additional provision is made in relevant enactments relating to limited companies for security to be ordered against an insolvent claimant company.

Application for order for security for costs

24.2 (1) A defendant in any proceedings may apply for an order requiring the claimant to give security for the defendant's costs of the proceedings.

(2) Where practicable such an application must be made at a case management conference or pre-trial review.

(3) An application for security for costs must be supported by evidence on affidavit.

(4) The amount and nature of the security shall be such as the court thinks fit.

Conditions to be satisfied

24.3 The court may make an order for security for costs under rule 24.2 against a claimant only if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and that –

(a) some person other than the claimant has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover;

(b) the claimant –

(i) failed to give his or her address in the claim form;

(ii) gave an incorrect address in the claim form; or

(iii) changed his or her address since the claim was commenced,

with a view to evading the consequences of the litigation;

(c) the claimant has taken steps with a view to placing the claimant's assets beyond the jurisdiction of the court;

(d) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 21, and there is reason to believe that the claimant will be unable to pay the defendant's costs if ordered to do so;

(e) the claimant is an assignee of the right to claim and the assignment has been made with a view to avoiding the possibility of a costs order against the assignor;

(f) the claimant is an external company; or

(g) the claimant is ordinarily resident out of the jurisdiction.

Security for costs against counter-claiming defendant

24.4 Rules 24.2 and 24.3 apply where a defendant makes a counterclaim as if references in those rules –

(a) to a claimant – were references to a defendant making a counterclaim;

(b) to a defendant – were references to a claimant defending a counterclaim.

Enforcing order for security for costs

24.5 On making an order for security for costs the court must also order that –

(a) the claim (or counterclaim) be stayed until such time as security for costs is provided in accordance with the terms of the order; and

(b) if security is not provided in accordance with the terms of the order by a specified date, the claim (or counterclaim) be struck out.

PART 25
Case Management –The Objective

Contents of this Part

Court's duty to actively manage cases Rule 25.1

Court's duty to actively manage cases

25.1 The court must further the overriding objective by actively managing cases. This may include –

(a) actively encouraging and assisting parties to settle the whole or part of their case on terms that are fair to each party;

(b) considering whether the likely benefits of taking a particular step will justify the cost of taking it;

(c) dealing with as many aspects of the case as is practicable on the same occasion;

(d) dealing with as many aspects of the case, as it appears appropriate to do, without requiring the parties to attend court;

(e) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;

(f) deciding the order in which issues are to be resolved;

(g) encouraging the parties to co-operate with each other in the conduct of proceedings;

(h) encouraging the parties to use any appropriate form of alternative dispute resolution including, in particular, mediation, if the court considers it appropriate and facilitating the use of such procedures;

(i) ensuring that no party gains an unfair advantage by reason of that party's failure to give full disclosure of all relevant facts prior to the trial or the hearing of any application;

(j) fixing timetables or otherwise controlling the progress of the case;

(k) giving directions to ensure that the trial of the case proceeds quickly and efficiently;

(1) identifying the issues at an early stage; and

(m) making appropriate use of technology.

- Part 1 sets out the overriding objective.

PART 26
Case Management –The Court's Powers

Contents of this Part

Court's general powers of management	Rule 26.1
Court's power to make orders of its own initiative	Rule 26.2
Sanctions - striking out statement of case	Rule 26.3
Court's general power to strike out statement of case	Rule 26.4
Judgment without trial after striking out	Rule 26.5
Setting aside judgment after striking out	Rule 26.6
Court's powers in cases of failure to comply with rules, etc.	Rule 26.7
Relief from sanctions	Rule 26.8
General power of court to rectify matters	Rule 26.9

Court's general powers of management

26.1 (1) The list of powers in this rule is in addition to any powers given to the court by any other rule, practice directions or any enactment.

(2) Except where these rules provide otherwise, the court may –

(a) adjourn or bring forward a hearing to a specific date;

(b) consolidate proceedings;

(c) deal with a matter without the attendance of any of the parties;

(d) decide the order in which issues are to be tried;

(e) direct a separate trial of any issue;

(f) direct that any evidence be given in written form;

(g) direct that notice of any proceedings or application be given to any person;

(h) direct that part of any proceedings (such as a counterclaim or ancillary claim) be dealt with as separate proceedings;

(i) dismiss or give judgment on a claim after a decision on a preliminary issue;

(j) exclude an issue from determination if the court can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;

(k) extend or shorten the time for compliance with any rule, practice direction, order or direction of the court even if the application for an extension is made after the time for compliance has passed;

(l) give the conduct of any matter to any person it thinks fit and make any appropriate consequential order about costs;

(m) hold a hearing and receive evidence by telephone or use any other method of direct oral communication;

(n) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;

(o) require any party or a party's legal practitioner to attend court;

(p) require the maker of an affidavit or witness statement to attend for cross-examination;

(q) stay the whole or part of any proceedings generally or until a specified date or event;

(r) transfer proceedings to the Family Court or the District or Magistrate's Court;

(s) transfer the whole or any part of any proceedings to another court office from the court office of one Member State, Territory or Circuit;

(t) try two or more claims on the same occasion;

(u) where there is a substantial inequality in the proven financial position of each party, order any party having the greater financial resources who applies for an order to pay the other party's costs of complying with the order in any event;

(v) where two or more parties are represented by the same legal practitioner –

(i) direct that they be separately represented;

(ii) if necessary, adjourn any hearing to a fixed date to enable separate representation to be arranged; and

(iii) make any consequential order as to costs thrown away;

(w) make an "unless order" specifying the consequences of any failure to comply with any rule, practice direction, or order;

(x) in special circumstances, on the application of a party, dispense with compliance with any of these rules; or

(y) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.

(3) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.

(4) The conditions which the court may impose include a condition –

(a) requiring a party to give an undertaking;

(b) requiring a party to give security;

(c) requiring a party to pay all or part of the costs of the proceedings;
(d) requiring the payment of money into court or as the court may direct; and
(e) that a party permit entry to property owned or occupied by that party to another party or someone acting on behalf of another party.

(5) In considering whether to make an order, the court may take into account whether a party is prepared to give an undertaking.

Court's power to make orders of its own initiative

26.2 (1) Except where a rule or other enactment provides otherwise, the court may exercise its powers on an application or of its own initiative.

(2) If the court proposes to make an order of its own initiative, it must give any party likely to be affected a reasonable opportunity to make representations.

(3) The opportunity may be to make representations orally, in writing, telephonically or by any other means as the court considers reasonable.

(4) If the court proposes to –
(a) make an order of its own initiative; and
(b) hold a hearing to decide whether to do so,
the court office must give each party likely to be affected by the order at least 7 days' notice of the date, time and place of the hearing.

(5) If the court of its own initiative strikes out a statement of case or dismisses an application (including an application for permission to appeal) and it considers that the claim or application is totally without merit -
(a) the court's order must record that fact; and
(b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

(6) The Chief Justice may by practice direction prescribe –
(a) the circumstances in which the court has the power to make a civil restraint order against a party to the proceedings;
(b) the procedure where a party applies for a civil restraint order against another party; and

(c) the consequences of the court making a civil restraint order.

Sanctions – striking out statement of case

26.3 (1) In addition to any other power under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court that –

(a) there has been a failure to comply with a rule, practice direction, order or direction given by the court in the proceedings;

(b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim;

(c) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings; or

(d) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

(2) If –

(a) the court has struck out a claimant's statement of case;

(b) the claimant is ordered to pay costs to the defendant; and

(c) before those costs are paid, the claimant starts a similar claim against the same defendant based on substantially the same facts,

the court may on the application of the defendant stay the subsequent claim until the costs of the first claim have been paid.

Court's general power to strike out statement of case

26.4 (1) If a party has failed to comply with any of these rules or any court order in respect of which no sanction for non-compliance has been imposed, any other party may apply to the court for an "unless order".

(2) Such an application may be made without notice but must be supported by evidence on affidavit which –

(a) contains a certificate that the other party is in default;

(b) identifies the rule or order which has not been complied with; and

(c) states the nature of the breach.

(3) The court office must refer any such application immediately to a judge, master or registrar who may –

(a) grant the application;

(b) direct that an appointment be fixed to consider the application and that the court office give to all parties notice of the date, time and place for such appointment; or
(c) seek the views of the other party.

(4) If an appointment is fixed the court must give 7 days' notice of the date, time and place of the appointment to all parties.

(5) An "unless order" must identify the breach and require the party in default to remedy the default by a specified date.

(6) The general rule is that the respondent should be ordered to pay the assessed costs of such an application.

(7) If the defaulting party fails to comply with the terms of an "unless order" made by the court under this rule that party's statement of case shall be deemed to be struck out without further order.

(8) Rule 26.9 (general power of the court to rectify matters) shall not apply.

- Rule 11.19 deals with applications to set aside any order made on an application made without notice.

Judgment without trial after striking out

26.5 (1) This rule applies where the court makes an order which includes a term that the statement of case of a party be struck out if the party does not comply with the "unless order" by the specified date.

(2) If the party against whom the order was made does not comply with the order, any other party may ask for judgment to be entered and for prescribed costs appropriate to the stage that the proceedings have reached.

(3) If the party wishing to obtain judgment is the claimant and the claim is for -

(a) an amount of money to be decided by the court;
(b) a specified sum of money;
(c) delivery of goods and the claim form gives the defendant the alternative of paying their value; or
(d) any combination of these remedies,

a party may obtain judgment by filing a request for judgment and the judgment must be in accordance with the terms of the statement of claim plus any interest and costs after giving credit for any payment that may have been made.

(4) If the party wishing to obtain judgment is the claimant and the claim is for some other remedy, the party may obtain judgment by filing an application for judgment and the judgment must be such as the court considers that the claimant is entitled to.

(5) The request or application must -

(a) certify that the right to enter judgment has arisen because the court's order was not complied with;

(b) prove service of the "unless order"; and

(c) state the facts which entitle the party to judgment.

- Part 65 deals with the quantification of costs.

Setting aside judgment entered after striking out

26.6 (1) A party against whom the court has entered judgment under rule 26.5 when the right to enter judgment had not arisen may apply to the court to set it aside.

(2) If the right to enter judgment had not arisen at the time when judgment was entered, the court must set aside judgment.

(3) If the application to set aside is made for any other reason, rule 26.8 (relief from sanctions) applies.

Court's powers in cases of failure to comply with rules etc.

26.7 (1) If the court makes an order or gives directions, the court must whenever practicable also specify the consequences of failure to comply.

(2) If a party has failed to comply with any of these rules, a direction or any order, any sanction for non-compliance imposed by the rule, direction or order has effect unless the party in default applies for and obtains relief from the sanction, and rule 26.9 does not apply.

(3) If a rule, practice direction or order –

(a) requires a party to do something by a specified date; and

(b) specifies the consequences of failure to comply,

the time for doing the act in question may not be extended by agreement between the parties.

(4) In circumstances where –

(a) a bundle is not filed in accordance with rule 39.1(5);

(b) a core bundle is not filed in accordance with rule 62.12(4);

(c) a legal practitioner fails to comply with a provision of these rules, a court order, a practice direction or a practice guide;

(d) documents to be used at the trial are not served in accordance with rule 39.1(1); or

(e) a pre-trial memorandum is not filed in accordance with rule 38.5,

the court may on its own initiative order the legal practitioner responsible to pay to any party and or to the court an amount of money which does not exceed the sum or sums specified by the relevant practice direction.

(5) Any sum paid under an order made under rule 26.7(4) may be payable in addition to any sum which the court may order a legal practitioner to pay by way of wasted costs under rule 64.8.

Relief from sanctions

26.8 (1) An application for relief from any sanction specified for a failure to comply with any rule, order or direction must be supported by evidence on affidavit.

(2) In considering whether to grant relief, the court must have regard to –

(a) the effect which the granting of relief or not would have on each party;

(b) the interests of the administration of justice;

(c) whether the failure to comply has been or can be remedied within a reasonable time;

(d) whether the failure to comply was due to the party or the party's legal practitioner;

(e) whether the trial date or any likely trial date can still be met if relief is granted;

(f) whether there is a good explanation for the failure;

(g) whether the party in default has generally complied with all other relevant rules, practice directions, orders and directions; and
(h) whether the application for relief was made promptly.

(3) The court may not order the respondent to pay the applicant's costs in relation to an application for relief unless exceptional circumstances are shown.

General power of court to rectify matters

26.9 (1) This rule applies only where the consequence of failure to comply with a rule, practice direction, court order or direction has not been specified by any rule, practice direction or court order.

(2) An error of procedure or failure to comply with a rule, practice direction, court order or direction does not invalidate any step taken in the proceedings, unless a rule, practice direction, court order or direction so provides.

(3) If there has been an error of procedure or failure to comply with a rule, practice direction, court order or direction, the court may make an order to put matters right.

(4) The court may make such an order to put matters right on or without an application by a party.

PART 27
Case Management Conferences – Procedure

Contents of this Part

Scope of this Part	Rule 27.1
Fixed date claims – first hearing	Rule 27.2
Case management conference	Rule 27.3
Attendance at case management conference or pre-trial review	Rule 27.4
Orders to be made at case management conference	Rule 27.5
Dispensing with case management conference in simple and urgent proceedings	Rule 27.6
Adjournment of case management conference	Rule 27.7
Variation of case management timetable	Rule 27.8
Listing questionnaire	Rule 27.9
Fixing trial date	Rule 27.10

Scope of this Part

27.1 This Part deals with the procedures by which the court will manage cases.

Fixed date claims – first hearing

27.2 (1) When a fixed date claim is issued the court must fix a date for the first hearing of the claim.

(2) On that hearing, in addition to any other powers that the court may have, the court shall have all the powers of a case management conference.

(3) Subject to paragraph (4), the first hearing is the first case management conference for the purposes of Part 20.

(4) The court may, however, treat the first hearing as the trial of the claim if it is not defended or it considers that the claim can be dealt with summarily.

(5) The general rule is that the court must give at least 14 days' notice of any first hearing.

(6) The general rule is subject to any rule or statutory provision which specifies a different period.

(7) The court may on or without an application direct that shorter notice be given –

(a) if the parties agree; or

(b) in urgent cases.

(8) Unless the defendant files an acknowledgement of service, the claimant must file evidence on affidavit of service of the claim form and the relevant documents specified in rule 5.2(3) at least 7 days before the first hearing.

Case management conference

27.3 (1) The general rule is that the court office must fix a case management conference immediately upon the filing of a defence to a claim other than a fixed date claim.

(2) If the defendant files a defence and also an admission of a specified sum of money, the case management conference is not to be fixed until the claimant gives notice under rule 14.7(3) that the claim is to continue.

(3) The case management conference must take place not less than 4 weeks nor more than 8 weeks after the defence is filed (or notice is given under rule 14.7(3)) unless any rule or practice direction prescribes a shorter or longer period or the case is urgent.

(4) Notwithstanding paragraph (3) a party may apply to the court to fix a case management conference before a defence is filed.

(5) The application may be without notice but must state the reasons for the application.

(6) The court office must give all parties not less than 14 days' notice of the date, time and place of the case management conference.

(7) The court may with or without an application direct that shorter notice be given –

(a) if the parties agree; or

(b) if it is just in the circumstances for a shorter period of notice to be given.

Attendance at case management conference or pre-trial review

27.4 (1) If a party is represented by a legal practitioner, that legal practitioner or another legal practitioner who is authorised to negotiate on behalf of the client and competent to deal with the case must attend the case management conference and any pre-trial review.

(2) The general rule is that the party or a person who is in a position to represent the interests of the party (other than the legal practitioner) must attend the case management conference or pre-trial review.

(3) The court may dispense with the attendance of a party or representative (other than a legal practitioner).

(4) If the case management conference or pre-trial review is not attended by the legal practitioner and the party or a representative, the court may adjourn the case management conference or pre-trial review to a fixed date and may exercise any of its powers under Part 26 (case management – the court's powers) or Part 64 (costs – general).

Orders to be made at case management conference

27.5 (1) The general rule is that at a case management conference the court must consider whether to give directions for –

(a) the filing and service of a list of all documents that are agreed and a list of those documents not agreed;

(b) service of expert reports (if any);

(c) service of witness statements; and

(d) standard disclosure and inspection,

by dates fixed by the court.

(2) The court may also give directions for the preparation of an agreed statement –

(a) as to any relevant specialist area of law;

(b) of facts;

(c) of issues; and

(d) of the basic technical, scientific or medical matters in issue,

which statement does not bind the trial judge.

(3) The court must fix a date for a pre-trial review unless it is satisfied that having regard to the value, importance and complexity of the case it may be dealt with justly without a pre-trial review.

(4) The court must in any event fix the –

(a) period within which the trial is to commence; or

(b) trial date.

(5) The court office must serve an order containing the directions made on all parties and give notice of the –

(a) date of any pre-trial review;

(b) date on which the listing questionnaire is to be sent out by the court office; and

(c) trial date or trial period.

Dispensing with case management conference in simple or urgent proceedings

27.6 (1) The court may, of its own volition or on the application of a party, make an order dispensing with a case management conference if it is satisfied that the –

(a) case can be dealt with justly without a case management conference;

(b) case should be dealt with as a matter of urgency; or

(c) cost of a case management conference is disproportionate to the value of the proceedings or the benefits that might be achieved from a case management conference.

(2) If the court dispenses with a case management conference, it must at the same time –

(a) fix a trial date or the period within which the trial is to take place;

(b) give directions in writing about the preparation of the case; and

(c) set a timetable for the steps to be taken before the date of trial.

(3) If the court dispenses with a case management conference, it may -

(a) dispense with a listing questionnaire under rule 27.9;

(b) dispense with all or any of the requirements relating to the preparation and filing of bundles of documents under rule 39.1;

(c) dispense with a pre-trial review under Part 38; and

(d) give any other direction that will assist in the speedy and just trial of the claim, including any direction that might be given under Part 38.

Adjournment of case management conference

27.7 (1) The court may not adjourn a case management conference without fixing a new date, time and place for the adjourned case management conference.

(2) If the court is satisfied that the parties are –

(a) attending, or have arranged to attend, a form of alternative dispute resolution procedure; or

(b) in the process of negotiating, or are likely to negotiate a settlement,

the court may adjourn the case management conference to a suitable date, time and place to enable negotiations or the alternative dispute resolution procedure to continue.

(3) If the case management conference is adjourned under paragraph (2) each party must notify the court office promptly if the claim is settled.

(4) The court may give directions as to the preparation of the case for trial if the case management conference is adjourned.

(5) As far as practicable, any adjourned case management conference and procedural application made prior to a pre-trial review must be heard and determined by the judge, master or registrar who conducted the first case management conference.

Variation of case management timetable

27.8 (1) A party must apply to the court if that party wishes to vary a date which the court has fixed for –

(a) a case management conference;

(b) a party to do something where the order specifies the consequences of failure to comply;

(c) a pre-trial review;

(d) the return of a listing questionnaire; or

(e) the trial date or trial period.

(2) Any date set by the court or these rules for doing any act may not be varied by the parties if the variation would make it necessary to vary any of the dates mentioned in paragraph (1).

(3) A party seeking to vary any other date in the timetable without the agreement of the other parties must apply to the court, and the general rule is that the party must do so before that date.

- Rule 42.7 deals with consent orders.

(4) A party who applies after that date must apply for –

(a) an extension of time; and

(b) relief from any sanction to which the party has become subject under these Rules or any court order.

- Rule 26.8 provides for applications for relief from sanctions.

(5) The parties may agree to vary a date in the timetable other than one mentioned in paragraph (1) or (2).

(6) Where the parties so agree, they must –

(a) file a consent application for an order to that effect; and

(b) certify on that application that the variation agreed will not affect the date fixed for the trial or, if no date has been fixed, the period in which the trial is to commence,

and the timetable is accordingly varied unless the court directs otherwise.

Listing questionnaire

27.9 (1) Each party must file the completed listing questionnaire in Form 10 at the court office within the period set by the court.

(2) If –

(a) a party fails to –

(i) give all the information requested by the listing questionnaire;

(ii) return the completed questionnaire to the court office within the period set by the court; or

(b) the court considers that a hearing is necessary to enable it to decide what directions to give in order to complete the preparation of the case,

the court office may fix a listing appointment and direct any or all of the parties to attend the listing hearing.

(3) The court office must give all parties at least 7 days' notice of the date, time and place of the listing hearing.

(4) Any party at fault must attend the listing hearing.

(5) At the listing hearing the court must –

(a) give any directions which may be needed to complete the preparation of the case for trial without any adjournment of the trial; and

(b) if the listing appointment has been fixed under paragraph (2)(a) make a wasted costs order unless there is a special reason why it should not make such an order.

(6) Apart from the requirement to complete a listing questionnaire the court may at any time require the parties to answer a questionnaire to assist it in the management of the case.

Fixing trial date

27.10 (1) As soon as practicable after –

(a) each party has returned a completed listing questionnaire to the court office; or

(b) the court has held a listing hearing under rule 27.9(2),

the court office must fix the date of the trial (or, if it has already done so, confirm that date) and notify the parties.

(2) The general rule is that the court office must give the parties at least 8 weeks' notice of the date of the trial.

(3) The court may however give shorter notice –

(a) if the parties agree; or

(b) in urgent cases.

PART 28
Disclosure and Inspection of Documents

Contents of this Part

Scope of this Part	Rule 28.1
Duty of disclosure limited to documents which are or have been in party's control	Rule 28.2
Disclosure of copies	Rule 28.3
Standard disclosure	Rule 28.4
Specific disclosure	Rule 28.5
Criteria for ordering specific disclosure	Rule 28.6
Procedure for disclosure	Rule 28.7
Duty of legal practitioner	Rule 28.8
Requirement for maker to certify understanding of the duty of disclosure	Rule 28.9
Disclosure in stages	Rule 28.10
Inspection and copying of listed documents	Rule 28.11
Duty of disclosure continuous during proceedings	Rule 28.12
Consequence of failure to disclose documents under order for disclosure	Rule 28.13
Claim of right to withhold disclosure or inspection document	Rule 28.14
Restriction on use of a privileged document inspection of which has been inadvertently allowed	Rule 28.15
Documents referred to in statements of case, etc.	Rule 28.16
Subsequent use of disclosed documents	Rule 28.17
Notice to prove document	Rule 28.18

Scope of this Part

28.1 (1) This Part sets out rules about the disclosure and inspection of documents.

(2) In this Part –

"**copy**", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly; and

"**document**" means anything on or in which information of any description is recorded.

(3) A party "**discloses**" a document by revealing that the document exists or has existed.

(4) For the purposes of this Part a document is "**directly relevant**" if –

(a) the party with control of the document intends to rely on it;

(b) it tends to adversely affect that party's case; or

(c) it tends to support another party's case; but

the rule of law known as "the rule in Peruvian Guano" does not apply.

Duty of disclosure limited to documents which are or have been in party's control

28.2 (1) A party's duty to disclose documents is limited to documents which are or have been in the control of that party.

(2) For this purpose a party has or has had control of a document if –

(a) it is or was in the physical possession of the party;

(b) the party has or has had a right to inspect or take copies of it; or

(c) the party has or has had a right to possession of it.

Disclosure of copies

28.3 (1) Except where required by paragraph (2), a party need not disclose more than one copy of a document.

(2) A party must however disclose a copy if it contains a modification, obliteration or other marking or feature which is not present in the original or any copy of the document which is being disclosed.

Standard disclosure

28.4 If a party is required by any direction of the court to give standard disclosure, that party must undertake a reasonable and proportionate search for and disclose all documents which are directly relevant to the matters in question in the proceedings.

Specific disclosure

28.5 (1) An order for specific disclosure is an order that a party must do one or more of the following things –

(a) disclose documents or classes of documents specified in the order;

(b) carry out a search for documents to the extent stated in the order; or

(c) disclose any document located as a result of that search.

(2) An order for specific disclosure may be made on or without an application.

(3) An application for specific disclosure may be made without notice at a case management conference.

(4) An application for specific disclosure may identify documents –

(a) by describing the class to which they belong; or

(b) in any other manner.

(5) An order for specific disclosure may require disclosure only of documents which are directly relevant to one or more matters in issue in the proceedings.

Criteria for ordering specific disclosure

28.6 (1) When deciding whether to make an order for specific disclosure, the court must consider whether specific disclosure is necessary in order to dispose fairly of the claim or to save costs.

(2) The court must have regard to –

(a) the likely benefits of specific disclosure;

(b) the likely cost of specific disclosure; and

(c) whether it is satisfied that the financial resources of the party against whom the order would be made are likely to be sufficient to enable that party to comply with any such order.

(3) If, having regard to paragraph (2) (c), the court would otherwise refuse to make an order for specific disclosure, it may nonetheless make such an order on terms that the party seeking the order must pay the other party's costs of such disclosure in any event.

(4) If the court makes an order under paragraph (3), it must assess the costs to be paid in accordance with rule 65.12.

(5) The party in whose favour such order for costs was made may apply to vary the amount of costs so assessed.

Procedure for disclosure

28.7 (1) Paragraphs (2) to (5) set out the procedure for disclosure.

(2) Each party must make, and serve on every other party, a list of documents in Form 11.

(3) The list must identify the documents or categories of documents in a convenient order and manner and as concisely as possible.

(4) The list must state –

(a) what documents are no longer in the party's control;

(b) what has happened to those documents; and

(c) where each such document then is, to the best of the party's knowledge, information or belief.

(5) The list must include documents already disclosed.

(6) A list of documents served by a company, firm, association or other organisation must –

(a) state the name and position of the person responsible for identifying individuals who might be aware of any document which should be disclosed; and

(b) identify those individuals who have been asked whether they are aware of any such documents and state the position of those individuals.

Duty of legal practitioner

28.8 The legal practitioner for a party must –

(a) explain to the maker of the list of documents the –

(i) necessity of making full disclosure in accordance with the terms of the order for disclosure and these Rules; and

(ii) possible consequences of failing to do so; and

(b) certify on the list of documents under rule 28.7(2) that the explanation required by subparagraph (a) has been given.

Requirement for maker to certify understanding of duty of disclosure

28.9 (1) The maker of the list of documents must certify in the list of documents that –

(a) the maker understands the duty of disclosure; and

(b) to the best of the knowledge of the maker the duty has been carried out.

(2) In the case of a list served on behalf of a company, firm, association or other organisation the certificate referred to in paragraph (1) must be made by the person identified in rule 28.7(6)(a).

(3) If it is impracticable for the maker of the list of documents to sign the certificate required by paragraph (1), it may be given by that person's legal practitioner.

(4) A certificate given by the legal practitioner must also certify –

(a) that the certificate is given on the instructions of the maker; and

(b) the reasons why it is impractical for the maker of the list of documents to give the certificate.

Disclosure in stages

28.10 The parties may agree in writing or the court may direct that disclosure or inspection or both may take place in stages.

Inspection and copying of listed documents

28.11 (1) When a party has served a list of documents on any other party, that party has a right to inspect any document on the list, except documents –

(a) for which a right to withhold from disclosure is claimed; or

(b) which are no longer in the physical possession of the party who served the list.

(2) The party wishing to inspect the documents must give the party who served the list written notice of the wish to inspect documents in the list.

(3) The party who is to give inspection must permit inspection not more than 7 days after the date on which the notice is received.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the party who served the list must supply the other with a copy of each document requested, not more than 7 days after the date on which the notice was received.

Duty of disclosure continuous during proceedings

28.12 (1) The duty of disclosure in accordance with any order for standard or specific disclosure continues until the proceedings are concluded.

(2) If documents to which that duty extends come to a party's notice at any time during the proceedings, that party must immediately notify every other party and serve a supplemental list of those documents.

(3) The supplemental list must be served not more than 7 days after the documents to which that duty extends have come to the notice of the party required to serve it.

(4) A supplemental list must be accompanied by an affidavit evidencing compliance with paragraphs (2) and (3).

Consequence of failure to disclose documents under order for disclosure

28.13 (1) A party who fails to give disclosure by the date ordered, or to permit inspection, may not rely on or produce at the trial any document not so disclosed or made available for inspection, without the permission of the court.

(2) A party seeking to enforce an order for disclosure may apply to the court for an order that the other party's statement of case or some part of it be struck out.

(3) An application under paragraph (2) relating to an order for specific disclosure must be supported by evidence on affidavit that the other party has not complied with the order.

(4) On an application under paragraph (2) the court may order that unless the party in default complies with the order for disclosure by a specific date that party's statement of case or some part of it be struck out.

- Rule 26.5 deals with judgment without trial after striking out.
- Rule 26.8 deals with relief from sanctions.

Claim of right to withhold disclosure or inspection of document

28.14 (1) A person who claims a right to withhold disclosure or inspection of a document or part of a document must –

(a) make such claim for the document; and

(b) state the grounds on which such a right is claimed,

in the list or otherwise in writing to the person wishing to inspect the document.

(2) A person may however apply to the court, without notice, for an order permitting that person not to disclose the existence of a document on the ground that disclosure of the existence of the document would damage the public interest.

(3) A person who applies under paragraph (2) must –

(a) identify the document, documents or parts thereof for which a right to withhold disclosure is claimed; and

(b) give evidence on affidavit showing –

(i) that the applicant has a right or duty to withhold disclosure; and

(ii) the grounds on which the right or duty is claimed.

(4) Unless the court orders otherwise, an order of the court under paragraph (2) is not to be -

(a) open for inspection by; or

(b) served on,

any person.

(5) A person who does not agree with a claim of right to withhold inspection or disclosure of a document may apply to the court for an order that the document be disclosed or made available for inspection.

(6) On hearing such an application the court must make an order that the document be disclosed unless it is satisfied that there is a right to withhold disclosure.

(7) If a person –

(a) applies for an order permitting that person not to disclose the existence of a document or part of a document; or

(b) claims a right to withhold inspection,

the court may require the person to produce that document to the court to enable it to decide whether the claim is justified.

(8) On considering any application under this rule, the court may invite any person to make representations on the question of whether the document ought to be withheld.

Restrictions on use of a privileged document inspection of which has been inadvertently allowed

28.15 If a party inadvertently allows a privileged document to be inspected, the party who has inspected it may use it only with the –

(a) agreement of the party disclosing the document; or

(b) permission of the court.

Documents referred to in statements of case, etc.

28.16 (1) A party may inspect and copy a document mentioned in –

(a) an affidavit;

(b) an expert's report;

(c) a statement of case;

(d) a witness statement or summary;

(e) the claim form.

(2) A party who wishes to inspect and copy such a document must give written notice to the party who, or whose witness, mentioned the document.

(3) The party to whom the notice is given must comply with the notice not more than 7 days after the date on which the notice is served.

Subsequent use of disclosed documents

28.17 (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, unless –

(a) the document has been read to or by the court, or referred to in open court;

(b) the party disclosing the document and the person to whom the document belongs agree; or

(c) the court gives permission.

(2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to in open court.

(3) An application for such an order may be made by any –

(a) party; or
(b) person to whom the document belongs.

Notice to prove document

28.18 (1) A party shall be deemed to admit the authenticity of any document disclosed to that party under this Part unless that party serves notice that the documents must be proved at trial.

(2) A notice to prove a document must be served not less than 42 days before the trial.

PART 29
Evidence

Contents of this Part

Power of court to control evidence	Rule 29.1
Evidence at trial – general rule	Rule 29.2
Evidence by video link or other means	Rule 29.3
Requirement to serve witness statements	Rule 29.4
Form of witness statements	Rule 29.5
Witness summaries	Rule 29.6
Procedure where one party does not serve witness statement by date directed	Rule 29.7
Witness to give evidence unless court otherwise orders	Rule 29.8
Amplifying witness statements at trial	Rule 29.9
Cross-examination on witness statement	Rule 29.10
Consequence of failure to serve witness statement or summary	Rule 29.11
Use of witness statement for other purposes	Rule 29.12
Notice to admit facts	Rule 29.13

Power of court to control evidence

29.1 The court may control the evidence to be given at any trial or hearing by giving appropriate directions, at a case management conference or by other means, as to the –

(a) issues on which it requires evidence; and

(b) way in which any matter is to be proved.

Evidence at trial – general rule

29.2 (1) The general rule is that any fact which needs to be proved by evidence of witnesses is to be proved at –

(a) trial, by their oral evidence given in public; and

(b) any other hearing – by affidavit.

(2) The general rule is subject to any –

(a) order of the court; and

(b) provision to the contrary contained in these rules or elsewhere.

(3) Any evidence taken at the trial or other hearing of any proceedings may be used subsequently in those proceedings.

- Part 30 deals with affidavits.

Evidence by video link or other means

29.3 The court may allow a witness to give evidence without being present in the courtroom, through a video link or by any other means.

Requirement to serve witness statements

29.4 (1) The court may order a party to serve on any other party a statement of the evidence of any witness upon which the first party intends to rely in relation to any issue of fact to be decided at the trial.

(2) A statement of the evidence referred to in paragraph (1) is known as a "witness statement".

(3) A party's obligation to serve a witness statement is independent of any other party's obligation to serve such a statement.

- Rule 29.7 provides a procedure that may be adopted when one party does not serve witness statements by the date directed.

(4) The court may give directions as to –

(a) the order in which witness statements are to be served; and

(b) when they are to be filed.

Form of witness statements

29.5 (1) A witness statement must –

(a) be dated;

(b) be signed or otherwise authenticated by the intended witness;

(c) give the name, address and occupation of the witness;

(d) include a statement by the intended witness that he or she believes the statements of fact in it to be true;

(e) not include any matters of information or belief which are not admissible or, where admissible, must state the source of any matters of information or belief;

(f) so far as reasonably practicable, be in the intended witness' own words; and

(g) identify any document which is considered to be necessary.

(2) The court may order that any inadmissible, scandalous, irrelevant or otherwise oppressive matter be struck out of any witness statement.

Witness summaries

29.6 (1) A party who is required to provide and is not able to obtain a witness statement may serve a witness summary instead.

(2) The party who serves a witness summary must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of the –

(a) evidence, so far as is known, which would otherwise be included in a witness statement; or

(b) matters about which the party serving the witness summary proposes to question the witness, if the evidence is not known.

(4) Unless the court orders otherwise, a witness summary must include the name and address of the intended witness or other sufficient means of identifying the intended witness.

(5) A witness summary must be served within the period in which a witness statement would have had to be served.

(6) Where a party provides a witness summary, so far as practicable, rules 29.4 (requirement to serve witness statements), 29.7 (procedure where one party does not serve witness statements by date directed), 29.8 (witness to give evidence unless court otherwise orders) and 29.9 (amplifying witness statements at trial) apply to the witness summary.

Procedure where one party does not serve witness statement by date directed

29.7 (1) This rule applies where –

(a) one party (the "first party") is able and prepared to comply with the order to serve witness statements; and

(b) the other party fails to make reasonable arrangements to exchange statements.

(2) The first party may comply with the requirements of this Part by -

(a) filing the witness statements in a sealed envelope at the court office

by the date directed; and

(b) giving notice to all other parties that the witness statements have been filed.

(3) Statements filed pursuant to paragraph (2) must not be disclosed to the other party until the other party certifies that the witness statements or summaries in respect of all witnesses upon whose evidence the other party intends to rely have been served.

Witness to give evidence unless court otherwise orders

29.8 (1) If a party –

(a) has served a witness statement or summary; and

(b) wishes to rely on the evidence of that witness,

that party must call the witness to give evidence unless the court orders otherwise.

(2) If a party –

(a) has served a witness statement or summary; and

(b) does not intend to call that witness at the trial,

that party must give notice to that effect to the other parties not less than 28 days before the trial.

Amplifying witness statements at trial

29.9 A witness giving oral evidence may with the permission of the court –

(a) amplify the evidence as set out in his or her witness statement if that statement has disclosed the substance of the evidence which the witness is asked to amplify;

(b) give evidence in relation to new matters which have arisen since the witness statement was served on the other parties; or

(c) comment on evidence given by other witnesses.

Cross-examination on witness statement

29.10 If a witness is called to give evidence at trial, that witness may be cross examined on the evidence as set out in his or her witness statement, whether or not the statement or any part of it was referred to during the witness' evidence in chief.

Consequence of failure to serve witness statement or summary

29.11 (1) If a witness statement or witness summary is not served in respect of an intended witness within the time specified by the court, the witness may not be called unless the court permits.

(2) The court may not give permission at the trial unless the party asking for permission has a good reason for not previously seeking relief under rule 26.8.

Use of witness statement for other purposes

29.12 (1) Except as provided by this rule, a witness statement may be used only for the purpose of the proceedings in which it is served.

(2) Paragraph (1) does not apply if and to the extent that the –

(a) court gives permission for some other use of it;

(b) witness gives consent in writing to some other use of it; or

(c) witness statement has been put in evidence.

Notice to admit facts

29.13 (1) A party may serve notice on another party requiring that other party to admit the facts or the part of the first party's case specified in the notice.

(2) A notice to admit facts must be served no later than 42 days before the trial.

(3) If the other party makes any admission in response to the notice to admit facts, the admission may be used against that party only –

(a) by the party who served the notice; and

(b) in the proceedings in which the notice is served.

(4) If the party served with the notice to admit does not admit the facts set out in the notice within 21 days of service of the notice upon that party, the court may assess the costs incurred by the party serving the notice in proving such facts and order the party served with the notice to pay such costs.

- Rule 65.11 deals with assessment of costs.

PART 30
Affidavits

Contents of this Part

Affidavit evidence	Rule 30.1
Form of affidavits	Rule 30.2
Contents of affidavits	Rule 30.3
Documents to be used in conjunction with affidavits	Rule 30.4
Making of affidavits	Rule 30.5
Service of affidavits	Rule 30.6

Affidavit evidence

30.1 (1) The court may require evidence to be given by affidavit instead of, or in addition to oral evidence.

(2) In this Part –
"**deponent**" means the maker of an affidavit.

(3) Whenever an affidavit is to be used in evidence, any party may apply to the court for an order requiring the deponent to attend to be cross-examined.

(4) Such an application must be made not less than in the case of –

(a) a trial – 21 days; or

(b) any other hearing – 7 days,

before the date of the hearing at which it is intended to cross-examine the deponent.

(5) If the deponent does not attend as required by the court order, the affidavit may not be used as evidence unless the court permits.

(6) The general rule is that an affidavit must be filed before it may be used in any proceedings.

(7) In a case of urgency, the court may permit reliance on an affidavit which has not been filed if the party tendering it undertakes to file it.

Form of affidavits

30.2 Every affidavit must –

(a) be headed with the title of the proceedings;

(b) be divided into paragraphs numbered consecutively;

(c) be in the first person and state the name, address and occupation of the deponent and, if more than one, of each of them;

(d) be marked on the line describing the affidavit (and of the backsheet) with –

(i) the name of the party on whose behalf it is filed;

(ii) the first name and surname of the deponent;

(iii) where the deponent swears more than one affidavit in any proceedings, the number of the affidavit in relation to the deponent;

(iv) the identifying reference of each exhibit referred to in the affidavit;

(v) the date when sworn; and

- Example: [First/Second Affidavit of Nicholas Berridge in support of [Application for Interim Injunction] [Claimant: Sworn 3.12.21: Exhibits 3 and 4]

(e) state if any deponent is employed by a party to the proceedings.

Contents of affidavits

30.3 (1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.

(2) An affidavit may contain statements of information and belief –

(a) if any of these rules so allows; and

(b) if the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application, provided that the affidavit indicates –

(i) which of the statements in it are made from the deponent's own knowledge and which are matters of information or belief; and

(ii) the source of any matters of information and belief.

(3) The court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit.

(4) An affidavit containing any alteration may not be used in evidence unless all such alterations have been initialled both by the deponent and the person before whom the affidavit is sworn.

Documents to be used in conjunction with affidavits

30.4 (1) Any document to be used in conjunction with an affidavit must be exhibited with it.

(2) If there is more than one such document, those documents may be included in a bundle which is arranged chronologically or in some other convenient order and is properly paginated.

(3) Clearly legible photocopies of original documents may be exhibited, provided that the originals are made available for inspection by the other parties before the hearing and by the court at the hearing.

(4) Each exhibit or bundle of exhibits must be —

(a) produced to and verified by the deponent;

(b) accurately identified by an endorsement on the exhibit or on a certificate attached to it signed by the person before whom the affidavit is sworn or affirmed; and

(c) marked in accordance with rule 30.2(d).

Making of affidavits

30.5 (1) An affidavit must –

(a) be signed by all deponents;

(b) be sworn or affirmed by each deponent;

(c) be completed and signed by the person before whom the affidavit is sworn or affirmed; and

(d) contain the full name, address and qualifications of the person before whom it is sworn or affirmed.

(2) The statement authenticating the affidavit ("the jurat") must follow immediately from the text and not be on a separate page.

(3) An affidavit may not be admitted into evidence if sworn or affirmed before the legal practitioner of the party on whose behalf it is to be used or before any agent, partner, employee or associate of such legal practitioner.

(4) If it appears that the deponent is illiterate or blind, the person before whom the affidavit is sworn or affirmed must certify in the jurat that the –

(a) affidavit was read to the deponent by him or her in his or her presence;
(b) deponent appeared to understand it; and
(c) deponent signed or made his or her mark in his or her presence.

(5) A person may make an affidavit outside the jurisdiction in accordance with –

(a) the law of the place where the affidavit is made; or
(b) this Part.

(6) Any affidavit which purports to have been sworn or affirmed in accordance with the law and procedure of any place outside the jurisdiction is presumed to have been so sworn.

Service of affidavits

30.6 (1) The general rule is that a party who is giving evidence by affidavit must serve a copy of the affidavit on every other party.

(2) The general rule applies whether the affidavit was made in the proceedings or in some other proceedings.

(3) The general rule does not apply if the affidavit is being used in support of an application that may be made without notice.

PART 31
Miscellaneous Rules about Evidence

Contents of this Part

Use of plans, photographs, etc. as evidence	Rule 31.1
Evidence on questions of foreign law	Rule 31.2
Evidence of consent of trustee to act	Rule 31.3
Translation of documents	Rule 31.4

Use of plans, photographs, etc. as evidence

31.1 (1) A party who intends to rely at a trial on evidence which is not –

(a) to be given orally; and

(b) contained in a witness statement, affidavit or expert report,

must disclose that intention to the other parties in accordance with this rule.

(2) If a party fails to disclose the intention to rely on the evidence as required by this rule, the evidence may not be given.

(3) Subject to paragraphs (4) and (5) a party who intends to use the evidence referred to in paragraph (1) to prove any fact must disclose such intention not later than the latest date for serving witness statements.

(4) If –

(a) there is no order for service of witness statements; or

(b) a party intends to put in the evidence referred to in paragraph (1) solely in order to disprove an allegation made in a witness statement,

that party must disclose the evidence at least 21 days before the hearing at which it is proposed to be put in the evidence.

(5) If the evidence referred to in paragraph (1) forms part of expert evidence, the intention to put in the evidence must be disclosed when the expert's report is served on the other party.

(6) If a party has disclosed the intention to put in the evidence referred to in paragraph (1), that party must give every other party an opportunity to inspect the evidence and to agree to its admission without proof.

Evidence on questions of foreign law

31.2 (1) This rule sets out the procedure which must be followed by a party who intends to adduce evidence on a question of foreign law.

(2) A party who intends to adduce evidence on a question of foreign law must first give every other party notice of that intention.

(3) Notice under paragraph (2) must be given not less than 42 days before the hearing at which the party proposes to adduce the evidence.

(4) The notice must –

(a) have attached a document which forms the basis of the evidence; and

(b) specify the question on which the evidence is to be adduced.

Evidence of consent of trustee to act

31.3 A document purporting to contain the written consent of a person to act as trustee and to bear that person's signature verified by some other person is evidence of such consent.

Translation of documents

31.4 A party who discloses a document in a foreign language may not rely on that document unless the party produces a certified English translation of the document.

PART 32
Experts and Assessor

Contents of this Part

Scope of this Part	Rule 32.1
General duty of court and of parties	Rule 32.2
Expert's overriding duty to court	Rule 32.3
Way in which expert's duty to court is to be carried out	Rule 32.4
Expert's right to apply to court for directions	Rule 32.5
Court's power to restrict expert evidence	Rule 32.6
General requirement for expert evidence to be given in written report	Rule 32.7
Written questions to experts	Rule 32.8
Court's power to direct evidence by single expert	Rule 32.9
Cross-examination of court appointed expert	Rule 32.10
Instructions to single expert	Rule 32.11
Power of court to direct party to provide expert report	Rule 32.12
Expert's report to be addressed to court	Rule 32.13
Contents of report	Rule 32.14
Meeting of experts	Rule 32.15
Consequence of failure to disclose expert's report	Rule 32.16
Appointment of assessor	Rule 32.17

Scope of this Part

32.1 (1) This Part deals with the provision of expert evidence to assist the court.

(2) In this Part –

"**expert witness**" means an expert who has been instructed to prepare or give evidence for the purpose of court proceedings but does not include a person with expertise who is giving evidence as a witness of fact.

General duty of court and of parties

32.2 Expert evidence must be restricted to that which is reasonably required to resolve the proceedings justly.

Expert's overriding duty to court

32.3 (1) It is the duty of an expert witness to help the court impartially on the matters relevant to his or her expertise.

(2) This duty overrides any obligation to the person by whom he or she is instructed or paid.

Way in which expert's duty to court is to be carried out

32.4 (1) Expert evidence presented to the court must be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the demands of the litigation.

(2) An expert witness must provide independent assistance to the court by way of objective, unbiased opinion in relation to matters within the witness' expertise.

(3) An expert witness must state the facts or assumptions upon which his or her opinion is based, and must consider and include any material fact which could detract from his or her conclusion.

(4) An expert witness must state if a particular matter or issue falls outside of his or her expertise.

(5) If the opinion of an expert witness is not properly researched then this must be stated with an indication that the opinion is no more than a provisional one.

(6) If an expert witness cannot assert that his or her report contains the truth, the whole truth and nothing but the truth without some qualification, that qualification must be stated in the report.

(7) If after service of a report an expert witness changes his or her opinion on a material matter, that change of opinion must be communicated to all parties.

Expert's right to apply to court for directions

32.5 (1) An expert witness may apply in writing to the court for directions to assist him or her in carrying out his or her functions and duty to the court as an expert witness.

(2) An expert witness who applies for directions under paragraph (1) need not give notice of the application to any party.

(3) The court may direct that –

(a) notice of an application under paragraph (1) be given to any party; or

(b) a copy of the application and any directions given be sent to any party.

Court's power to restrict expert evidence

32.6 (1) A party may not call an expert witness or put in the report of an expert witness without the court's permission.

(2) The general rule is that the court's permission is to be given at a case management conference.

(3) When a party applies for permission under this rule –

(a) that party must name the expert witness and identify the nature of his or her expertise; and

(b) any permission granted shall be in relation to that expert witness only.

(4) The oral or written expert witness' evidence may not be called or put in unless the party wishing to call or put in that evidence has served a report of the evidence which the expert witness intends to give.

(5) The court must direct by what date the report must be served.

(6) The court may direct that only part of an expert witness' report be disclosed.

General requirement for expert evidence to be given in written report

32.7 (1) Expert evidence is to be given in a written report unless the court directs otherwise.

(2) This rule is subject to any enactment restricting the use of "hearsay evidence".

Written questions to experts

32.8 (1) A party may put written questions to an expert witness instructed by another party or jointly about his or her report.

(2) Written questions under paragraph (1) –

(a) may be put once only;

(b) must be put within 28 days of service of that expert witness' report; and

(c) must only be in order to clarify the report; unless –

(i) the court permits; or

(ii) the other party agrees.

(3) An expert witness' answers to questions under this rule must be treated as part of that expert witness' report.

(4) If a party has put a written question to an expert witness instructed by another party in accordance with this rule and the expert witness does not answer the question, the court may make one or more of the following orders in relation to the party who instructed the expert, namely that –

(a) that party may not recover the fees and expenses of the expert witness from any other party;

(b) that party may not rely on the evidence of the expert witness;

(c) the party asking the questions may seek to obtain answers from another expert.

(5) This rule also applies where evidence from a single expert witness is to be used under rule 32.9.

Court's power to direct evidence by single expert

32.9 (1) If two or more parties wish to submit expert evidence on a particular issue, the court may direct that expert evidence be given by one expert witness.

(2) The parties referred to in paragraph (1) are known as "the instructing parties".

(3) If the instructing parties cannot agree who should be the expert witness, the court may –

(a) select the expert witness from a list prepared or identified by the instructing parties; or

(b) direct that the expert witness be selected in such other manner as the court may direct.

(4) The court may vary a direction given under this rule.

(5) The court may appoint a single expert witness instead of the parties instructing their own expert witnesses or may replace expert witnesses instructed by the parties.

Cross-examination of court appointed expert

32.10. If an expert appointed by the court under rule 32.9(5) gives oral evidence, the expert may be cross-examined by any party.

Instructions to single expert

32.11 (1) If the court gives directions under rule 32.9 for a single expert witness to be used, each instructing party may give instructions to the expert witness.

(2) When an instructing party gives instructions to the expert witness that party must, at the same time, send a copy of the instructions to the other instructing parties.

(3) The court may give directions about the arrangements for –

(a) any inspection, examination or experiment which the expert witness wishes to carry out; and

(b) the payment of the expert witness' fees and expenses.

(4) The court may, before an expert witness is instructed –

(a) limit the amount that can be paid by way of fees and expenses to the expert witness; and

(b) direct that the instructing parties pay that amount into court in such proportions as may be directed.

(5) Unless the court directs otherwise, the instructing parties are jointly and severally liable for the payment of the expert witness' fees and expenses.

Power of court to direct party to provide expert report

32.12 (1) If a party has access to information which is not reasonably available to the other party, the court may order that party –

(a) to arrange for an expert witness to prepare a report on any matter;

(b) if appropriate, to arrange for an examination to be carried out in relation to that matter; and

(c) to file the report and serve a copy on any other party.

(2) The court's powers under this rule may be exercised only on the application of a party.

Expert's report to be addressed to court

32.13 An expert witness must address his or her report to the court and not to any person from whom the expert witness has received instructions.

Contents of report

32.14 (1) An expert witness' report must –

(a) give details of the expert witness' qualifications;

(b) give details of any literature or other material which the expert witness has used in making the report;

(c) say who carried out any test or experiment which the expert witness has used for the report;

(d) give details of the qualifications of the person who carried out any such test or experiment;

(e) If there is a range of opinion on the matters dealt with in the report –

(i) summarise the range of opinion; and

(ii) give reasons for his or her opinion; and

(f) contain a summary of the conclusions reached.

(2) At the end of an expert witness' report there must be a statement that the expert witness –

(a) understands his or her duty to the court as set out in rules 32.3 and 32.4;

(b) has complied with that duty;

(c) has included in the report all matters within the expert witness' knowledge and area of expertise relevant to the issue on which the expert evidence is given; and

(d) has given details in the report of any matter which to his or her knowledge might affect the validity of the report.

(3) There must also be attached to an expert witness' report copies of –

(a) all written instructions given to the expert witness;

(b) any supplemental instructions given to the expert witness since the original instructions were given; and

(c) a note of any oral instruction given to the expert witness, and the expert must certify that no other instruction than those disclosed have been received by him or her from the party instructing the expert, the party's legal practitioner or any other person acting on behalf of the party.

(4) If a report refers to photographs, plans, calculations, survey reports or other similar documents, these must be provided to the opposite party at the same time as the service of the report.

(5) If it is not practicable to provide a copy of the documents referred to in paragraph (4), those documents must be made available for inspection by the other party or any expert witness instructed by that party within 7 days of a request to do so.

Meeting of experts

32.15 (1) The court may direct a meeting of expert witnesses of like speciality.

(2) The court may specify the issues which the expert witnesses must discuss.

(3) The contents of the discussion between the expert witnesses must not be referred to at the trial unless the parties agree.

(4) The meeting may take place in person, over the telephone or by any other suitable means.

(5) After the meeting, the expert witnesses must prepare for the court a statement of any issue within their expertise on which they –

(a) agree; and

(b) disagree, with their reasons for disagreeing.

(6) Instead of, or in addition to such statement, the court may direct that the expert witnesses prepare an agreed statement of the basic 'science' which applies to the matters relevant to their expertise.

(7) The statement referred to in paragraph (6) must be as short as practicable.

Consequence of failure to disclose expert's report

32.16 (1) A party who fails to comply with a direction to disclose an expert witness' report may not use the report at the trial or call the expert witness unless the court gives permission.

(2) The court may not give permission at the trial unless the party asking for permission can show that it was not reasonably practicable to have applied for relief at an earlier stage.

- Rule 26.8 deals with relief from sanctions.

Appointment of assessor

32.17 (1) The court may appoint an assessor to –

(a) advise the judge at the trial with regard to evidence of expert witnesses called by the parties;

(b) assist the court in understanding technical evidence; or

(c) provide a written report.

(2) On making an order under paragraph (1), the court must decide –

(a) what fee is to be paid to the assessor; and

(b) by whom.

(3) Notwithstanding paragraph (2), the court may ultimately order any party to pay the fee of the assessor.

(4) All communications apart from written instructions between the court and an assessor must be in open court.

(5) Before requesting a written report or opinion from an assessor the court must allow the parties to make submissions in respect of the form and content of the questions to be asked.

(6) Before giving judgment the court must provide the parties with the questions asked of, and any opinion given by the assessor and give them an opportunity to make submissions.

PART 33
Court Attendance by Witnesses and Depositions

Contents of this Part

Scope of this Part	Rule 33.1
Witness summonses	Rule 33.2
Issue of witness summons	Rule 33.3
Witness summons in aid of inferior court or tribunal	Rule 33.4
Time for serving witness summons	Rule 33.5
Compensation for loss of time	Rule 33.6
Evidence by deposition before examiner	Rule 33.7
Conduct of examination	Rule 33.8
Evidence without examiner being present	Rule 33.9
Enforcing attendance of witness	Rule 33.10
Special report	Rule 33.11
Fees and expenses of examiner	Rule 33.12
Order for payment of examiner's fees	Rule 33.13
Use of deposition at hearing	Rule 33.14
Where person to be examined is out of the jurisdiction – letter of request	Rule 33.15
Early appointment to produce documents	Rule 33.16

Scope of this Part

33.1 (1) This Part provides –

(a) for a party to obtain evidence prior to a hearing; and

(b) for the circumstances in which a person may be required to attend court to give evidence or to produce a document.

(2) In this Part, reference to a hearing includes a reference to the trial.

Witness summonses

33.2 (1) A witness summons is a document issued by the court, whether on its own motion or at the request of a party, requiring a witness to attend court –

(a) to give evidence; or

(b) to produce documents to the court.

(2) A witness summons must be in Form 12.

(3) There must be a separate witness summons for each witness.

(4) A witness summons may require a witness to produce documents to the court either on –

(a) the date fixed for the trial or the hearing of any application in the proceedings; or

(b) any other date the court may direct.

Issue of witness summons

33.3 (1) A witness summons is issued on the date entered on the summons by the court office.

(2) A party must obtain permission from the court when that party wishes to have –

(a) a witness summons issued less than 21 days before the date of the hearing; or

(b) a summons issued for a witness to attend court to give evidence or to produce documents on any date except the date fixed for the trial or the hearing of any application.

(3) An application for permission under paragraph (2) may be without notice but must be supported by evidence on affidavit.

(4) The court may set aside or vary a witness summons.

Witness summons in aid of inferior court or tribunal

33.4 (1) The court may issue a witness summons in aid of an inferior court or of a tribunal.

(2) The court may set aside a witness summons issued under this rule.

(3) In this rule –

"**inferior court or tribunal**" means any court or tribunal which does not have power to issue a witness summons in relation to proceedings before it.

Time for serving witness summons

33.5 (1) The general rule is that a witness summons is binding only if it is served at least 14 days before the date on which the witness is required to attend before the court or tribunal.

(2) The court may direct that a witness summons shall be binding although it will be served less than 14 days before the date on which the witness is required to attend before the court or tribunal.

(3) An application under paragraph (2) may be made without notice but must be supported by evidence on affidavit.

(4) A witness summons which –

(a) is served in accordance with this rule; and

(b) requires the witness to attend court to give evidence,

is binding until the conclusion of the hearing at which the attendance of the witness is required.

Compensation for loss of time

33.6 At the time of service of a witness summons the witness must be offered or paid –

(a) a sum reasonably sufficient to cover his or her subsistence and expenses in travelling to and from the court; and

(b) such sum by way of compensation for loss of time as may be specified in a practice direction.

Evidence by deposition before examiner

33.7 (1) A party may apply for an order for a person to be examined before the trial or the hearing of any application in the proceedings.

(2) In this rule –

"**deponent**" means a person from whom evidence is to be obtained following any order under this rule; and

"**deposition**" means the evidence given by the deponent.

(3) An order under this rule shall be for a deponent to be examined on oath before –

(a) a judge;

(b) a legal practitioner who has practised for at least 5 years;

(c) a magistrate;

(d) a master;

(e) a registrar; or

(f) the Chief Registrar.

(4) A person listed in paragraph (3) is referred to as an **"examiner"**.

(5) The order must state –

(a) the date, time and place of the examination; and

(b) the name of the examiner.

(6) The order may require the production of any document which the court considers may be necessary for the purposes of the examination.

(7) Rule 2.7 applies to an examination under this rule.

(8) At the time of service of the order the deponent must be offered or paid travelling expenses and compensation for loss of time in accordance with rule 33.6.

(9) An application may be made by any party whether or not that party would otherwise call the witness.

(10) If the application is made by the party who would call the witness to give evidence, the court may order that party to serve a witness statement or witness summary in relation to the evidence to be given by the person to be examined.

- Part 29 contains general rules about witness statements and witness summaries.

Conduct of examination

33.8 (1) Subject to any directions contained in the order for examination, the examination must be conducted in the same way as if the witness were giving evidence at a trial.

(2) If all the parties are present, the examiner may, with the consent of the parties, conduct the examination of a person not named in the order for examination.

(3) The examiner may conduct the examination in private if he or she considers it appropriate to do so.

(4) The examiner must ensure that a full record is taken of the evidence given by the witness.

(5) If any person being examined objects to answering any question put to him or her, the ground of the objection to the question must be set out in the deposition or in a statement annexed to the deposition.

(6) The examiner must send the original deposition to the court office and a copy of the deposition to –

(a) every party to the proceedings; and

(b) the deponent.

(7) If the witness or any legal practitioner present at the hearing is of the opinion that the deposition does not accurately represent the evidence, he or she may –

(a) endorse on the copy deposition the corrections which in his or her opinion should be made;

(b) file the endorsed copy deposition; and

(c) serve a copy of it on all other parties.

Evidence without examiner being present

33.9 (1) With the consent of the parties, the court may order that the evidence of a witness be taken as if before an examiner, but without an examiner being appointed or present.

(2) Where such an order is made then, subject to any directions that may be contained in the order –

(a) a legal practitioner for any party may administer the oath to a witness;

(b) any person transcribing evidence given need not be sworn but must certify as correct the transcript of the evidence and deliver it to the legal practitioner for the party whose witness was examined;

(c) the legal practitioner for the party whose witness was examined must file the original transcript and deliver a true copy to all other parties and to the witness who was examined;

(d) the party whose witness is to be examined must provide a means of recording the evidence of the witness; and

(e) if the witness or any legal practitioner present at the hearing is of the opinion that the transcript does not accurately represent any evidence given, he or she may –

(i) endorse on the copy transcript the corrections which in his or her opinion should be made;
(ii) file the endorsed copy transcript; and
(iii) serve a copy of it on all other parties.

Enforcing attendance of witness

33.10 (1) If a person served with a witness summons to attend before an examiner –

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

the party requiring the deposition may file a certificate signed by the examiner of such failure or refusal.

(2) On the certificate being filed, the party requiring the deposition may apply to the court for an order requiring the person to attend, to be sworn, to affirm or to answer any question or produce any document, as the case may be.

(3) An application for an order under this rule may be made without notice.

(4) Any order made by the court must be served personally on the person served with the witness summons and be endorsed with a notice in the form given in rule 53.3(b).

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

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

- Part 53 deals with the procedure relating to committal for contempt of court.

Special report

33.11 The examiner may make a special report to the court with regard to the –

(a) absence of any person; or

(b) conduct of any person present,

when the deposition was taken.

Fees and expenses of examiner

33.12 (1) On appointing an examiner the court must fix the fee to be paid to the examiner for carrying out the examination.

(2) If an examination is carried out by a person other than a legal practitioner, the fee must be paid into the court office.

(3) The party who obtained the order must also pay the fee and all reasonable travelling and other expenses including charges for a room (other than the examiner's own chambers or office) where the examination takes place.

(4) Notwithstanding paragraphs (1) and (3), the court may ultimately order any party to bear the costs of the examination.

Order for payment of examiner's fees

33.13 (1) The examiner may report to the court the fact that any fees or expenses due to him or her have not been paid and the court may make an order that the party who obtained the order for the examination should pay such fees and expenses.

(2) An order under paragraph (1) may be enforced as a money judgment.

Use of deposition at hearing

33.14 (1) A deposition ordered under rule 33.7 or 33.9 may be given in evidence at the trial unless the court orders otherwise.

(2) A party intending to put in evidence a deposition at a hearing must serve notice of such intention on every other party at least 21 days before the date fixed for the hearing.

(3) The court may require a deponent to attend the hearing and give oral evidence.

Where person to be examined is out of the jurisdiction – letter of request

33.15 (1) If a party wishes to take a deposition from a party outside the jurisdiction, the court may direct the issue of a letter of request to the judicial authorities of the country in which the proposed deponent is.

(2) A letter of request is a request to a judicial authority to take the evidence of that person, or arrange for it to be taken.

(3) If the government of the country to which the letter of request is sent allows a person appointed by the court to examine a person in that country, the court may make an order appointing an examiner for that purpose.

(4) A person may be examined under this rule on oath or affirmation or in accordance with any procedure permitted in the country in which the examination is to take place.

(5) If the court makes an order for the issue of a letter of request, the party who sought the order must file –

(a) the following documents and, except where paragraph (6) applies, a translation of these –

(i) a draft letter of request;

(ii) a list of questions or the subject matter of questions to be put to the person to be examined; and

(iii) a statement of the issues relevant to the proceedings; and

(b) an undertaking to be responsible for the expenses of the minister with responsibility for foreign affairs in relation to the request.

(6) There is no need to file a translation if English is one of the official languages used in the court of the country to which the request is to be sent where the examination is to take place and the record is produced in English.

Early appointment to produce documents

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

(2) The only type of document that a summons under this rule can require a person to produce is a document which that person could be compelled to produce at the trial.

PART 34

Requests for Information

Contents of this Part

Right of parties to obtain information	Rule 34.1
Orders compelling reply to request for information	Rule 34.2
Information obtained under Part 34 not to be used in other proceedings	Rule 34.3
Certificate of truth	Rule 34.4

Right of parties to obtain information

34.1 (1) This Part enables a party to obtain from any other party information about any matter which is in dispute in the proceedings.

(2) To obtain the information referred to in paragraph (1), the party must serve on the other party a request identifying the information sought.

Orders compelling reply to request for information

34.2 (1) If a party does not, within a reasonable time, give information which another party has requested under rule 34.1, the party who served the request may apply for an order compelling the other party to do so.

(2) An order may not be made under this rule unless it is necessary to dispose fairly of the claim or to save costs.

(3) When considering whether to make an order, the court must have regard to –

(a) the likely benefit which will result if the information is given;

(b) the likely cost of giving it; and

(c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

Information obtained under Part 34 not to be used in other proceedings

34.3 A party may use information obtained –

(a) in compliance with an order under rule 34.2; or

(b) in response to a request under rule 34.1,

only in the proceedings in which the request or order was made.

Certificate of truth

34.4 Any information provided under this Part must be verified by a certificate of truth in accordance with rule 3.11.

PART 35
Offers to Settle

Contents of this Part

Scope of this Part	Rule 35.1
Introductory	Rule 35.2
Making offer to settle	Rule 35.3
Time when offer to settle may be made	Rule 35.4
Procedure for making offer to settle	Rule 35.5
Extent to which offer to settle covers interest, costs or counterclaim	Rule 35.6
Offer to settle made after interim payment	Rule 35.7
Offer to settle part of claim	Rule 35.8
Time limit for accepting offer to settle	Rule 35.9
Procedure for acceptance	Rule 35.10
Effect of acceptance – generally	Rule 35.11
Effect of acceptance – more than two parties	Rule 35.12
Costs of offeror and offeree where offer is accepted – defendant's offer	Rule 35.13
Costs of offeror and offeree where offer is accepted – claimant's offer	Rule 35.14
Costs where offer not accepted – general rules	Rule 35.15
How costs are to be dealt with	Rule 35.16

Scope of this Part

35.1 (1) This Part contains rules about –

(a) offers to settle which a party may make to another party; and

(b) the consequences of such offers.

(2) This Part does not limit a party's right to make an offer to settle otherwise than in accordance with this Part.

(3) The rules in this Part are subject to rule 23.12 (compromise, etc. on behalf of a minor or patient).

- Part 36 deals with payments into court.

Introductory

35.2 (1) An offer to settle may be made in any proceedings whether or not there is a claim for money.

(2) The party who makes the offer is called the "offeror".

(3) The party to whom the offer is made is called the "offeree".

(4) An offer to settle is made when it is served on the offeree.

Making offer to settle

35.3 (1) A party may make an offer to another party which is expressed to be "without prejudice" and in which the offeror reserves the right to make the terms of the offer known to the court after judgment is given with regard to –

(a) the allocation of the costs of the proceedings; and

(b) (in the case of an offer by the claimant) the question of interest on damages.

(2) The offer may relate to the whole of the proceedings or to part of them or to any issue that arises in them.

Time when offer to settle may be made

35.4 A party may make an offer to settle under this Part at any time before the beginning of the trial.

Procedure for making offer to settle

35.5 (1) An offer to settle must be in writing.

(2) The offeror must serve the offer on the offeree and a copy on all other parties.

(3) Neither the fact nor the amount of the offer or any payment into court in support of the offer must be communicated to the court before all questions of liability and the amount of money to be awarded (other than costs and interest) have been decided.

(4) Paragraph (3) does not apply to an offer which has been accepted or where a defence of tender before claim has been pleaded.

Extent to which offer to settle covers interest, costs or counterclaim

35.6 (1) An offer to settle a claim for damages must state whether or not the amount offered includes interest or costs.

(2) If the offer covers interest or costs it must state the amount which is included for each.

(3) If there is a counterclaim as well as a claim, the offer must state in the case of an offer by the –

(a) claimant – whether or not it takes into account the counterclaim; or

(b) defendant – whether or not it takes into account the claim,

and in each case in what amount.

Offer to settle made after interim payment

35.7 If an interim payment has been made, whether voluntarily or under an order under Part 17, any subsequent offer to settle must state whether it is in addition to the interim payment or whether it is intended to replace it.

Offer to settle part of claim

35.8 (1) An offer to settle must state whether or not it covers the whole or part of the claim.

(2) If it does not state that it covers part of the claim, it is to be taken to cover the whole claim.

(3) If the offer covers only part or parts of the claim it must –

(a) identify the part or parts of the claim in respect of which it is made; and

(b) if more than one, state what is offered in respect of each part covered by the offer.

Time limit for accepting offer to settle

35.9 (1) The offeror may state in the offer that it is open for acceptance until a specified date.

(2) The offer shall have no effect on any decision that the court makes as to the consequences of the offer unless it is open for acceptance for at least 21 days.

(3) Acceptance of the offer after the beginning of the trial shall have no effect on any decision that the court makes as to the consequences of such acceptance.

(4) The court may permit an offeree to accept an offer after the specified date on such terms as the court considers just.

Procedure for acceptance

35.10 (1) To accept an offer a party must –

(a) serve written notice of acceptance on the offeror; and

(b) send a copy of the notice to any other party.

(2) The offeree accepts the offer when notice of acceptance is served on the offeror.

(3) If an offer or payment into court under Part 36 is made in proceedings to which rule 23.12 applies –

(a) the offer or payment may be accepted only with the permission of the court; and

(b) no payment out of any sum paid into court may be made without a court order.

- Rule 23.12 deals with compromises, etc. by or on behalf of a minor or patient.

Effect of acceptance – generally

35.11 (1) If the offeree accepts an offer which is not limited in accordance with rule 35.8, the claim is stayed upon the terms of the offer.

(2) If the offer covers a claim and a counterclaim, both the claim and the counterclaim are stayed on the terms of the offer.

(3) In any other case, the proceedings are stayed to the extent that they are covered by the terms of the offer.

(4) If the court's approval is required for the settlement of the proceedings, any stay arising on the acceptance of the offer has effect only when the court gives its approval.

- Rule 23.12 deals with the settlement of proceedings involving minors and patients.

(5) A stay arising on the acceptance of an offer does not affect proceedings to deal with any question of costs relating to the proceedings which have been stayed and which have not been dealt with by the offer.

(6) If money has been paid into court in support of an offer, a stay arising out of the acceptance of the offer does not affect any proceedings to obtain payment out of court.

- Part 36 deals with payments into court.

(7) If an offer is accepted and its terms are not complied with, any stay arising on acceptance ceases to have effect and –

(a) the proceedings or the part which was stayed may continue; and

(b) either party may apply to the court to enforce those terms.

(8) If a party claims damages for breach of contract arising from an alleged failure of another party to carry out the terms of an agreed offer, that party may do so by applying to the court without the need to commence new proceedings unless the court orders otherwise.

Effect of acceptance – more than two parties

35.12 (1) If there is more than one defendant whom the claimant claims are jointly and severally, or severally, liable and the claimant –

(a) agrees to settle the claim as against one or more, but not all of them; and

(b) discontinues the claim against any other defendant,

the claimant is liable to pay the costs of that defendant unless the court otherwise orders.

- Part 37 deals with discontinuance.

(2) If a claimant accepts an offer made by one of a number of joint defendants –

(a) paragraph (1) does not apply; and

(b) the defendant who made the offer is liable for the costs of the other joint defendants.

(3) If–

(a) there is more than one claimant; and

(b) one or more, but not all, of them agree to settle,

the other claimants may continue the proceedings.

Costs of offeror and offeree where offer is accepted – defendant's offer

35.13 (1) If the –

(a) defendant makes an offer to settle; and

(b) claimant accepts the offer within any period stated for accepting it and before the beginning of the trial,

the claimant is entitled to the costs of the proceedings up to the date of acceptance of the offer.

(2) If the defendant permits a claimant to accept an offer after the time stated for accepting it, the general rule is that the –

(a) claimant is entitled to costs up to the end of the period stated for accepting the offer; and

(b) defendant is entitled to any costs incurred between the end of the period stated for accepting the offer and the date when the offeree accepts the offer,

unless the court orders otherwise.

(3) If the settlement relates only to part of the proceedings and the remaining part or parts of the proceedings continue –

(a) the claimant is entitled under this rule only to the costs relating to that part of the proceedings which has been settled; and

(b) unless the court orders otherwise or the defendant agrees,

the claimant may not recover any such costs, nor have them quantified, until the conclusion of the rest of the proceedings, when the court can deal with the costs of the whole of the proceedings including any costs relating to those parts of the proceedings that were not settled.

Costs of offeror and offeree where offer is accepted – claimant's offer

35.14 If the claimant makes an offer which is accepted by the defendant, the claimant is entitled to costs up to the time when notice of acceptance of the offer is served.

Costs where offer not accepted – general rules

35.15 (1) The general rule for defendants' offers is that, if the defendant makes an offer to settle which is not accepted and in –

(a) the case of an offer to settle a claim for damages – the court awards less than 85% of the amount of the defendant's offer; or

(b) any other case – the court considers that the claimant acted unreasonably in not accepting the defendant's offer,

the claimant must pay any costs incurred by the defendant after the latest date on which the offer could have been accepted without the court's permission.

(2) If a claimant makes an offer to settle and in –

(a) the case of an offer to settle a claim for damages – the court awards an amount which is equal to or more than the amount of the offer; or

(b) any other case – the court considers that the defendant acted unreasonably in not accepting the claimant's offer,

the court may, make an award of interest as it deems fit taking into account all of the relevant circumstances of the case.

(3) The court may decide that the general rule under paragraph (1) is not to apply in a particular case.

(4) In deciding whether the general rule should not apply and in considering the exercise of its discretion under paragraph (2), the court may take into account the –

(a) conduct of the offeror and the offeree with regard to giving or refusing information for the purposes of enabling the offer to be made or evaluated;

(b) information available to the offeror and the offeree at the time that the offer was made;

(c) stage in the proceedings at which the offer was made; and

(d) terms of any offer.

(5) This rule applies to offers to settle at any time, including before proceedings were started.

How costs are to be dealt with

35.16 (1) If an offer to settle is accepted, the parties may agree the amount of costs that are due to be paid under this Part.

(2) If the amount of costs falls to be quantified by the court, then the general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(3) If an offer to settle –

(a) is accepted after the time originally stated for accepting it under rule 35.10(2); or

(b) deals only with part of the case in accordance with rule 35.13(3),

the amount of costs to be paid to the party entitled to such costs must be determined by the court and, in determining the quantum of costs, the court must take into account the scale of prescribed costs or the amount of the budgeted costs as the case may be.

(4) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

PART 36

Payments into Court to Support Offers under Part 35 and under Court Order

Contents of this Part

Scope of this Part	Rule 36.1
Payments into court to support offers to settle	Rule 36.2
Right to payment out on acceptance of offer	Rule 36.3
Cases where payment out requires court order	Rule 36.4
Money paid into court under order	Rule 36.5
Money paid into court as condition for permission to defend or to continue to defend	Rule 36.6
Proceedings under Fatal Accidents Acts	Rule 36.7

Scope of this Part

36.1 (1) This Part deals with payments into court made –

(a) in accordance with an order of court;

(b) to support a defence of tender; and

(c) to support an offer of payment under Part 35.

(2) A defendant is not obliged to make a payment into court to support an offer under Part 35.

(3) With the –

(a) agreement of the claimant; or

(b) permission of the court,

a defendant may pay money in support of an offer of payment into an interest bearing account on such terms as to the –

(i) names of the account holders; and

(ii) terms on which money may be paid out of the account,

as may be ordered by the court or agreed between the parties.

Payments into court to support offers to settle

36.2 (1) A defendant who offers to settle the whole or part of a claim may pay money into court in support of the offer.

(2) A defendant may not pay money into court unless the –

(a) defendant certifies that such payment is in support of an offer to settle;

(b) payment is made to support a defence of tender; or

(c) payment is made under a court order.

(3) A payment into court may not be made until a claim is issued.

(4) A payment into court to support an offer may be made –

(a) when the offer is made; or

(b) at any time while the offer is outstanding.

(5) A defendant who pays money into court must –

(a) serve notice of payment on the claimant; and

(b) file a copy of the notice with a statement of the date (if any) by which the offer is open for acceptance under rule 35.9(1).

Right to payment out on acceptance of offer

36.3 (1) The general rule is that a claimant who accepts an offer to settle –

(a) within the period stated; or

(b) where no period is stated for accepting it in the defendant's offer,

is entitled to payment of the sum which the defendant paid into court to support the offer without needing a court order.

(2) To obtain payment, the claimant must file a request for payment certifying that the offer has been accepted in accordance with paragraph (1)(a) or (b).

(3) The general rule is qualified by rule 36.4.

Cases where payment out requires court order

36.4 (1) If a claimant accepts money paid into court –

(a) after the end of the period stated for accepting it;

(b) by one or more, but not all, of a number of defendants;

(c) to settle a claim to which –

(i) Part 23 (claims by minors and patients); or

(ii) rule 36.7 (proceedings under Fatal Accidents Acts) apply; or

(d) with a defence of tender before claim,

the money in court may only be paid out under an order of the court.

(2) An order under paragraph (1) (c) may not be made by consent.

(3) A court order is required for payment out of money paid into court where –

(a) the claimant accepts money paid into court after the trial has begun; and

(b) all further proceedings on the claim or that part of it to which the acceptance relates are stayed.

(4) An order under this rule must deal with the costs of the proceedings which have been stayed.

Money paid into court under order

36.5 (1) When a party makes a payment into court under a court order that party must give notice of the payment to every other party.

(2) Money paid into court under a court order may not be paid out unless the court gives permission.

(3) Paragraph (2) does not apply where –

(a) the money is paid into court by a defendant;

(b) in accordance with rule 36.6(2), that defendant chooses to treat the money paid into court as if it were payment into court in support of an offer to settle; and

(c) the claimant accepts the offer to settle.

Money paid into court as condition for permission to defend or to continue to defend

36.6 (1) This rule applies where the court makes an order permitting a defendant to –

(a) continue to defend; or

(b) defend,

on condition that the defendant makes a payment into court.

(2) If –

(a) a defendant makes such a payment into court; and

(b) makes an offer to settle (whether before or after the order to pay money into court),

the defendant may choose to treat the whole or any part of the money paid into court as if it were a payment into court made in support of the offer to settle.

(3) To do this the defendant must –

(a) file a notice that the defendant so chooses; and

(b) serve a copy of it on every other party to the proceedings.

Proceedings under Fatal Accidents Acts

36.7 (1) If a single sum of money is paid into court in satisfaction of proceedings arising under a Fatal Accidents Act and that sum is accepted, the court must apportion that sum between the different causes of action when –

(a) giving directions under rule 23.13; or

(b) authorising its payment out of court.

(2) If in proceedings arising under a Fatal Accidents Act a claim is made by more than one person and a single sum of money is paid into or apportioned by the court to the cause of action under the Act and is accepted by such persons, the court must apportion the payment between those persons.

PART 37
Discontinuance

Contents of this Part

Scope of this Part	Rule 37.1
Right to discontinue claim	Rule 37.2
Procedure for discontinuing	Rule 37.3
Right to apply to have notice of discontinuance set aside	Rule 37.4
Effect of discontinuance	Rule 37.5
Liability for costs	Rule 37.6
Quantification of costs	Rule 37.7
Discontinuance and subsequent proceedings	Rule 37.8

Scope of this Part

37.1 (1) The rules in this Part set out the procedure by which a claimant may discontinue all or any part of a claim.

(2) A claimant who –

(a) claims more than one remedy; and

(b) subsequently abandons a claim to one or more remedies but continues with the claim for the other remedies,

is not treated as discontinuing part of a claim for the purposes of this Part.

- Rule 42.7 deals with consent orders which may include orders bringing a claim to an end by way of a consent judgment or otherwise.

Right to discontinue claim

37.2 (1) The general rule is that a claimant may discontinue all or part of a claim without the permission of the court.

(2) However –

(a) a claimant needs permission from the court to discontinue all or part of a claim in relation to which –

(i) any party has given an undertaking to the court; or

(ii) the court has granted an interim injunction;

(b) a claimant who has received an interim payment in relation to a claim (whether voluntarily or pursuant to an order under Part 17) may discontinue only if the –

(i) court gives permission; or

(ii) defendant who made the payment consents in writing;

(c) if there is more than one claimant, a claimant may not discontinue unless –

(i) every other claimant consents in writing; or

(ii) the court gives permission.

(3) If there is more than one defendant the claimant may discontinue all or part of the claim against all or any of the defendants.

Procedure for discontinuing

37.3 (1) To discontinue a claim or any part of a claim a claimant must –

(a) serve a notice of discontinuance on every other party to the claim; and

(b) file a copy of it.

(2) The claimant must certify on the filed copy that notice of discontinuance has been served on every other party to the claim.

(3) If the claimant needs the consent of some other party, a copy of the necessary consent must be attached to the filed copy of the notice of discontinuance.

(4) If the claimant needs permission from the court, the notice of discontinuance must contain details of the order by which the court gave permission.

(5) If there is more than one defendant, the notice of discontinuance must specify against which defendant or defendants the claim is discontinued.

Right to apply to have notice of discontinuance set aside

37.4 (1) Where -

(a) the claimant requires the defendant's consent or the permission of the court to discontinue a claim and the claimant discontinues without the consent of the defendant or the permission of the court; or

(b) the claimant has failed to serve a defendant as required by rule 37.3(1)(a),

the defendant may apply to have the notice of discontinuance set aside.

(2) A defendant may not apply under this rule more than 28 days after the date the notice of discontinuance was served on that defendant.

Effect of discontinuance

37.5 (1) Discontinuance against any defendant takes effect on the date when the notice of discontinuance is served on that defendant under rule 37. 3(1) (a).

(2) A claim or the relevant part of a claim is brought to an end as against that defendant on that date.

(3) However, this does not affect –

(a) any proceedings relating to costs; or

(b) the right of the defendant under rule 37.4 to apply to have the notice of discontinuance set aside.

Liability for costs

37.6 (1) Unless the –

(a) parties agree; or

(b) court orders otherwise,

a claimant who discontinues is liable for the costs incurred by the defendant against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If a claim is only partly discontinued –

(a) the claimant is only liable for the costs relating to that part of the claim which is discontinued; and

(b) unless the court orders otherwise, the costs which the claimant is liable to pay are not to be quantified until the conclusion of the rest of the claim.

Quantification of costs

37.7 (1) The general rule is that, unless an order has been made for budgeted costs under rule 65.8, the costs are to be determined in accordance with the scale of prescribed costs contained in Part 65, Appendices B and C.

(2) If the claimant discontinues part of the case only, the amount of costs must be quantified by the court when the remainder of the claim is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

Discontinuance and subsequent proceedings

37.8 If the claimant –

(a) discontinues a claim after the defendant against whom the claim is discontinued has filed a defence;

(b) makes a subsequent claim against the same defendant arising out of facts which are the same or substantially the same as those relating to the discontinued claim; and

(c) has not paid the defendant's costs of the discontinued claim,

the court may stay the subsequent claim until the costs of the discontinued claim are paid.

PART 38
Pre-Trial Review

Contents of this Part

Scope of this Part	Rule 38.1
Direction for pre-trial review	Rule 38.2
Rules relating to case management conference to apply	Rule 38.3
Who is to conduct pre-trial review	Rule 38.4
Parties to prepare pre-trial memorandum	Rule 38.5
Directions at pre-trial review	Rule 38.6

Scope of this Part

38.1 This Part deals with the pre-trial review which is to be held shortly before trial if the court so orders.

Direction for pre-trial review

38.2 (1) At any case management conference and at any subsequent hearing in the claim other than the trial, the court must consider whether a pre-trial review should be held to enable the court to deal justly with the claim.

(2) A party may apply for a direction that a pre-trial review be held.

(3) An application for a pre-trial review must be made at least 60 days before the trial date or the beginning of any trial period fixed under rule 27.5(3).

(4) The court office must give each party at least 14 days' notice of the date, time and place for the pre-trial review.

Rules relating to case management conference to apply

38.3 Parts 25 and 26, where appropriate, apply to a pre-trial review as they do to a case management conference.

Who is to conduct pre-trial review

38.4 Wherever practicable the pre-trial review is to be conducted by the trial judge.

Parties to prepare pre-trial memorandum

38.5 (1) The parties must seek to agree on and file at the court office a pre-trial memorandum not less than 7 days before the pre-trial review.

(2) If the parties are not able to agree on a memorandum, each party must file its own memorandum and serve a copy on all other parties not less than 3 days before the date fixed for the pre-trial review.

(3) A pre-trial memorandum must contain –

(a) a concise statement of the nature of the proceedings;

(b) a statement of the issues to be determined at the trial;

(c) details of any admissions made; and

(d) the factual and legal contentions of the party or parties filing it.

Directions at pre-trial review

38.6 (1) At the pre-trial review the judge must give directions as to the conduct of the trial to ensure the fair, expeditious and economic trial of the issues.

(2) In particular, the court may –

(a) fix the date for the trial (if one has not been previously fixed) and decide on the total time to be allowed for the trial;

(b) direct either party to provide further information to the other;

(c) direct how that time shall be allocated between the parties;

(d) direct the parties jointly to prepare one or more of –

(i) a core bundle of documents (that is, a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial);

(ii) an agreed statement of facts;

(iii) an agreed statement of the basic technical, scientific or medical matters in issue;

(iv) an agreed statement as to any relevant specialist area of law, which statement shall not be binding on the trial judge;

(e) direct when and by whom the documents should be filed at the court;

(f) direct whether or not there are to be any opening or closing addresses and the time to be allocated to each;

(g) give directions as to the extent to which evidence may be given in written form;

(h) give directions as to the procedure to be followed at the trial; and

(i) give directions for the filing by each party and service on all other parties of one or more of the following –

(i) a chronology of relevant events;
(ii) a list of authorities which it is proposed to cite in support of those propositions;
(iii) a skeleton argument; and
(iv) a summary of any legal propositions to be relied on at the trial.

PART 38A
Judicial Settlement Conferences

Contents of this Part

Scope of this Part	Rule 38A.1
Docketing for judicial settlement conferences	Rule 38A.2
Court may assist in negotiating for settlement before a hearing	Rule 38A.3
Court may assist in negotiating for settlement during a hearing	Rule 38A.4
Directions for mediation or other alternative dispute resolution mechanism	Rule 38A.5
Rules relating to case management conference to apply	Rule 38A.6
Confidentiality	Rule 38A.7
Preparation for judicial settlement conference	Rule 38A.8
Attendance at judicial settlement conference	Rule 38A.9
Non-attendance at judicial settlement conference and costs consequences	Rule 38A.10
Judicial settlement conference directions	Rule 38A.11
Conclusion of judicial settlement conference	Rule 39A.12
Where judicial settlement conference is unsuccessful	Rule 38A.13
Costs	Rule 38A.14

Scope of this Part

38A.1 (1) This Part deals with a judicial settlement conference which is intended to complement the provisions for mediation as an alternative dispute resolution mechanism for promoting the early disposition of cases.

(2) The purpose of this Part is to facilitate the making of an order or recommendation for a judicial settlement conference designed to assist the parties in their negotiation of a settlement of the proceedings or of any of the issues in the proceedings.

(3) This Part contemplates judicial involvement in the settlement process at two stages -

(a) during the case management conference process and the stages leading up to trial or the hearing of an appeal; and

(b) during the hearing or trial provided it is undertaken with the parties' consent.

(4) In conducting a judicial settlement conference, a judge or master may assist the parties in evaluating the merits of the dispute and may also provide an evaluation or an opinion of the likely outcome of the dispute.

(5) In this Part -
"court" means the High Court and where appropriate, the Court of Appeal;
"judge" means judge of the High Court and where appropriate, Justice of Appeal; and
"relevant enactment" means the Evidence Act or similar enactment in force in a Member State or Territory.

Docketing for judicial settlement conferences

38A.2 (1) A judicial settlement conference may be held virtually or in person by any judge or master resident in any Member State or Territory via a random docket system.

(2) The pool of judges and masters available to conduct a judicial settlement conference shall be fixed by the Chief Justice and the responsibility for docketing shall be assigned to either a judge or master as the Chief Justice may direct from time to time.

Court may assist in negotiating for settlement before a hearing

38A.3 (1) A judge or master may, at any time before the hearing of any proceedings, convene a conference of the parties in chambers for the purpose of negotiating for a settlement of the proceedings or of any issue in those proceedings, and may assist in those negotiations.

(2) A judge or master who presides at a conference under paragraph (1) may not preside at or take any further part in any proceedings relating to the case unless -

(a) all parties taking part in the conference consent; and
(b) the judge or master is satisfied there are no circumstances that would make it inappropriate for the judge or master to do so.

Court may assist in negotiating for settlement during a hearing

38A.4 (1) A judge or master may, with the consent of the parties, at any time during the hearing of any proceedings, convene a conference of the parties for the purpose of negotiating for a settlement of the proceedings or of any issue in those proceedings.

(2) A judge or master who convenes a conference under paragraph (1) may not assist in the negotiations, but must arrange for another judge or master to do so unless -

(a) the parties agree that the judge or master should assist in the negotiations and continue to preside at the hearing; and

(b) the judge or master is satisfied that there are no circumstances that would make it appropriate for the judge or master to do so.

Directions for mediation or other alternative dispute resolution mechanism

38A.5 A judge or master may at any time, with the consent of the parties, make an order directing the parties to attempt to settle their dispute by mediation or other alternative dispute resolution mechanism (to be specified in the order) agreed to by the parties.

Rules relating to case management conferences to apply

38A.6 (1) Part 25 of these rules, where appropriate, applies to judicial settlement conferences.

(2) The general powers of case management under Part 26 shall not be exercised by the judge or master at a judicial settlement conference.

Confidentiality

38A.7 (1) The parties, and the judge or master who presides at a judicial settlement conference or assists in negotiations under this rule must not disclose any statement made during a conference.

(2) This rule must be read together with any relevant provisions of the relevant Evidence Acts or any other relevant enactment or law dealing with privileged information.

Preparation for judicial settlement conference

38A.8 For effectively promoting settlement, the legal practitioners for the parties must be prepared, at a case management conference or pre-trial review or at any other appropriate stage of the proceedings as directed by a judge or master and in keeping with any Practice Direction made applicable to this Part, to deal with the following matters -

(a) what information should be exchanged prior to a settlement conference;

(b) who should be at the settlement conference;
(c) what is the best time in advance of the trial to hold a settlement conference;
(d) what is the estimated time required for the settlement conference;
(e) whether there is a need for any special aids for the settlement conference, e.g. technological equipment such as video links for parties overseas etc.;
(f) who has the burden of proof on specific issues – is there a need to reverse the normal order for the exchange of memoranda for the settlement conference; and
(g) if mediation is the preferred option for resolution of the dispute, then who is the suggested mediator, what time constraints are involved in setting up the mediation and what review date should follow the proposed mediation as far as the court is concerned and otherwise the most appropriate course to be adopted in accordance with the Mediation Practice Direction.

Attendance at judicial settlement conference

38A.9 All parties to the proceedings are required to attend the judicial settlement conference or be represented at the conference by a person who has authority to negotiate, enter into and execute a settlement agreement.

Non-attendance at judicial settlement conference and costs consequences

38A.10 (1) A party who fails to attend a judicial settlement conference or refuses to participate at or during the conference may be ordered to pay the costs of the conference or aborted conference.

(2) A judge or master conducting a judicial settlement conference may refer the conduct of a party at or during a settlement conference to the docketed judge or master for a determination of any costs consequences if the matter is not resolved and proceeds to trial.

(3) Where a judge or master conducting a judicial settlement conference is desirous of referring the conduct of a party to the docketed judge or master for consideration of costs consequences, such referral must form part of the settlement conference report prepared by the judge or master to the docketed judge or master.

Judicial settlement conference directions

38A.11 A judge or master may, either at the case management conference or pre-trial review or at any stage of the proceedings leading up to trial or the hearing of an appeal, give directions for a judicial settlement conference in Form 12A and such other directions as may be considered necessary for promoting an effective judicial settlement conference.

Conclusion of judicial settlement conference

38A.12 (1) Where the parties arrived at a settlement agreement, the judge or master shall within 7 days submit a report, in Form 12B, to the docketed judge or master who shall then consider and give directions on whether any trial dates fixed may be vacated and any trial directions be rescinded, or what further steps are required to be taken to facilitate the implementation of the settlement agreement including fixing a reporting date to be held in chambers or directing when a notice of discontinuance is to be filed as may be deemed appropriate in the circumstances.

(2) Where the parties arrive at a settlement agreement, this agreement must be filed at the court office in Form 12C within 7 days or such extended period as the court may allow for the agreement to be made a consent order of the court.

(3) In cases where the court's approval of the agreement is required, the agreement shall not take effect until the court's approval is sought on application and the court makes an order approving the terms of the agreement.

Where judicial settlement conference is unsuccessful

38A.13 (1) If no settlement agreement is reached by the parties at the judicial settlement conference, the judge or master shall within 7 days submit a report in Form 12B to the docketed judge or master stating that no settlement has been reached.

(2) Upon receipt of the report in paragraph (1), the docketed judge or master will -

(a) attempt a complete identification of all the issues with the parties or give a specific direction for the filing of memoranda by the parties so that this can occur;

(b) ascertain what further steps are required before the trial of the proceedings; or

(c) give further case management directions or schedule a trial date and make trial directions, as the case may be, if that has not already occurred.

Costs

38A.14 Where there has been a settlement of the issues in a matter referred to a settlement conference but there is no agreement by the parties on the issue of costs, the docketed judge or master shall determine the issue of costs of the proceedings.

PART 39
Trial

Contents of this Part

Documents for use at trial	Rule 39.1
Cross-examination	Rule 39.2
Written submissions	Rule 39.3
Failure of party to attend trial	Rule 39.4
Applications to set aside judgment given in party's absence	Rule 39.5
Adjournment of trial	Rule 39.6
Inspection	Rule 39.7

Documents for use at trial

39.1 (1) At least 21 days before the date fixed for the trial, all parties must –

(a) inform the claimant of all the documents; and

(b) serve on the claimant all documents not already in the possession of the claimant, that they wish to have included in the bundle of documents to be used at the trial.

(2) The claimant must prepare a bundle including all the documents which any party wishes to make use of at the trial.

(3) The bundle of documents should separate those which are agreed and those which are not agreed.

(4) The claimant must paginate and index the bundle of documents.

(5) At least 10 days before the date fixed for the trial the claimant must file at the court office –

(a) a bundle comprising copies of –

(i) the claim form;

(ii) all other statements of case;

(iii) any requests for information and the replies;

(iv) any document which the parties were ordered to file under rule 38.6(2)(b); and

(v) the pre-trial memorandum or memoranda.

(b) a second bundle comprising copies of –

(i) all expert reports;

(ii) all witness statements; and

(iii) agreed statements under rule 38.6(2)(d)(ii)-(iv);

(c) a third bundle comprising the documents referred to in paragraph (2); and

(d) where the bundles exceed 100 pages of documents in total, a core bundle (i.e., a bundle containing only the documents which the trial judge will need to pre-read or to which it will be necessary to refer repeatedly at the trial).

(6) There must be excluded from the bundles prepared under this rule any –

(a) application or order relating to interim payments under Part 17; and

(b) offer to settle under Part 35 or notice of payment into court under Part 36,

and any reference to any such payment or offer must be excised from any document contained in the bundles.

(7) If only a counterclaim is to be tried, references in this rule to the "**claimant**" should be construed as references to the defendant.

- Rule 27.6 allows the court to dispense with all or some of the requirements of this rule in simple and urgent cases.

Cross-examination

39.2 The court may limit examination, cross-examination or re-examination of any witness.

Written submissions

39.3 (1) The parties may, with the consent of the judge, file written submissions instead of or in addition to closing speeches.

(2) Such written submissions must be filed within 7 days of the conclusion of the trial or such period as the judge directs.

Failure of party to attend trial

39.4 If the judge is satisfied that notice of the hearing has been served on the absent party or parties in accordance with these rules -

(a) if any party does not appear at the trial, the judge may strike out that party's statement of case;

(b) if one or more but not all parties appear, the judge may proceed in the absence of the parties who do not appear.

Applications to set aside judgment given in party's absence

39.5 (1) A party who was not present at a trial at which judgment was given or an order made may apply to set aside that judgment or order.

(2) The application must be made within 14 days after the date on which the judgment or order was served on the applicant.

(3) The application to set aside the judgment or order must be supported by evidence on affidavit.

(4) If the evidence shows that the party or legal practitioner was not notified of the date fixed for the trial at which the judgment was given or the order made, the judgment or order must be set aside.

(5) In all other cases, the evidence must show -

(a) that –

(i) there was a good reason for failing to attend the hearing; and

(ii) it is likely that, had the party or legal practitioner attended, some other judgment or order might have been given or made; or

(b) exceptional reasons why the judgment or order should be set aside.

Adjournment of trial

39.6 (1) The judge may adjourn a trial on such terms as the judge thinks just.

(2) The judge may only adjourn a trial to a date and time fixed by the judge or to be fixed by the court office.

Inspection

39.7 The judge trying a claim may inspect any place or thing that may be relevant to any issue in the claim.

PART 40

Appointment of Referee to Inquire and Report

Contents of this Part

Power to order trial before referee	Rule 40.1
Reference to referee to inquire and report	Rule 40.2
Appointment of referee	Rule 40.3
Conduct of reference	Rule 40.4
Report following reference	Rule 40.5
Consideration of report by court	Rule 40.6
Restrictions on appointment of referee in a claim by or against Crown	Rule 40.7

Power to order trial before referee

40.1 If the –

(a) court considers that the claim requires –

(i) prolonged examination of documents; or

(ii) scientific or local investigation which cannot conveniently be carried out by the court;

(b) matters in dispute are wholly or mainly a matter of account; or

(c) parties agree,

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

Reference to referee to inquire and report

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

Appointment of referee

40.3 (1) The general rule is that a referee must be appointed at a case management conference or pre-trial review.

(2) The referee must be a person agreed on by the parties or, if they fail to agree, a person selected by the court in accordance with paragraph (3).

(3) If the parties cannot agree who should be the referee, the court may –

(a) select the referee from a list prepared or identified by the parties; or

(b) direct that the referee be selected in such other manner as the court directs.

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

(5) The court must decide what fee is to be paid to the referee and by whom.

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

Conduct of reference

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

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

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

(4) If a person served with a witness summons to appear before a referee –

(a) fails to attend;

(b) refuses to answer any lawful question or produce any document at the inquiry; or

(c) refuses to be sworn or affirm for the purposes of the inquiry,

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

(5) Any party may apply to the court for an order requiring the person served with the witness summons to appear before a referee to attend, be sworn or affirmed, or answer any question or produce any document, as the case may be.

(6) An application for an order under paragraph (5) may be made without notice but must be supported by evidence on affidavit.

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

(a) service of the witness summons; and

(b) that the person served with the witness summons was paid or offered the payments required by rule 33.6.

(8) An order under this rule must be served personally on the person served with the witness summons and be endorsed with a notice in accordance with rule 53.3(b).

(9) A person who wilfully disobeys an order made against that person under this rule commits contempt of court.

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

(a) failure to attend before a referee;

(b) refusal to answer any lawful question or produce any document at the inquiry; or

(c) refusal to be sworn or to affirm for the purpose of the inquiry.

- Part 53 deals with the procedure to apply to commit a person for contempt of court.

Report following reference

40.5 (1) The report of the referee is to be made to the court.

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

(3) The referee may in the report –

(a) make a special statement of facts from which the court may draw inferences; or

(b) submit any question for the decision of the court.

Consideration of report by court

40.6 (1) Upon receipt of the report of the referee, the court office must fix a date, time and place for consideration of the report by the court.

(2) The court office must give 14 days' notice to the parties of such consideration.

(3) The court may –

(a) adopt the report in whole or in part;

(b) ask the referee to explain any part of the report;

(c) decide the question or issue on the evidence taken by the referee;
(d) direct that additional evidence be given to the court;
(e) remit any question or issue for further consideration; or
(f) vary the report.

Restrictions on appointment of referee in a claim by or against Crown

40.7 In a claim by or against the Crown an appointment of a referee may not be made without the consent of the relevant Attorney General.

PART 41
Accounts and Inquiries

Contents of this Part

Scope of this Part	Rule 41.1
Directions for account	Rule 41.2
Verification of account	Rule 41.3
Notice of omissions	Rule 41.4
Allowances	Rule 41.5
Delay	Rule 41.6
Distribution before entitlement ascertained	Rule 41.7

Scope of this Part

41.1 (1) This Part deals with claims –

(a) for an account; or

(b) for some other relief which requires the taking of an account.

(2) A claim for an account must be made by fixed date claim supported by evidence on affidavit.

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

Directions for account

41.2 (1) If a claim or counterclaim is made for an account or requires the taking of an account, an application for directions relating to the taking of the account must be made at the case management conference or first hearing.

(2) The court may –

(a) direct that any preliminary issue of fact be tried;

(b) order an account to be taken;

(c) order inquiries be made; or

(d) order that any amount shown to be due to a party on the account be paid by a date specified in the order.

(3) Every direction that an account be taken must be so numbered that each distinct account and inquiry can be designated by that number.

(4) On directing that an account be taken, or subsequently, the court must direct how it is to be taken or vouched.

(5) The court may direct that any relevant books of account shall be evidence of the matters contained in them, subject to any objection that any party may take.

Verification of account

41.3 (1) When there has been a direction for an account to be taken the accounting party must make out its account and verify it by affidavit exhibiting the account.

(2) The items on each side of the account must be numbered consecutively.

(3) Unless the court otherwise orders, the accounting party must file the affidavit and the account and serve a copy on all other parties.

Notice of omissions

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

(a) best particulars that the party who so claims can give of the omission or error; and

(b) grounds for alleging it.

Allowances

41.5 In taking any account all just allowances must be made.

Delay

41.6 If there is undue delay in taking the account, the court may –

(a) require the accounting party, or any other party, to explain the delay;

(b) give directions to expedite the taking of the account;

(c) direct any other party to take over the taking of the account; and

(d) make such order for costs as is just.

Distribution before entitlement ascertained

41.7 (1) This rule applies where some, but not all, of the persons entitled to share in a fund are ascertained and there is likely to be delay in determining the existence or entitlement of the other persons.

(2) The court may order immediate payment of their shares to the persons who have been ascertained.

(3) The court need not reserve any part of those shares for the purpose of meeting any subsequent costs of determining the existence or entitlement of the other persons.

PART 42
Judgments and Orders

Contents of this Part

Scope of this Part	Rule 42.1
Parties present when order made or notified of terms to be bound	Rule 42.2
Practice forms to be used where available	Rule 42.3
Standard requirements	Rule 42.4
Drawing of judgments and orders	Rule 42.5
Service of orders	Rule 42.6
Consent judgments and orders	Rule 42.7
Time when judgment or order takes effect	Rule 42.8
Time for complying with judgment or order	Rule 42.9
Correction of errors in judgments or orders	Rule 42.10
Cases where court gives judgment both on claim and counterclaim	Rule 42.11
Service of copy order or judgment on person not a party	Rule 42.12

Scope of this Part

42.1 (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.

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

42.2 A party who is –

(a) notified of the terms of the judgment or order by telephone, electronic communication or otherwise; or

(b) present whether in person or by legal practitioner when the judgment was given or order was made, is bound by the terms of a judgment or order whether or not the judgment or order is served.

Practice forms to be used where available

42.3 If there is a practice form for a judgment or order of any description, a judgment or order of that description must be in that form.

Standard requirements

42.4 (1) Every judgment or order must state the name and judicial title of the person who made it, unless it is a –

(a) consent order under rule 42.7;

(b) default judgment under Part 12; or

(c) judgment entered on an admission or following a court order under rule 14.6, 14.7, 14.8, 14.10 or 14.11.

(2) Every judgment or order must –

(a) be sealed by the court;

(b) bear the date on which it is given or made; and

(c) be signed by the registrar.

Drawing of judgments and orders

42.5 (1) Every order of the court must be drawn by the party seeking it and submitted to the court for approval, unless the court otherwise directs.

(2) Every judgment must be drawn by the court.

(3) Where a draft of an order is directed to be drawn by a party, it must be filed no later than 7 days from the date on which the direction was given so that the court office can seal the order.

(4) Where a party fails to file the draft order within the period specified in paragraph (3), the judge or master shall settle the order.

Service of orders

42.6 (1) Unless the court otherwise directs, the court office must serve every judgment or order on –

(a) any person on whom the court orders it to be served; and

(b) every party to the claim in which the judgment or order is made.

- Part 6 deals with service.

(2) Notwithstanding paragraph (1), the service of the judgment or order may be effected by any party to the claim in which the judgment or order is made.

(3) If a party is acting by a legal practitioner, the court may direct that any judgment or order be served on the party in person as well as on the legal practitioner.

Consent judgments and orders

42.7 (1) Subject to paragraphs (2) to (5), a consent order or judgment must be –

(a) drawn in the terms agreed;

(b) expressed as being "By Consent";

(c) signed by the party or legal practitioner acting for each party to whom the order relates; and

(d) filed at the court office for sealing.

(2) Where a party is a litigant in person any consent order must be approved by the court at a hearing before it is entered.

(3) Except as provided by paragraphs (4) and (5), this rule applies to the following kinds of judgments or orders –

(a) a judgment for –

(i) costs;

(ii) the delivery up of goods with or without the option of paying the value of the goods to be assessed or the agreed value; and

(iii) the payment of a debt or damages (including a judgment or order for damages or the value of goods to be assessed);

(b) an order for the –

(i) discharge from liability of any party;

(ii) dismissal of any claim, wholly or in part;

(iii) payment, assessment or waiver of costs, or such other provision for costs as may be agreed;

(iv) payment out of money which has been paid into court;

(v) setting aside of a default judgment under Part 13;

(vi) stay of enforcement of a judgment, either unconditionally or on condition that the money due under the judgment is payable on a stated date or by instalments specified in the order; and

(vii) stay of proceedings on terms which are attached as a schedule to the order but which are not otherwise part of it (a "Tomlin Order"); and

(c) any procedural order other than one falling within rule 26.7(3) or rule 27.8(1) and (2).

(4) This rule does not apply –

(a) to admiralty proceedings;

(b) where any party is a minor or patient; or

(c) where the court's approval is required by these rules or any enactment before an agreed order can be made.

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

Time when judgment or order takes effect

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

Time for complying with judgment or order

42.9 A party must comply with a judgment or order immediately, unless the –

(a) claimant, on requesting judgment in default under Part 12 or judgment on an admission under Part 14, specifies a different time for compliance;

(b) court varies the time for compliance, including specifying payment by instalments; or

(c) judgment or order specifies some other date for compliance.

Correction of errors in judgments or orders

42.10 (1) The court may, with or without an application, 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 may apply for a correction without notice.

Cases where court gives judgment both on claim and counterclaim

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

(2) If there is a balance in favour of one of the parties, the court may order the party whose 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 paragraph (2)) a separate order as to –

(a) costs; or
(b) damages.

Service of copy order or judgment on person not a party

42.12 (1) If in any claim an order is made which might affect the rights of persons who are not parties to the claim, the court may at any time direct that a copy of any judgment or order be served on any such person.

(2) Service must be effected in accordance with Parts 5, 5A, 6 and 7 (as applicable) and the court may direct which party is to be responsible for service.

(3) The copy order or judgment must be endorsed with a notice in Form 13.

(4) The court may dispense with service of the copy 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; and
(b) may take part in any proceedings under the judgment or order.

(6) Notwithstanding paragraph (5), any person to whom that paragraph applies may apply within 28 days to discharge, vary or add to the judgment or order.

PART 43
Enforcement – General Provisions

Contents of this Part

Scope of this Part	Rule 43.1
Procedure for beginning enforcement	Rule 43.2
Judgment subject to conditions	Rule 43.3
Separate enforcement of costs	Rule 43.4
Effect of setting aside judgment or order	Rule 43.5
Court's powers where person ordered to do act fails to comply	Rule 43.6
Judgment for sum in foreign currency	Rule 43.7
Enforcement by or against person who is not a party	Rule 43.8
Enforcement against partnership	Rule 43.9
Enforcement of awards, etc. made by an outside body	Rule 43.10
Recognition and enforcement of awards made by a foreign body	Rule 43.11
Application for recognition and enforcement	Rule 43.12

Scope of this Part

43.1 (1) This Part deals generally with the enforcement of judgments and orders.

(2) In this Part and in Parts 44 to 53 –

"**judgment creditor**" means the person who is entitled to enforce a judgment or order;

"**judgment debtor**" means the person who is liable to enforcement under the judgment or order, even though the judgment or order is not a money judgment.

Procedure for beginning enforcement

43.2 (1) The general rule is that, once a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate request.

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

(3) A judgment creditor may, except where an enactment, rule or practice direction 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.

Judgment subject to conditions

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

(a) condition is fulfilled; or

(b) court gives permission for the judgment or order to be enforced.

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

(a) that person loses the benefit of the judgment or order; and

(b) any other person interested under the judgment or order may take any step which –

(i) is warranted by the judgment or order; or

(ii) might have been taken if the judgment or order had not been given.

Separate enforcement for costs

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

Effect of setting aside judgment or order

43.5 (1) The general rule is that if 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 remains in force.

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

43.6 (1) If –

(a) the court orders a party to do an act; and

(b) that party does not do it,

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 and expenses of the person who does the act.

(3) If the court makes an order under paragraph (2), it must assess the costs under rule 65.11 and determine the amount of expenses to be allowed.

- Part 53 deals with contempt proceedings.

Judgment for sum in foreign currency

43.7 If the court gives judgment for a sum expressed in a currency of a country other than that in use in the Member State or Territory in which the judgment is to be enforced, the judgment creditor must, when commencing enforcement proceedings, file a certificate stating the current exchange rate in the Member State or Territory where enforcement is to be carried out (for the purpose of the unit of foreign currency in which the judgment is expressed) at the close of business on the previous business day.

Enforcement by or against person who is not a party

43.8 (1) A judgment or order in favour of a person who is not a party may be enforced in the same way as a judgment or order in favour of a party.

(2) A judgment or order against a person who is not a party may be enforced in the same way as a judgment or order against a party.

Enforcement against partnership

43.9 (1) This rule has effect where the court gives a judgment or makes an order against a firm or partnership.

(2) A judgment creditor may enforce the judgment or order against –

(a) any of the firm's property; or

(b) any person who –

(i) has acknowledged service as a partner in the firm;

(ii) has admitted in a statement of case to being a partner in the firm;

(iii) was adjudged by the court to be a partner;

(iv) was served with the claim form as a partner within the jurisdiction or, under Part 7, out of the jurisdiction; or

(v) in Saint Lucia, is registered as a partner in the firm under article 20 of the Commercial Code (Cap. 13.31).

(3) In a case to which paragraph (2) does not apply, the judgment creditor may issue enforcement proceedings against a person whom it claims to be a partner if it has the court's permission to do so.

(4) Notice of an application for permission must be served on the person against whom the judgment creditor seeks to enforce judgment and must be supported by evidence on affidavit.

(5) A judgment or order given or made on a claim –

(a) by or against a firm or by or against a member of the firm; or

(b) by another firm against a firm where the two firms have one or more partners in common, may not be enforced without the permission of the court.

Enforcement of awards, etc. made by an outside body

43.10 (1) This rule relates to the enforcement of awards and third-party costs orders and has effect as to the –

(a) enforcement of an award that was not made by the court, but was made by an outside body and which is enforceable by virtue of a statutory provision as if it were an order of the court; and

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

(2) In this rule –

"**award**" means the award, order or decision which is sought to be enforced;

"**outside body**" means any authority within a Member State or Territory other than the court.

(3) The general rule is that an application –

(a) for permission to enforce an award; or

(b) to register an award,

may be made without notice but must be supported by evidence on affidavit.

(4) The general rule does not apply where a rule or statutory provision requires notice to be given.

(5) The applicant must –

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

(b) give an address for service on the person against whom the applicant seeks to enforce the award; and

(c) (if the award is for the payment of money), certify the amount remaining due to the applicant.

Recognition and enforcement of awards made by a foreign body

43.11 (1) This rule relates to the procedure for the recognition and enforcement by the court of an award made in proceedings by a foreign body which is amenable to recognition and enforcement in accordance with the laws of a Member State or Territory.

(2) In this rule –

"foreign body" means an individual or tribunal outside of the jurisdiction of the court;

"relevant enactment" means any enactment in force in a Member State or Territory in question which relates to the enforcement of awards.

(3) This rule is subject to the requirements of any relevant enactment or law in force in a Member State or Territory.

Application for recognition and enforcement

43.12 (1) An application for the recognition and enforcement of an award made by a foreign body must be made by Fixed Date Claim Form in Form 2.

(2) An application under this rule must be supported by affidavit evidence –

(a) exhibiting the original award or a verified, certified or otherwise duly authenticated copy of it, and if the award is in a language other than English, an English translation of it certified by a notary public;

(b) where applicable, exhibiting the original agreement or a duly certified copy of the agreement;

(c) specifying the date and place of the proceedings;

(d) specifying the amount of the interest, if any, which under the law of the country of the award has become due under the award up to the time of the application;

(e) stating to the best of the information or belief of the deponent –

(i) that the claimant is entitled to enforce the award;

(ii) at the time of the application the award has not been satisfied; and

(iii) the amount of the award which remains unsatisfied.

(3) For the purposes of paragraphs (2)(a) and (b), a copy of the original award or the original agreement is considered verified, certified or duly authenticated if it is notarised by a notary public or any other person having authority under the laws of the country in which the award was made to notarise or certify documents.

(4) An award recognised and enforced under this Part shall operate as a judgment of the court.

PART 44

Oral Examination in Aid of Enforcement

Contents of this Part

Scope of this Part	Rule 44.1
Who may be orally examined	Rule 44.2
Procedure to obtain order for oral examination	Rule 44.3
Order for oral examination	Rule 44.4
Conduct of oral examination	Rule 44.5
Order for payment by instalments	Rule 44.6
Financial position notice	Rule 44.7

Scope of this Part

44.1 This Part deals with the examination of a judgment debtor to obtain information to assist in enforcing a judgment and is called an "**oral examination**".

Who may be orally examined

44.2 (1) The following persons may be ordered to attend an oral examination –

(a) the judgment debtor; or

(b) an officer or former officer of a judgment debtor which is a body corporate.

(2) A person referred to in paragraph (1) is called "**the examinee**".

Procedure to obtain order for oral examination

44.3 (1) Where permission is not required to enforce the judgment, a request for an order that a person attend an oral examination may be made by filing a request as specified in Form 29 or 30 as the case requires, which contains the information required by the relevant practice direction.

(2) Where permission is required to enforce the judgment, an application for an order that a person attend an oral examination must be made and a copy of the permission must be attached to the application.

(3) An application under paragraph (2) may be made without notice.

(4) Where a request or an application for the order is against an officer or a body corporate, the request or the application must be supported by evidence on affidavit showing that the person to be orally examined is such an officer.

Order for oral examination

44.4 (1) The order in Form 14 must state the date, time and place of the examination.

(2) The judgment creditor must serve the order personally on the examinee at least 7 days before the date fixed for the examination.

(3) The judgment creditor must file an affidavit of service not less than 3 days before the date fixed for the examination.

Conduct of oral examination

44.5 (1) The examination may take place before the registrar or an officer of the court authorised by the Chief Justice.

(2) A person referred to in paragraph (1) is called "**the examiner**".

(3) The examination must be on oath or affirmation.

(4) The statement made by the examinee must be recorded and read to the examinee who must then be asked to sign it.

(5) If the examinee refuses to sign the statement it must be signed by the examiner and certified to be a true record of the examination.

(6) If the examinee –

(a) fails to attend;

(b) refuses to be sworn or affirm; or

(c) refuses to answer any question,

the examiner may adjourn the examination to a judge or master.

(7) The notice of the adjourned hearing must be in Form 15.

(8) The judgment creditor must –

(a) serve the examinee personally with the notice of the adjourned hearing endorsed with the first form of notice set out in rule 53.3(b) at least 7 days before the adjourned examination; and

(b) file an affidavit proving service of Form 15 and that the examinee was offered his or her travelling expenses to and from the court.

Order for payment by instalments

44.6 If the parties agree that the judgment debt should be paid by instalments or at some future date, the court office may draw an order to that effect.

Financial position notice

44.7 (1) If the judgment to be enforced is a money judgment, the judgment creditor may serve, in addition to or in place of an order for an oral examination, a financial position notice in Form 16 requiring a judgment debtor to complete a statement of the judgment debtor's financial position in the practice form and serve it on the judgment creditor within 14 days of service.

(2) The judgment creditor may notify the court if satisfied with the information provided by the judgment debtor.

(3) The court office must then notify the person to be examined that he or she need not attend the examination.

(4) If the judgment debtor is a body corporate, the financial position notice must require an officer of the body corporate to comply with paragraph (1).

PART 45

How Judgments may be Enforced

Contents of this Part

Scope of this Part	Rule 45.1
How money judgments may be enforced	Rule 45.2
Enforcement of orders for payment of money into court	Rule 45.3
Enforcement of judgments and orders for possession of land	Rule 45.4
Enforcement of judgments and orders for delivery of goods	Rule 45.5
Enforcement of judgments and orders requiring person to do act within specified time or not to do act	Rule 45.6
Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act	Rule 45.7

Scope of this Part

45.1 This Part sets out the ways in which judgments may be enforced and has effect subject to any enactment as to enforcement of judgments in force for the time being in any Member State or Territory.

How money judgments may be enforced

45.2 A judgment or order for payment of a sum of money other than an order for payment of money into court may be enforced by –

(a) a charging order under Part 48;

(b) a garnishee order under Part 50;

(c) (subject to the restrictions of any relevant Debtors Act) a judgment summons under Part 52;

(d) an order for the seizure and sale of goods under Part 46; or

(e) the appointment of a receiver under Part 51.

Enforcement of orders for payment of money into court

45.3 (1) An order for the payment of money into court may be enforced by –

(a) a committal order under Part 53;

(b) an order for sequestration of assets under Part 53; or

(c) the appointment of a receiver under Part 51.

(2) An order for committal or sequestration of assets under subparagraph (a) or (b) may be made only if the order requires payment to be made within a specified time or by a specified date.

Enforcement of judgments and orders for possession of land

45.4 (1) A judgment or order for the possession of land may be enforced by –

(a) a committal order under Part 53;

(b) a sequestration of assets order under Part 53; or

(c) a writ of possession of land.

(2) An order for committal or sequestration of assets under subparagraph (a) or (b) may be made only if the court has given a judgment or made an order requiring possession of land to be given within a specified time or by a specified date.

Enforcement of judgments and orders for delivery of goods

45.5 (1) The ways in which an order for delivery of goods may be enforced depend on whether or not the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods.

(2) If it gives the judgment debtor the choice, the means of enforcement are –

(a) a writ of delivery to recover the goods or their assessed value under Part 46; or

(b) a writ of specific delivery for the recovery of specified goods under Part 46.

(3) A judgment creditor may only obtain a writ of specific delivery under paragraph (2)(b) if the court gives permission under rule 46.9.

(4) If the judgment or order gives the judgment debtor the choice of paying the assessed value of the goods, that judgment or order may not be enforced by order of committal under Part 53.

(5) However, on the application of the judgment creditor, the court may make an order requiring the judgment debtor to deliver the goods to the judgment creditor within a specified time or by a specified date, and if the judgment debtor does not comply, that order may be enforced by an order for committal under Part 53.

(6) If the judgment or order does not give the judgment debtor the choice of paying the assessed value of the goods, or an order is made under rule 46.9, the means of enforcing the order are by orders for –

(a) committal under Part 53;
(b) recovery of specified goods under Part 46; or
(c) sequestration of assets under Part 53.

(7) The judgment creditor may obtain an order for sequestration of assets or committal under paragraph (5) or (6) only if the court has given a judgment or made an order requiring delivery within a specified time.

Enforcement of judgments and orders requiring person to do act within specified time or not to do act

45.6 A judgment or order which requires a person to –
(a) abstain from doing an act; or
(b) do an act within a specified time or by a specified date,
may be enforced by an order under Part 53 for –
(i) committal; or
(ii) sequestration of assets.

Enforcement of judgments and orders requiring body corporate to do act within specified time or not to do act

45.7 (1) If the court gives a judgment or makes an order under rule 45.6 which requires a body corporate to do or abstain from an act it may make an order under Part 53 for –
(a) committal or for sequestration of assets against an appropriate person; or
(b) sequestration of assets of the body corporate.

(2) In this rule –
"**appropriate person**" means a director or other officer of the body corporate.

PART 46
General Rules about Writs of Execution

Contents of this Part

Meaning of "writ of execution"	Rule 46.1
Permission required to enforce in certain cases	Rule 46.2
Application for permission to enforce	Rule 46.3
Amount to be recovered on enforcement	Rule 46.4
Enforcement of judgment or order requiring judgment debtor to do two or more different things	Rule 46.5
Enforcement of judgment for payment by instalments	Rule 46.6
No writ of execution for goods or payment of assessed value unless court has assessed value	Rule 46.7
Order for specific delivery	Rule 46.8
Period for which writ of execution valid	Rule 46.9
Renewal of writ of execution	Rule 46.10
Period for which court may renew writ of execution	Rule 46.11
Effective date of renewed writ unchanged	Rule 46.12
Claims to goods seized under writ of execution	Rule 46.13
Suspension of writ of execution at request of judgment creditor	Rule 46.14
Return to writ of execution	Rule 46.15

Meaning of "writ of execution"

46.1 In these Rules a "**writ of execution**" means any of the following –

(a) an order for the sale of land (or, in Saint Lucia, a writ for the seizure and sale of immovable property);

(b) an order for the seizure and sale of goods or a writ of fieri facias (or, in Saint Lucia, a writ for the seizure and sale of moveable property);

(c) an order for sequestration of assets;

(d) a writ of delivery, being either an order for –

(i) recovery of specified goods; or

(ii) the recovery of goods or their assessed value; and

(e) a writ of possession.

- Part 53 deals with enforcement by an order for sequestration of assets.

Permission required to enforce in certain cases

46.2 A writ of execution may not be issued without permission if –

(a) any party against whom a judgment or order was liable to be enforced is no longer liable to have it enforced against it;

(b) any statutory provision requires the permission of the court to be obtained before judgment is enforced;

(c) 6 years have elapsed since the judgment was entered;

(d) the goods against which it is wished to enforce the judgment or order are in the hands of a receiver or confiscator appointed by the court;

(e) the judgment creditor is no longer entitled to enforce the order;

(f) the judgment debtor has died and the judgment creditor wishes to enforce against assets of the deceased person which have passed to that person's personal representatives since the date of the order or the judgment was made subject to conditions.

Application for permission to enforce

46.3 (1) An application for permission may be made without notice unless the court otherwise directs but must be supported by evidence on affidavit.

(2) On an application for leave, the applicant must satisfy the court that it is entitled to proceed to enforce the judgment or order and in particular must satisfy the court –

(a) if the judgment is a money judgment – as to the amount –

(i) originally due; and

(ii) due together with interest at the date of the application;

(b) if rule 46.2 applies – as to the reasons for the delay;

(c) if rule 46.2 (a) or (e) applies – as to the change that has taken place;

(d) if rule 46.2 (d) or (f) applies – that a demand to satisfy the judgment or order has been made on the person holding the assets and that that person has refused or failed to do so;

(e) that the applicant is entitled to enforce the judgment; and

(f) that the person against whom enforcement is sought is liable to satisfy the judgment.

Amount to be recovered on enforcement

46.4 (1) A judgment creditor may recover on a writ of execution –

(a) fixed costs in accordance with rule 65.4;

(b) interest on a money judgment; and

(c) the balance of any money judgment.

(2) The rate of interest payable on a judgment debt is the statutory rate of interest unless the court has directed that some other rate shall apply.

(3) Unless the court otherwise orders, the amount for which a writ of execution may be issued may include the unpaid fixed costs and fees of any previous enforcement proceedings on the same judgment.

Enforcement of judgment or order requiring judgment debtor to do two or more different things

46.5 If a judgment or order requires the judgment debtor to do two or more different things, the judgment creditor may obtain –

(a) a single writ of execution to enforce every part of the judgment or order; or

(b) separate writs of execution to enforce one or more parts of it.

Enforcement of judgment for payment by instalments

46.6 (1) This rule has effect where the court has made an order for payment by instalments of –

(a) a sum of money; or

(b) the value of goods assessed,

after the court has made an order for the recovery of goods or their assessed value and the judgment debtor has failed to pay one or more instalments.

(2) The judgment creditor may issue an order for the seizure and sale of the goods for the purpose of recovering the whole of the amount recoverable under the judgment and not merely the instalment(s) in arrears.

No writ of execution for goods or payment of assessed value unless court has assessed value

46.7 A judgment creditor may not issue a writ of delivery for the recovery of goods or payment of their assessed value, unless that value has previously been assessed by the court or an order has been made under rule 46.8.

Order for specific delivery

46.8 (1) If the court makes an order for delivery of goods or payment of their assessed value, the judgment creditor may apply to the court for permission to issue an order for delivery of specified goods without the alternative of payment of the assessed value.

(2) An application for permission must be served on the defendant whether or not that defendant has filed an acknowledgment of service.

Period for which writ of execution valid

46.9 (1) A writ of execution is valid for a period of 12 months beginning with the date of its issue.

(2) After that period, the judgment creditor may not take any step under the writ unless the court has renewed it.

Renewal of writ of execution

46.10 (1) The judgment creditor may apply for the renewal of a writ of execution.

(2) The general rule is that an application for renewal must be made within the period for which the writ is valid.

(3) If the judgment creditor applies for renewal after the end of that period, the court may renew the writ only if it is satisfied that the judgment creditor has –

(a) taken all reasonable steps to execute the writ or some part of it; and

(b) been unable to do so.

(4) An application for renewal may be made without notice but must be supported by evidence on affidavit.

(5) The judgment creditor must state in the affidavit under paragraph (4) whether or not the judgment creditor is aware of any other judgment creditor and, if so, give such details of which the judgment creditor is aware as to the money due from the judgment debtor to each such judgment creditor.

(6) On such an application the court must have regard to the interests of any other judgment creditor of whose existence it is aware.

Period for which court may renew writ of execution

46.11 On an application for renewal of a writ of execution, the court may renew it for a period of not more than 6 months.

Effective date of renewed writ unchanged

46.12 (1) The renewal of a writ of execution does not change its effective date.

(2) The effective date is therefore still that of the writ as originally issued.

(3) The priority of the renewed writ and of any other writ of execution must be determined accordingly.

Claims to goods seized under writ of execution

46.13 If –

(a) goods are seized under a writ of execution; and

(b) some person other than the judgment creditor or judgment debtor subsequently claims any of them,

the validity of the writ of execution is extended until the end of 12 months from the conclusion of interpleader proceedings on that claim.

- Part 54 deals with interpleader proceedings.

Suspension of writ of execution at request of judgment creditor

46.14 (1) The judgment creditor may ask the sheriff to suspend execution.

(2) If the judgment creditor does so, neither the judgment creditor nor the sheriff may take any further step under the writ of execution unless the court first renews it.

Return to writ of execution

46.15 (1) A judgment creditor who has issued a writ of execution may serve a notice on the sheriff requiring the sheriff to make a return of the manner in which it has been executed.

(2) If the sheriff fails to comply with the notice within 14 days, the judgment creditor may apply to the court for an order directing the sheriff to comply.

PART 47

Variation of Terms of Judgments and Suspension of Writs

Contents of this Part

Scope of this Part	Rule 47.1
Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery	Rule 47.2
Where no objection except as to terms – procedure	Rule 47.3
Application for redetermination of court's decision	Rule 47.4
Where judgment creditor objects to variation or suspension	Rule 47.5
Pre-suspension costs	Rule 47.6
Judgment creditor's right to re-issue writ of execution	Rule 47.7

Scope of this Part

47.1 This Part deals with –

(a) variation of the terms of a judgment for payment of a specified sum of money as to the time and method of payment; and

(b) suspension of orders for the seizure and sale of goods and writs of delivery.

Applications to vary time and method of payment or to suspend order for seizure and sale of goods or writ of delivery

47.2 (1) This rule applies to –

(a) judgments for payment of a sum of money;

(b) judgments for the delivery of goods or payment of their value;

(c) orders for seizure and sale of goods; and

(d) writs of delivery, where the defendant has the alternative of paying the assessed value.

(2) An application by the judgment debtor to vary the terms of the judgment as to the time or method of payment or to suspend a writ of execution under this rule must be supported by evidence in the appropriate practice form.

Where no objection except as to terms – procedure

47.3 (1) The court must serve the application to vary or suspend on the judgment creditor.

(2) The judgment creditor may file and serve on the judgment debtor objections to the application.

(3) If the judgment creditor does not do so before the end of 14 days from the date of service of the application, the court may make an order according to the terms which the judgment debtor asks.

(4) If the judgment creditor objects only to the rate and time of any payment proposed by the judgment debtor, the court –

(a) may decide the rate and time of payments; and

(b) may make an order suspending the writ of execution in respect of the original rate and time of payments.

(5) The court may make this decision without a hearing.

(6) Unless the court directs otherwise, the court office must serve a copy of the order made under paragraph (3) or (4) on the judgment creditor and judgment debtor.

Application for redetermination of court's decision

47.4 (1) The judgment creditor or the judgment debtor may apply to the court to re-determine the decision.

(2) The application may not be made more than 14 days after the date of service of the court's order under rule 47.3(6).

(3) The court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days' notice of the date, time and place of the hearing.

Where judgment creditor objects to variation or suspension

47.5 If the judgment creditor gives the court notice that it does not agree to any variation as to the time or method of payment or suspension of the writ of execution on any terms, the court office must fix a hearing and give the judgment creditor and judgment debtor at least 7 days' notice of the date, time and place of the hearing.

Pre-suspension costs

47.6 If the court hears an application to vary the judgment or suspend a writ of execution it may add to the judgment debt –

(a) any costs or fees incurred by the judgment creditor in connection with any writ of execution; and

(b) the costs of the application for variation or suspension,

and such costs must be assessed by the court.

- Rule 65.11 deals with assessed costs.

Judgment creditor's right to re-issue writ of execution

47.7 (1) A judgment creditor may re-issue a writ of execution if –

(a) execution has been suspended on terms; and

(b) the judgment debtor has not complied with those terms.

(2) The re-issued order has the same priority as the original order.

PART 48
Charging Orders

Contents of this Part

Scope of this Part and definitions	Rule 48.1
How to apply for charging order	Rule 48.2
Evidence in support of application for charging order	Rule 48.3
Single charging order for more than one judgment debt	Rule 48.4
Procedure for making provisional charging order	Rule 48.5
Interested persons	Rule 48.6
Service of provisional charging order and of copies	Rule 48.7
Making of final charging order	Rule 48.8
Effect of provisional or final charging order	Rule 48.9
Discharge or variation of final charging order	Rule 48.10
Enforcement of charging order by sale	Rule 48.11

Scope of this Part and definitions

48.1 (1) This Part deals with the enforcement of a judgment debt by charging –

(a) stock (including stock held in court); and

(b) other personal property.

(2) In this Part –

"**proper officer**" means the court officer who is responsible for the custody of funds in court;

"**stock**" includes securities, shares and dividends arising therefrom.

How to apply for charging order

48.2 (1) An application for a charging order must be made on the appropriate practice form.

(2) The application is to be made without notice but must be supported by evidence on affidavit.

(3) An application for a charging order relating to stock may incorporate an application for an order for sale of such stock under rule 48.11.

Evidence in support of application for charging order

48.3 (1) This rule sets out the evidence required to support an application for a charging order.

(2) The affidavit must –

(a) certify the amount remaining due under the judgment;

(b) identify the judgment or order to be enforced;

(c) state that the applicant is entitled to enforce the judgment;

(d) state that to the best of the deponent's information and belief the debtor is beneficially entitled to the stock or personal property as the case may be;

(e) state the name and address of every person who is believed to be an unsecured creditor of the judgment debtor;

(f) state the name and address of the judgment debtor;

(g) where the application relates to stock –

(i) identify the company and the stock of that company to be charged;

(ii) identify any person who has responsibility for keeping a register of the stock;

(iii) state whether any person other than the judgment debtor is believed to have an interest in that stock whether as a beneficiary, a joint owner or trustee; and

(iv) if so, give the names and addresses of such persons and details of their interest;

(h) in the case of any other personal property —

(i) identify that property; and

(ii) state whether any other person is believed to have an interest in the property.

Single charging order for more than one judgment debt

48.4 A judgment creditor may apply for a single charging order in respect of more than one judgment or order against a judgment debtor.

Procedure for making provisional charging order

48.5 (1) In the first instance the court must deal with an application for a charging order without a hearing and may make a provisional charging order.

(2) On the application of the judgment creditor the court may grant an injunction to secure the provisional charging order.

(3) An application for an injunction may be made without notice and may remain in force until 7 days after the making of an order under rule 48.8(4).

Interested persons

48.6 (1) In this Part –

"**interested persons**" means the persons specified in paragraph (2) as well as the judgment creditor and the judgment debtor.

(2) The interested persons are –

(a) any person who is responsible for keeping the register of stock for that company;

(b) any person who owns the stock to be charged jointly with the judgment debtor;

(c) any unsecured creditor;

(d) if the stock is held in court, the proper officer;

(e) the company whose stock is to be charged;

(f) if the stock is held by the judgment debtor as a trustee – such of the other trustees and beneficiaries as the court may direct;

(g) if the stock is held under a trust – the trustees or such of them as the court may direct; and

(h) any other person who has an interest in the personal property to be charged.

Service of provisional charging orders and of copies

48.7 (1) If the court makes a provisional charging order, the judgment creditor must serve on the judgment debtor in accordance with Part 5 –

(a) a copy of the affidavit in support of the application for the order; and

(b) the order.

(2) The judgment creditor must also serve a copy of the order on the interested persons listed in the affidavit filed in support of the application.

(3) Any interested person other than the company and the person responsible for keeping the register must be served personally.

(4) The provisional charging order must state the date, time and place when the court will consider making a final charging order.

(5) The order and copy orders must be served at least 28 days before the hearing.

(6) The judgment creditor must file an affidavit of service not less than 7 days before the hearing.

Making of final charging order

48.8 (1) This rule deals with the –

(a) filing of objections to a provisional charging order; and

(b) making of a final charging order.

(2) The following persons may file objections to a provisional charging order –

(a) any interested person;

(b) the judgment creditor; and

(c) the judgment debtor.

(3) The objection must be filed not less than 14 days before the hearing.

(4) At the hearing if satisfied that the provisional charging order has been served on the judgment debtor, the court has power to –

(a) discharge the provisional charging order;

(b) give directions for the resolution of any objection that cannot be fairly resolved summarily; or

(c) make a final charging order.

(5) If the court makes an order under paragraph (4)(b), it may continue any injunction made under rule 48.5 until 7 days after the application is finally determined.

(6) Unless the court directs otherwise, a copy of the charging order must be served by the court office on —

(a) any interested person who has filed an objection;

(b) the judgment creditor;

(c) the judgment debtor; and

(d) in the case of stock –

(i) any person who has responsibility for keeping a register of the stock; and

(ii) the company.

(7) Every copy of the charging order served on –

(a) any person who has responsibility for keeping a register of the stock; and

(b) the company,

must contain a stop notice.

- Part 49 deals with the effect of a stop notice.

Effect of provisional or final charging order

48.9 (1) A disposition by a judgment debtor of an interest in property subject to a provisional or final charging order is not valid against the judgment creditor.

(2) Any person or body on whom an order was served under rule 48.6(2) (a) or (e) must not permit the transfer of any stock specified in the order or pay any interest or dividend payable out of the stock to any person while the order remains in force.

(3) If after service of the order the person or body listed in rule 48.6(2) (a) or (e) makes a transfer or payment prohibited by paragraph (2), that person or body is liable to pay the judgment creditor an amount equivalent to the value of the stock transferred or payment made or as much of it as is necessary to satisfy the judgment debt and costs.

Discharge or variation of final charging order

48.10 (1) An application to discharge or vary a final charging order may be made by -

(a) any interested person;

(b) the judgment creditor; or

(c) the judgment debtor.

(2) Notice of application must be served on the –

(a) judgment creditor and judgment debtor, if made by an interested person;

(b) judgment creditor, if made by the judgment debtor; or

(c) judgment debtor, if made by the judgment creditor.

(3) Any order must be served on every person on whom the final charging order was served.

Enforcement of charging order by sale

48.11 (1) If a judgment creditor wishes to enforce a charging order of stock or personal property by sale, the judgment creditor may apply to the court for an order for sale of the stock or personal property.

(2) The application must be supported by evidence on affidavit.

(3) Notice must be served on the judgment debtor.

(4) The court may give such directions as deemed appropriate to secure the expeditious sale of the stock or property charged at a price that is fair to both creditor and judgment debtor.

PART 49
Stop Notices and Stop Orders

Contents of this Part

Scope of this Part	Rule 49.1
Right to apply for stop notice	Rule 49.2
Procedure for obtaining stop notice	Rule 49.3
Service	Rule 49.4
Amendment of stop notice	Rule 49.5
Withdrawal or discharge of stop notice	Rule 49.6
Stop orders	Rule 49.7
Procedure on application for stop order	Rule 49.8
Power to vary or discharge stop order	Rule 49.9

Scope of this Part

49.1 (1) This Part enables a person by obtaining a –

(a) stop notice – to be notified of proposed dealings relating to stock;

(b) stop order – to prevent certain specified steps being taken with regard to stock or funds in court.

(2) In this Part –

"**proper officer**" means the officer of the court who is responsible for the custody of funds in court;

"**stop notice**" means a notice requiring any person or body on whom it is served to refrain from taking, in respect of any of the stock specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served;

"**stop order**" means an order of the court prohibiting the taking, in respect of any of the stock or funds in court specified in the order, any of the specified steps; and

"**the specified steps**" means –

(a) in the case of stock or funds in court – the transfer, sale or other dealing with the stock or funds or the payment out of the income thereof;

(b) the making of any payment by way of dividend, interest or otherwise in respect of the stock; and

(c) the registration of any transfer of the stock.

Right to apply for stop notice

49.2 Any person who claims to be beneficially entitled to an interest in stock may apply for a stop notice.

Procedure for obtaining stop notice

49.3 (1) Anyone who wants the court office to issue a stop notice may obtain one by filing a notice in the practice form.

(2) The applicant must also file an affidavit which –

(a) gives an address for service for the applicant;

(b) identifies the stock; and

(c) identifies the applicant's interest in it.

(3) The court office must then issue a stop notice.

(4) Anyone who applies to the court to issue a stop notice is referred to as the "applicant".

Service

49.4 (1) The applicant must serve a copy of the –

(a) affidavit; and

(b) stop notice,

on the company and any keeper of the register on whom the applicant would have had to serve a charging order relating to the stock in accordance with rule 48.7.

(2) After that, so long as the stop notice is in force, neither the company nor the keeper of the register may register any transfer of the stock or take any step mentioned in the stop notice until 14 days after sending a notification of the proposed registration or other step to the applicant.

Amendment of stop notice

49.5 (1) If a stop notice describes any stock incorrectly, the applicant may ask the court office to issue an amended notice.

(2) The application may be made without notice.

- Rule 49.4 applies to an amended notice as it applies to the original notice.

Withdrawal or discharge of stop notice

49.6 (1) The person on whose behalf the court office issued a stop notice may withdraw it by serving a notification of withdrawal on the court and on every person on whom the stop notice was served.

(2) On the application of any person claiming to be beneficially interested in the stock to which a stop notice relates, the court may by order discharge or vary the notice.

(3) An application for such an order must be served on the person on whose behalf the court originally issued the stop notice.

(4) The application must be supported by evidence on affidavit.

Stop orders

49.7 (1) The court may make a stop order relating to –

(a) funds in court; or

(b) stock.

(2) The stop order may prohibit the taking of any of the specified steps.

Procedure on application for stop order

49.8 (1) Any person claiming to be beneficially entitled to stock may apply for a stop order.

(2) In the case of money in court any person –

(a) who has a mortgage or charge on the interest of any person in funds in court;

(b) to whom that interest has been assigned; or

(c) who is a judgment creditor of the person entitled to that interest,

may apply for a stop order.

(3) Notice of an application for a stop order must be served by the applicant at least 7 days before the hearing on any person whose interest may be affected by the order and, in the case of funds in court, on the proper officer.

Power to vary or discharge stop order

49.9 The court may vary or discharge a stop order on the application of any person claiming to be entitled to any interest in the stock to which the order relates.

PART 50
Attachment of Debts

Contents of this Part

Scope of this Part	Rule 50.1
Circumstances in which court may make order for attachment of debts	Rule 50.2
Procedure – making of provisional order	Rule 50.3
Money in bank accounts, etc.	Rule 50.4
Joint funds	Rule 50.5
Presumption of equal shares in joint funds	Rule 50.6
Attachment of debts owed by firm	Rule 50.7
Service of provisional order	Rule 50.8
Effect of provisional order	Rule 50.9
Obligations of third parties served with interim order	Rule 50.10
Hearing to consider making final order	Rule 50.11
Claim to debt by person other than judgment debtor	Rule 50.12
Enforcement against garnishee	Rule 50.13
Discharge of garnishee's debt to judgment debtor	Rule 50.14
Costs of attachment of debts proceedings	Rule 50.15
Money in court	Rule 50.16

Scope of this Part

50.1 (1) This Part provides a procedure under which a judgment creditor can obtain payment of all or part of a judgment debt from a person who owes the judgment debtor money.

(2) In this Part –

"**attachment of debts order**" means the order served on a garnishee attaching a debt in the garnishee's hands;

"**garnishee**" means a debtor in whose hands a debt has been attached; and

"**proper officer**" means the officer of the court who is responsible for the custody of funds in court.

(3) The attachment of debts order may require the garnishee to pay enough to satisfy the fixed costs of the attachment of debt proceedings as well as the judgment debt.

- Part 65, Appendix A sets out the fixed costs.

Circumstances in which court may make order for attachment of debts

50.2 (1) The attachment of debts procedure may not be used if the order is to pay money into court.

(2) An attachment of debts order can be made only against a garnishee who is within the jurisdiction.

(3) A debt may be attached if it –

(a) is due or accruing to the judgment debtor from the garnishee on the date that the provisional order under rule 50.3 is served on the garnishee; or

(b) becomes due or accrues due to the judgment debtor at any time between the service of the provisional order under rule 50.3 and the date of the hearing.

Procedure – making of provisional order

50.3 (1) An application by a judgment creditor for an attachment of debts order must be made by application under Part 11.

(2) The application may be made without notice but must be supported by evidence on affidavit.

(3) If the court considers that on the evidence submitted the judgment creditor is entitled to an attachment of debts order, it must make a provisional order.

(4) The court must do this without a hearing.

(5) The court office must state in the provisional order the date, time and place of the hearing.

Money in bank accounts, etc.

50.4 (1) An attachment of debts order may be made in respect of any type of debt but includes money standing to the credit of any account of the judgment debtor with a bank or other financial institution.

(2) An attachment of debts order must not require a payment that would reduce below $150 the amount standing in the name of a judgment debtor in an account with a bank or other financial institution.

Joint funds

50.5 (1) This rule applies where an application is made to attach a fund which is owned jointly by the judgment debtor and another person or persons.

(2) The evidence in support of the application must state –

(a) details of the joint fund;

(b) the names and addresses of the person or persons who own the fund jointly with the judgment debtor; and

(c) if the applicant claims that the judgment debtor is entitled to more than an equal share in the fund – the grounds for that claim.

(3) Each owner of the fund must be served with the provisional attachment of debts order and the evidence in support.

Presumption of equal shares in joint funds

50.6 (1) The general rule is that a fund held jointly by the judgment debtor and another person or persons is to be presumed to be owned in equal shares.

(2) Any person served under rule 50.5(3) may apply to the court to determine the actual beneficial entitlement of each owner of the joint fund.

Attachment of debts owed by firm

50.7 (1) This rule applies to the attachment of debts due or accruing due from a firm carrying on business within the jurisdiction.

(2) Such debts may be attached even if one or more members of the firm is resident outside the jurisdiction.

(3) A provisional order under rule 50.3 must be served on –

(a) a member of the firm; or

(b) some other person having the control or management of the partnership business,

in the jurisdiction.

(4) Any member of the garnishee may attend a hearing of an application for an attachment of debts order.

Service of provisional order

50.8 (1) The judgment creditor must serve the provisional attachment of debts order.

(2) It must be served first on the garnishee at least 14 days before the hearing and be served personally on the garnishee unless the garnishee is a body corporate.

(3) If the garnishee is a bank or other financial institution, the provisional attachment of debts order must be served at its principal or registered office and also the branch at which the judgment debtor's account is kept, if that address is known to the judgment creditor.

(4) Secondly, the order must be served on the judgment debtor.

(5) It must be served on the judgment debtor at least 7 days after it has been served on the garnishee and not less than 7 days before the hearing.

(6) If the judgment debtor or a third party objects to the court making a final attachment of debts order, the judgment debtor or a third party must file and serve a notice of objection with evidence stating the grounds of objection within 7 days of being served with the provisional attachment of debts order.

Effect of provisional order

50.9 (1) This rule sets out the effect of a provisional attachment of debts order.

(2) The order becomes binding on the garnishee as soon as it is served on the garnishee.

(3) The garnishee does not then have to pay the judgment creditor anything except to the extent that the garnishee's debt to the judgment debtor is greater than the amount of the attachment of debts order.

(4) However, if the garnishee pays anyone but the judgment creditor the garnishee may have to make further payment to the judgment creditor in

accordance with the terms of any final attachment of debts order that the court may make.

Obligations of third parties served with provisional order

50.10 (1) A bank or other financial institution served with a provisional attachment of debts order must carry out a search to identify all accounts held with it by the judgment debtor.

(2) The bank or other financial institution must disclose to the court and the judgment 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 financial institution asserts any right to the money in the account, whether pursuant to a right of set-off or otherwise, and if so, the details of the grounds for that assertion.

(3) If -

(a) the judgment debtor does not hold an account with the bank or financial institution; or

(b) the bank or financial institution 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 it cannot identify which account the order applies to),

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

(4) Any third party garnishee other than a bank or financial institution served with a provisional attachment of debts order must notify the court and the judgment creditor in writing within 7 days of being served with the order, if the third party garnishee claims –

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

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

(5) Where the garnishee is a bank or other financial institution, the garnishee order must be endorsed with a notice to the garnishee informing the garnishee of its obligations under paragraph (2).

Hearing to consider making final order

50.11 At the hearing fixed by the provisional order the court, if satisfied that the order has been properly served, may –

(a) discharge the provisional order;

(b) give directions for the resolution of any dispute; or

(c) make a final attachment of debts order.

Claim to a debt by person other than judgment debtor

50.12 (1) This rule has effect where the court is aware from information supplied by the garnishee or from any other source that someone other than the judgment debtor –

(a) is or claims to be entitled to the debt; or

(b) has or claims to have a charge or lien on it.

(2) In this rule –

"**lien**" means a right to retain possession of goods to protect a debt.

(3) Where this rule has effect, the court may require the judgment creditor to serve notice of –

(a) any hearing fixed by the court; and

(b) the application for an attachment of debts order,

on any person who may have such an interest as is set out in paragraph (1).

(4) The notice must be served personally unless the person is a body corporate.

(5) Notice must also be served on the –

(a) garnishee; and

(b) judgment debtor.

(6) A notice under this rule must contain a warning to every person on whom it is served that, if that person does not attend court, the court may proceed to decide the issue in that person's absence.

Enforcement against garnishee

50.13 If a garnishee does not fulfil the terms of an attachment of debts order, the judgment creditor may issue enforcement proceedings against the garnishee.

Discharge of garnishee's debt to judgment debtor

50.14 (1) This rule has effect where–

(a) an attachment of debts order is enforced against the garnishee; or

(b) the garnishee pays money to the judgment creditor in compliance with an attachment of debts order.

(2) The garnishee's liability to the judgment debtor is then discharged to the extent of the amount paid by, or recovered from the garnishee.

(3) This rule has effect even if the court later sets aside the attachment of debts order or the original judgment or order.

Costs of attachment of debts proceedings

50.15 (1) This rule contains general provisions about the costs of attachment of debts proceedings.

(2) The judgment creditor's costs are those fixed by Part 65, Appendix A unless the court makes some other order in which case it must assess the costs.

(3) The judgment creditor may retain the costs out of the money recovered through the attachment of debts order.

(4) The costs are to be taken to have been paid to the judgment creditor before any payment in respect of the judgment debt.

(5) A garnishee who appears at attachment of debts proceedings may deduct the garnishee's costs before paying any sum over to the judgment creditor in pursuance of the attachment of debts order but the court may in its discretion award reasonable costs incurred by either party.

(6) Costs payable under paragraph (5) must be assessed under rule 65.11 if not agreed.

Money in court

50.16 (1) An attachment of debts order may not be made in respect of money in court standing to the credit of the judgment debtor.

(2) The judgment creditor may however apply for an order that a sufficient amount of the money in court to satisfy the judgment and the fixed costs of the application be paid to the judgment creditor.

(3) Notice of the application must be given to the proper officer and any person who has an interest in the fund.

(4) Until hearing of the application the money to which it relates must not be paid out of court.

- Part 65, Appendix sets out the fixed costs.

PART 51
Appointment of Receiver

Contents of this Part

Scope of this Part	Rule 51.1
Application for appointment of receiver and injunction	Rule 51.2
Conditions for appointment of receiver	Rule 51.3
Giving of security by receiver	Rule 51.4
Remuneration of receiver	Rule 51.5
Receiver's powers	Rule 51.6
Accounts of receiver	Rule 51.7
Payment of balance into court	Rule 51.8
Default by receiver	Rule 51.9

Scope of this Part

51.1 This Part deals with the appointment of a receiver and includes an application to appoint a receiver to obtain payment of the judgment debt from the income or capital assets of the judgment debtor.

Application for appointment of receiver and injunction

51.2 (1) An application for the appointment of a receiver must be supported by evidence on affidavit.

(2) The applicant may also apply for an injunction to restrain the judgment debtor or other respondent from assigning, charging or otherwise dealing with any property identified in the application.

(3) If an application for an immediate injunction is made, the application for the appointment of a receiver and for an injunction may be made without notice.

- Rules 17.3 and 17.4 deal with applications for interim injunctions.

Conditions for appointment of receiver

51.3 In deciding whether to appoint a receiver to recover a judgment debt the court must have regard to the –

(a) amount likely to be obtained by the receiver;

(b) amount of the judgment debt; and

(c) probable cost of appointing and remunerating the receiver.

Giving of security by receiver

51.4 (1) The general rule is that a person may not be appointed receiver until that person has given security.

(2) The court may however dispense with security.

(3) The order appointing the receiver must state the amount of the security.

(4) The security must be by guarantee unless the court allows some other form of security.

(5) The guarantee or other security must be filed at the court.

Remuneration of receiver

51.5 The receiver may be allowed such remuneration as the court directs.

Receiver's powers

51.6 A receiver's powers operate to the exclusion of the powers of the judgment debtor for the duration of the receiver's appointment.

Accounts of receiver

51.7 (1) The order appointing a receiver must direct on what dates the receiver must file accounts.

(2) Unless the court orders otherwise the account must be verified by affidavit.

(3) The receiver must serve a copy of the account on the applicant.

(4) The applicant must obtain an appointment to pass the account.

(5) The passing of the account must be verified by the registrar.

Payment of balance into court

51.8 The receiver must pay into court any balance shown on the accounts under rule 51.7 as due from the receiver within 7 days of the passing of any account.

Default by receiver

51.9 (1) This rule applies if the receiver fails to –

(a) attend for the passing of any account;

(b) pay into court any balance shown on the account as due from the receiver; or

(c) submit an account by the date ordered.

(2) The applicant must ask the court office to fix a hearing for the receiver to show cause for the receiver's failure.

(3) The court office must issue a notice stating the date, time and place of the hearing to show cause.

(4) The applicant must serve the notice on the receiver at least 7 days before the hearing.

(5) At the hearing the court may do any of the following –

(a) give directions to remedy the default;

(b) give directions for the discharge of the receiver;

(c) appoint another receiver;

(d) disallow any remuneration claimed by the receiver;

(e) order the receiver to –

(i) pay the costs of the applicant as assessed by the court; and

(ii) pay interest at the statutory rate on any monies which may appear from a subsequent account to be due from the receiver.

PART 52
Judgment Summonses

Contents of this Part

Scope of this Part	Rule 52.1
Hearing to be in open court	Rule 52.2
Issue of judgment summons	Rule 52.3
Service of judgment summons	Rule 52.4
Hearing of judgment summons	Rule 52.5
Failure to comply with instalment order	Rule 52.6
Restored hearing of judgment summons	Rule 52.7

Scope of this Part

52.1 This Part deals with applications to commit a judgment debtor for non-payment of a debt where this is not prohibited by any relevant enactment.

Hearing to be in open court

52.2 The hearing of a judgment summons must be in open court.

Issue of judgment summons

52.3 (1) An application to commit a judgment debtor for failing to pay all or part of the judgment debt must be made by way of judgment summons in Form 21 and must state —

(a) any payment that has been made by the judgment debtor;

(b) the date and details of the judgment or order requiring payment of the debt; and

(c) the amount of interest claimed to the date of the application and the daily rate thereafter.

(2) The court order must –

(a) fix a date for hearing of the judgment summons;

(b) seal the judgment summons; and

(c) return the order to the judgment creditor for service.

Service of judgment summons

52.4 (1) The judgment creditor must serve the judgment debtor with the judgment summons personally in accordance with Part 5 not less than 7 days before the date fixed for the hearing of the application to commit.

(2) The judgment creditor must file an affidavit of service not less than 3 days before the hearing.

Hearing of judgment summons

52.5 At the hearing of the judgment summons, the court may –

(a) if satisfied that all reasonable efforts have been made to serve the judgment debtor and the –

(i) judgment debtor is wilfully evading service; or

(ii) summons has come to the knowledge of the judgment debtor,

proceed in the absence of the judgment debtor as if the judgment debtor had been personally served;

(b) receive evidence as to the means of the debtor in any manner that it thinks fit; and

(c) if satisfied that all statutory requirements have been met –

(i) adjourn the hearing of the summons to a fixed date;

(ii) commit the judgment debtor for such fixed term as is permitted by law;

(iii) suspend such committal upon payment of the judgment debt on such dates and by such instalments as the court may order;

(iv) dismiss the judgment summons; or

(v) make an order for payment of the judgment debt by a particular date or by specified instalments and adjourn the hearing of the judgment summons to a date to be fixed on the application of the judgment creditor.

Failure to comply with instalment order

52.6 If the judgment debtor fails to comply with the terms of the judgment summons, the judgment creditor may –

(a) issue a further judgment summons;

(b) if a suspended committal order has been made – apply to commit the judgment debtor in accordance with the provisions of Part 53 (committal orders); or

(c) if an order has been made under rule 52.5(c) (v) – apply to the court in writing to restore the judgment summons.

Restored hearing of judgment summons

52.7 (1) The judgment creditor must –

(a) serve the notice of the restored hearing of a judgment summons in accordance with Part 5 at least 7 days before the date fixed for hearing; and

(b) file an affidavit of service at least 3 days before the hearing.

(2) At the restored hearing the court may exercise any of its powers under rule 52.5.

PART 53
Committal and Sequestration

Contents of this Part

Scope of this Part	Rule 53.1
Order specifying time for act to be done	Rule 53.2
When committal order or sequestration order may be made	Rule 53.3
Committal order or sequestration order against officer of body corporate	Rule 53.4
Making committal order or sequestration order when judgment or order not served	Rule 53.5
Undertakings	Rule 53.6
Application for committal order or sequestration order	Rule 53.7
Service of notice of hearing	Rule 53.8
Powers of the court	Rule 53.9
Restoration of adjourned hearing	Rule 53.10
Application for enforcement of suspended committal order or order for sequestration	Rule 53.11
Special provisions relating to order for sequestration	Rule 53.12

Scope of this Part

53.1 This Part deals with the power of the court to commit a person to prison or to make a sequestration order for failure to comply with an –

(a) order requiring that person to do; or

(b) undertaking by that person to do,

an act within a specified time or by a specified date or not to do an act.

Order specifying time for act to be done

53.2 (1) If a judgment or order specifies the time or date by which an act must be done the court may by order specify another time or date by which the act must be done.

(2) If a judgment or order does not specify the time or date by which an act must be done, the court may by order specify a time or date by which it must be done.

(3) The time by which the act must be done may be specified by reference to the day on which the order is served on the judgment debtor.

(4) An application for an order under this rule may be made without notice but the court may direct that notice be given to the judgment debtor.

(5) Any order made under this rule must be served in the manner required by rule 53.3 (enforcement against an individual judgment debtor) or 53.4 (enforcement against an officer of a body corporate).

When committal order or sequestration order may be made

53.3 Subject to rule 53.5, the court may not make a committal order or a sequestration order unless —

(a) the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the judgment debtor;

(b) at the time the order was served it was endorsed with a notice in the following terms, or substantially in those terms:

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

or in the case of an order served on a body corporate, in the following terms:

"NOTICE: If you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court."; and

(c) if the order requires the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

Committal order or sequestration order against officer of body corporate

53.4 Subject to rule 53.5, the court may not make a committal order or a sequestration order against an officer of a body corporate unless —

(a) a copy of the order requiring the judgment debtor to do an act within a specified time or not to do an act has been served personally on the officer against whom the order is sought;

(b) at the time the order was served it was endorsed with a notice in the following terms:

"NOTICE: If [name of body corporate] fails to comply with the terms of this order proceedings may be commenced for contempt of court and you [name of officer] may be liable to be

imprisoned or to have an order of sequestration made in respect of your property."; and

(c) if the order required the judgment debtor to do an act within a specified time or by a specified date, it was served in sufficient time to give the judgment debtor a reasonable opportunity to do the act before the expiration of that time or before that date.

Making committal order or sequestration order when judgment or order not served

53.5 (1) This rule applies where the judgment or order has not been served.

(2) If the order requires the judgment debtor not to do an act, the court may make a committal order or sequestration order only if it is satisfied that the person against whom the order is to be enforced has had notice of the terms of the order by being –

(a) notified of the terms of the order by post, telephone, electronic communication or otherwise; or

(b) present when the order was made.

(3) The court may make an order dispensing with service of the judgment or order under rule 53.3 or 53.4 if it thinks it just to do so.

Undertakings

53.6 An undertaking given to the court must, if practicable, be given in writing in the appropriate practice form and a copy of this form endorsed with a notice in accordance with rule 53.3(b) or 53.4 (b) must, if practicable, be served on the person giving the undertaking.

Application for committal order or sequestration order

53.7 (1) The application must specify the –

(a) exact nature of the alleged breach or breaches of the order or undertaking by the judgment debtor; and

(b) precise term or terms of the order or undertaking which it is alleged that the judgment debtor has disobeyed or broken.

(2) The application must be verified by affidavit.

(3) The applicant must prove –

(a) service of the order endorsed with the appropriate notice under rule 53.3(b) or rule 53.4(b); and

(b) that the person against whom it is sought to enforce the order had notice of the terms of the order under rule 53.5 if the order required the judgment debtor not to do an act; or

(c) that it would be just for the court to dispense with service.

Service of notice of hearing

53.8 (1) The judgment creditor must serve on the judgment debtor or, in the case of a body corporate, the officer against whom it is sought to make a committal order or sequestration order, notice of the application for the order at least 7 days before the date fixed for hearing.

(2) If the notice of application is served on the judgment debtor less than 7 days before the hearing, the court may direct that in all the circumstances of the case sufficient notice has been given and may accordingly deal with the application.

(3) The notice of application must be served in accordance with Part 5.

(4) A copy of the application and of the evidence in support must be served with the notice.

Powers of the court

53.9 If satisfied that the notice of application has been duly served, the court may –

(a) accept an undertaking from the judgment debtor or an officer of a body corporate who is present in court and adjourn the application generally;

(b) adjourn the hearing of the application to a fixed date;

(c) dismiss the application and make such order as to assessed costs under rule 65.11 as it considers to be just;

(d) make a committal order against a judgment debtor who is an individual;

(e) make a committal order against an officer of a judgment debtor which is a body corporate;

(f) make a sequestration order against a judgment debtor who is an individual or a body corporate;

(g) make a sequestration order against an officer of a judgment debtor which is a body corporate; or

(h) make a suspended committal order or sequestration order on such terms as the court considers just.

Restoration of adjourned hearing

53.10 (1) If an application for a committal order or a sequestration order has been adjourned under rule 53.9(b), the court office may fix a date for the adjourned hearing.

(2) An application for a date to be fixed –

(a) may be made without notice; but

(b) must be supported by evidence on affidavit specifying –

(i) the exact nature of the alleged breach or breaches of the undertaking by the judgment debtor; and

(ii) the precise term or terms of the undertaking which it is alleged that the judgment debtor has disobeyed.

(3) The notice of the restored hearing must –

(a) state the date, time and place of the restored hearing; and

(b) be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.

(4) A copy of the evidence under paragraph (2) must be served with the notice.

Application for enforcement of suspended committal order or order for sequestration

53.11 (1) If the court has imposed terms under rule 53.9(h) and the judgment creditor alleges that the judgment debtor has failed to comply with the terms imposed, the judgment creditor may apply for the suspended order to be enforced.

(2) The application must specify the –

(a) precise term or terms of the suspended order which it is alleged that the judgment debtor has disobeyed; and

(b) exact nature of the alleged breach or breaches of the terms of the suspended order by the judgment debtor.

(3) The application must be verified by affidavit.

(4) The court office must fix a hearing of the application.

(5) The notice of hearing must be served on the judgment debtor or the officer of a body corporate personally at least 3 days before the adjourned hearing.

(6) A copy of the evidence under paragraph (2) must be served with the application.

Special provisions relating to order for sequestration order

53.12 (1) The judgment creditor may not sell any property seized under a sequestration order without the permission of the court.

(2) An application for permission must be supported by evidence on affidavit.

PART 54
Interpleader

Contents of this Part

Scope of this Part	Rule 54.1
Claim to goods taken in execution	Rule 54.2
How to interplead	Rule 54.3
Service of interpleader application	Rule 54.4
Powers of the court	Rule 54.5
Power to order sale of goods taken in execution	Rule 54.6

Scope of this Part

54.1 (1) This Part deals with the situation where a –

(a) claim is made to any money, goods or chattels seized or intended to be seized by the sheriff or the proceeds or value of such goods or chattels; or

(b) person is under a liability in respect of a debt or in respect of any money, goods or chattels and a claim is made or is likely to be made against that person, by two or more persons making adverse claims in respect of the debt, money, goods or chattels.

(2) The person under a liability under paragraph (1) (b) or the sheriff may apply for relief.

(3) That procedure is called an **"interpleader"**.

Claim to goods taken in execution

54.2 (1) A person who makes a claim against any money, goods or chattels seized or about to be seized by the sheriff must give written notice to the sheriff.

(2) The notice must –

(a) give that person's name and address for service;

(b) identify the money, goods or chattels claimed; and

(c) set out the grounds of the claim.

(3) Forthwith on receipt of the claim the sheriff must give written notice to the judgment creditor.

(4) Within 7 days after receiving the notice the judgment creditor must give notice to the sheriff admitting or disputing the claim.

(5) If the judgment creditor gives notice admitting the claim, the –

(a) judgment creditor is liable only for the fees and expenses of the sheriff incurred before the sheriff receives the notice;

(b) sheriff must withdraw from possession of the money, goods or chattels; and

(c) sheriff may apply to the court for an order restraining any claim being brought in respect of having taken possession of the money, goods or chattels.

(6) If the judgment creditor gives notice disputing the claim, or fails to give notice and the claim is not withdrawn, the sheriff may apply to the court for relief under this Part.

How to interplead

54.3 (1) A person interpleads by filing an application for relief by way of interpleader.

(2) The application must be filed –

(a) in the court office out of which the writ of execution was issued;

(b) if a writ of execution has not been issued but there are proceedings in respect of the money, goods or chattels – in the court office in which such proceedings are being conducted; or

(c) if there are no such proceedings – in any court office.

(3) An application other than by the sheriff must be supported by evidence on affidavit that the applicant –

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

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

(c) is willing to pay or transfer that subject-matter into court or dispose of it as the court directs.

Service of Interpleader application

54.4 (1) An application by the sheriff must be served on the judgment creditor and on the person claiming the money, goods or chattels.

(2) An application by any other person must be served on all persons making a claim to the money, goods or chattels.

(3) The application must be served not less than 14 days before the date fixed for hearing of the application.

Powers of the court

54.5 (1) On an application by the sheriff the court may, unless any claimant objects, summarily determine the question in issue between the parties.

(2) On any other application the court may order that –

(a) any person claiming the money, goods or chattels be made a defendant in any pending claim relating to such money, goods or chattels either in addition to, or in substitution for, the applicant for relief; or

(b) the issue between two or more persons claiming the money, goods or chattels be tried, and may direct which person claiming is to be the claimant in those proceedings and which the defendant.

(3) If a person making a claim to any money, goods or chattels who has been served with the application –

(a) fails to attend the hearing; or

(b) fails to comply with any order made by the court,

the court may make an order barring that person and any person claiming under that person forever from prosecuting any claim to the money, goods or chattels as against the applicant and any person claiming under the applicant.

(4) An order under paragraph (3) does not affect the rights as between the persons claiming the money, goods or chattels.

Power to order sale of goods taken in execution

54.6 On an application by a sheriff who has seized any goods or chattels where a person claims to be entitled to such goods or chattels by way of security, the court may order that all or part of such goods or chattels be sold and the proceeds applied in accordance with the order.

PART 55
Sale of Land by Order of Court

Contents of this Part

Scope of this Part	Rule 55.1
Application for order for sale	Rule 55.2
Hearing of application	Rule 55.3
Order for sale	Rule 55.4
Directions	Rule 55.5
Further directions	Rule 55.6

Scope of this Part

55.1 (1) This Part deals with the sale of land –

(a) under any enactment which authorizes the court to order a sale; and

(b) when it appears to the court to be necessary or expedient that the land should be sold.

(2) In this Part –

"**land**" includes any interest in, or right over, land.

Application for order for sale

55.2 (1) An application for an order for sale must be supported by affidavit evidence.

(2) The evidence under paragraph (1) must –

(a) exhibit a current valuation of the land by a qualified land valuer or surveyor;

(b) identify the land in question; and

(c) state —

(i) any restriction or condition that should be imposed on the sale for the benefit of any adjoining land of the judgment debtor or otherwise;

(ii) the full names and addresses of all persons who to the knowledge or belief of the applicant have an interest in the land;

(iii) the nature and extent of each such interest;

(iv) the grounds on which the court should order a sale of the land;

(v) the proposed method of sale and why such method will prove most advantageous;
(vi) the reason for seeking an order for sale; and
(vii) whom it is proposed should have conduct of the sale.

(3) The application and copies of the evidence in support must be served in accordance with Part 5 on the judgment debtor and every person who has an interest in the land.

Hearing of application

55.3 The court on hearing the application may –

(a) direct that notice be given to any person who appears to have an interest in the land but has not been served with the application and adjourn the application to a fixed date;
(b) order the sale of the land or a specified part of the land;
(c) direct who shall have conduct of the sale;
(d) order that any person in –
(i) possession; or
(ii) receipt of the rents or profits,
of the land or any part of the land do deliver up possession of the land or receipt of the rents and profits to such person and on such date as the court directs;
(e) suspend any such order on such terms as the court thinks fit; or
(f) dismiss the application.

Order for sale

55.4 On making an order for sale, the court may –

(a) direct the manner in which the land is to be sold; or
(b) permit the person having conduct of the sale to sell the land in such manner as that person thinks fit.

Directions

55.5 The court may give directions for the purpose of the sale, including –

(a) fixing any reserve or minimum price for the sale;
(b) obtaining further evidence as to the valuation of the land;
(c) settling the particulars and conditions of sale;
(d) fixing the remuneration of the auctioneer or estate agent dealing with the sale;

(e) requiring payment of the net proceeds of sale into court or otherwise;
(f) an inquiry into what interests any interested persons may have in the land and the extent of such interests in the net proceeds of sale;
(g) how the net proceeds of sale should be applied; and
(h) certification of the result of the sale.

Further directions

55.6 Any party or the person having the conduct of the sale may apply to the court to vary the directions or to give further directions.

PART 56
Administrative Law

Contents of this Part

Scope of this Part	Rule 56.1
Who may apply for judicial review	Rule 56.2
How to make application for administrative order	Rule 56.3
Delay	Rule 56.4
Proceedings by way of claim which should be application for administrative order	Rule 56.5
Joinder of claims for other relief	Rule 56.6
Service of claim form for administrative order	Rule 56.7
Evidence in answer	Rule 56.8
First hearing	Rule 56.9
Procedural applications	Rule 56.10
Hearing of application for administrative order	Rule 56.11
Special provisions relating to orders for judicial review	Rule 56.12

Scope of this Part

56.1 (1) This Part deals with applications –

(a) by way of originating motion or otherwise for relief under the Constitution of any Member State or Territory;

(b) for a declaration in which a party is the State, a court, a tribunal or any other public body;

(c) for judicial review; and

(d) where the court has power by virtue of any enactment or at common law to quash any order, scheme, certificate or plan, any amendment or approval of any plan, any decision of a minister, government department or public body or any action on the part of a minister government department or public body.

(2) In this Part, such applications are referred to generally as "applications for an administrative order".

(3) The term "judicial review" includes the remedies (whether by way of writ or order) of –

(a) certiorari, for quashing unlawful acts or decisions;

(b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and

(c) prohibition, for prohibiting unlawful acts.

(4) In addition to or instead of an administrative order the court may, without requiring the issue of any further proceedings, grant –

(a) an injunction;

(b) an order for the return of any property, real or personal; or

(c) restitution or damages.

Who may apply for judicial review

56.2 (1) An application for judicial review may be made by any person, group or body which has sufficient interest in the subject matter of the application.

(2) This includes –

(a) any person who has been adversely affected by the decision which is the subject of the application;

(b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);

(c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;

(d) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;

(e) any statutory body where the subject matters falls within its statutory limit; or

(f) any other person or body who has a right to be heard under the terms of any relevant enactment or Constitution.

How to make application for administrative order

56.3 (1) An application for an administrative order must be made by a fixed date claim in Form 2 identifying whether the application is for -

(a) a declaration;

(b) judicial review;

(c) relief under the relevant Constitution; or

(d) some other administrative order (naming it),

and must state the grounds and nature of any relief sought.

(2) The claim form in an application under a relevant Constitution requiring an application to be made by originating motion should be headed 'Originating Motion'.

(3) The claimant must file with the claim form evidence on affidavit.

(4) The affidavit must state –

(a) the name, address and description of the claimant and the defendant;

(b) in the case of a claim under the relevant Constitution – the provision of the Constitution which the claimant alleges has been, is being or is likely to be breached;

(c) the facts on which the claim is based;

(d) the claimant's address for service;

(e) the names and addresses of all defendants to the claim;

(f) whether an alternative form of redress exists and, if so, why an application for an administrative order is more appropriate or why the alternative has not been pursued;

(g) details of any consideration which the applicant knows the respondent has given to the matter in question in response to a complaint made by or on behalf of the applicant;

(h) whether any time limit for making the application has been exceeded and, if so, why;

(i) whether the applicant is personally or directly affected by the act, omission or decision about which complaint is made; and

(j) if the applicant is not personally or directly affected – what public or other interest the applicant has in the matter.

(5) The general rule is that the affidavit must be made by the claimant or, if the claimant is not an individual, by an appropriate officer of the body making the claim.

(6) If the claimant is unable to make the affidavit it may be made by some person on the claimant's behalf but must state why the claimant is unable to do so.

(7) On issuing the claim form the court office must fix a date for a first hearing which must either be endorsed on the claim form or contained in a separate notice of hearing issued by the court office.

(8) The general rule is that the first hearing must take place no later than 4 weeks after the date of issue of the claim.

(9) The judge at the first hearing shall have all the case management powers contained under Parts 25, 26 and 27.

(10) The application must be made on notice and supported by evidence on affidavit.

(11) Where the application relates to any judgment, order, conviction or other proceedings which are subject to appeal, the judge may adjourn consideration of the application to a date after the appeal has been determined.

Delay

56.4 (1) In addition to any time limit imposed by any enactment, the judge may refuse to grant relief in any case in which the judge considers that there has been unreasonable delay before making the application.

(2) When considering whether to refuse to grant relief because of delay the judge must consider whether the granting of relief would be likely to –

(a) be detrimental to good administration; or

(b) cause substantial hardship to or substantially prejudice the rights of any person.

Proceedings by way of claim which should be application for administrative order

56.5 (1) This rule applies where a claimant issues a claim for damages or other relief other than an administrative order but where the facts supporting the claim are such that the only or main relief is an administrative order.

(2) The court may at any stage direct that the claim is to proceed by way of an application for an administrative order.

(3) If the appropriate administrative order would be for judicial review, the court may give leave for the matter to proceed as if an application had been made under rule 56.3.

(4) If the court makes an order under paragraph (2), it must give such directions as are necessary to enable the claim to proceed under this Part.

Joinder of claims for other relief

56.6 (1) The general rule is that, where permitted by the substantive law, an applicant may include in an application for an administrative order a claim for any other relief or remedy that –

(a) arises out of; or

(b) is related or connected to,

the subject matter of an application for an administrative order.

(2) In particular the court may, on a claim for judicial review or for relief under the Constitution award –

(a) damages;

(b) restitution; or

(c) an order for return of property to the claimant,

if the –

(i) claimant has included in the claim form a claim for any such remedy arising out of any matter to which the claim for an administrative order relates; or

(ii) facts set out in the evidence or statement of case justify the granting of such remedy or relief; and

(iii) court is satisfied that, at the time when the application was made the claimant could have issued a claim for such remedy.

(3) The court may however at any stage –

(a) direct that any claim for other relief be dealt with separately from the claim for an administrative order; or

(b) direct that the whole application be dealt with as a claim and give appropriate directions under Parts 26 and 27; and

(c) in either case, make any order it considers just as to costs that have been wasted because of the unreasonable use of the procedure under this Part.

Service of claim form for administrative order

56.7 (1) The claim form and the affidavit in support must be served on the defendant not less than 14 days before the date fixed for the first hearing.

(2) A claim form relating to an application for relief under a relevant Constitution must be served on the Attorney General of the Member State or Territory concerned.

(3) The claimant must file at the court office not less than 7 days before the date fixed for the first hearing an affidavit which –

(a) gives the names and addresses of all defendants who have been served with the claim;

(b) states the date and place of service on each defendant;

(c) where applicable, states when the claim form was served on the Attorney General; and

(d) if any defendant has not been served, states that fact and the reason for not doing so.

(4) If the judge considers that any person who should have been served has not been served, the judge may adjourn the first hearing to a fixed date and give directions for service.

- Part 5 deals generally with the service of claims.

Evidence in answer

56.8 Any evidence filed in answer to a claim for an administrative order must be by affidavit but the provisions of Part 10 (defence) apply to such affidavit.

First hearing

56.9 (1) At the first hearing the judge must give any directions that may be required to ensure the expeditious and just trial of the claim and the provisions of Parts 25 to 27 of these Rules apply.

(2) In particular the judge may –

(a) allow any person or body appearing to have sufficient interest in the subject matter of the claim to be heard whether or not served with the claim form;

(b) direct whether any person or body having such interest –

(i) is to make submissions by way of written brief; or

(ii) may make oral submissions at the hearing;

(c) allow the claimant to –

(i) add or substitute a claim for relief other than an administrative order;

(ii) amend any claim for an administrative order; or

(iii) substitute another form of application for that originally made;

(d) direct that claims by one or more persons or bodies or against one or more persons in respect of the same office made on the same grounds be consolidated or heard together; and

(e) make orders for –

(i) witness statements or affidavits to be served;

(ii) cross-examination of witnesses; and

(iii) disclosure of documents.

(3) The judge may grant such interim relief as appears just.

Applications

56.10 Wherever practicable any interlocutory application in a claim for an administrative order must be made to the judge who dealt with the first hearing unless that judge orders otherwise.

Hearing of application for administrative order

56.11 (1) At the hearing of the application the judge may allow any person or body which appears to have a sufficient interest in the subject matter of the claim to make submissions whether or not served with the claim form.

(2) Such a person or body must make submissions by way of a written brief unless the judge orders otherwise.

(3) The judge may grant any relief that appears to be justified by the facts proved before the judge, whether or not such relief should have been sought by an application for an administrative order.

(4) The judge may, however, make such orders as to costs as appear to the judge to be just including a wasted costs order.

(5) If the judge makes any order as to costs the judge must assess them.

- Rules 65.11 and 65.12 deal with the assessment of costs.

(6) The general rule is that no order for costs may be made against an applicant for an administrative order unless the court considers that the applicant has acted unreasonably in making the application or in the conduct of the application.

- Part 64 deals with the court's general discretion as to the award of costs.

Special provisions relating to orders for judicial review

56.12 (1) If the claimant seeks an order or writ of certiorari to remove any proceedings for the purpose of quashing them, the claimant may not question the validity of any order, warrant, commitment, conviction or record unless –

(a) before the trial the claimant has lodged with the court office a copy of the order, etc. verified by affidavit; or

(b) the claimant can account for the failure to do so to the satisfaction of the court.

(2) If the claim is for an order or writ of certiorari, the judge may if satisfied that there are reasons for quashing the decision to which the claim relates -

(a) direct that the proceedings be quashed on their removal to the High Court; and

(b) in addition, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it in accordance with the findings of the High Court.

PART 57
Habeas Corpus

Contents of this Part

Scope of this Part	Rule 57.1
Application for issue of writ of Habeas Corpus	Rule 57.2
Power of court	Rule 57.3
Service of writ	Rule 57.4
Return to writ	Rule 57.5
Powers of court on hearing writ	Rule 57.6
Bringing up prisoner to give evidence, etc.	Rule 57.7

Scope of this Part

57.1 This Part deals with applications for the issue of a writ of Habeas Corpus and proceedings upon such a writ.

Application for issue of writ of Habeas Corpus

57.2 (1) An application for the issue of a writ of Habeas Corpus *ad subjiciendum* must be made to the court.

(2) An application under paragraph (1) may be made without notice but must be supported by evidence on affidavit.

(3) Such evidence must be given by the person restrained stating how that person is restrained.

(4) If the person restrained is not able to make the affidavit it may be made by another person on that person's behalf and must state why the person restrained is not able to make the affidavit.

(5) The application must be heard in open court unless it is made on behalf of a minor when it must be heard in chambers.

Power of court

57.3 (1) The court may –

(a) adjourn the application and give directions for notice to be given to –

(i) the person against whom the issue of the writ is sought; and

(ii) any other person as the judge may direct; or

(b) forthwith make an order for the writ in Form 22 to issue.

(2) The court may also order that the person restrained be released.

(3) An order under paragraph (2) is sufficient warrant to any person for the release of the person under restraint.

(4) On making an order for the writ to issue the court must give directions as to the date, time and place of hearing.

Service of writ

57.4 (1) The general rule is that the writ must be served personally on the person to whom it is directed.

(2) If it is not possible to serve that person personally or if that person is the keeper of a prison or other public official, the writ may instead be served personally on a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.

(3) If the writ is directed to more than one person it must be served on the person first named and copies served on each of the other persons named in accordance with paragraph (1) or (2).

(4) Each person served must also be served with a —

(a) copy of the evidence filed under rule 57.2 (2); and

(b) notice in the form included in Form 22 of the date, time and place at which the person restrained is to be brought and containing a warning that in default of compliance with the writ proceedings for committal may be taken.

Return to writ

57.5 (1) Each person served must endorse on or annex to the writ a return stating each cause of detention of the person restrained.

(2) The return may be amended or another substituted with the permission of the court.

Powers of court on hearing writ

57.6 On the date fixed for the person detained to be brought before the court, the court must make such orders as are just and, in particular, may give directions as to the manner in which any claim for compensation is to be dealt with by the court without requiring the issue of any further process.

Bringing up prisoner to give evidence, etc.

57.7 An application for –

(a) a writ of habeas corpus *ad respondendum;*

(b) a writ of habeas corpus *ad testificandum;* or

(c) an order to bring up a prisoner to give evidence otherwise than by writ of habeas corpus,

may be made without notice to a judge in chambers but must be supported by evidence on affidavit.

PART 58
Defamation Claims

Contents of this Part

Scope of this Part	Rule 58.1
Claimant's statement of claim	Rule 58.2
Defendant's statement of case	Rule 58.3
Ruling on meaning	Rule 58.4
Payments into court and offers	Rule 58.5
Statement in open court	Rule 58.6
Requests for information	Rule 58.7
Evidence to mitigate damages	Rule 58.8

Scope of this Part

58.1 These rules apply to claims for libel or slander subject to the rules in this Part.

Claimant's statement of claim

58.2 The statement of claim (or counterclaim) in a defamation claim must, in addition to the matters set out in Part 8 –

(a) give sufficient particulars of the publications in respect of which the claim is brought to enable them to be identified;

(b) if the claimant alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning – give particulars of the facts and matters relied on in support of such sense; and

(c) if the claimant alleges that the defendant maliciously published the words or matters – give particulars in support of the allegation.

Defendant's statement of case

58.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that –

(a) in so far as the words complained of consist of statements of facts, they are true in substance and in fact; and

(b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

(c) pleads to like effect; must give particulars stating –

(i) which of the words complained of are alleged to be statements of fact; and

(ii) the facts and matters relied on in support of the allegation that the words are true.

Ruling on meaning

58.4 (1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

Payments into court and offers

58.5 If the claimant claims against several defendants sued jointly and accepts money paid into court under Part 36 or a written offer under Part 35 by any one or more but not all of those defendants, the claim must be stayed against that defendant or those defendants, but –

(a) the sum recoverable under any judgment in favour of the claimant against any other defendant must not exceed the amount paid into court or the offer by the defendant or defendants against whom the claim has been stayed; and

(b) the claimant is not entitled to any costs after the date of acceptance of the payment into court or the offer to settle unless either the –

(i) court is satisfied that there were reasonable grounds to continue the claim against the other defendant or defendants; or

(ii) damages awarded exceed the amount paid into court or offered.

Statement in open court

58.6 If a defamation claim is settled before trial either party may apply to a judge in chambers for leave to make a statement in open court in terms agreed by the judge.

Requests for information

58.7 In a defamation claim where the defendant states that the words or matters complained of –

(a) are fair comment on a matter of public interest; or

(b) were published on a privileged occasion,

the claimant may not make a request for information under Part 34 as to the defendant's sources of information or grounds of belief.

Evidence to mitigate damages

58.8 A defendant who does not in the defence assert the truth of the statement of which complaint is made may not give evidence in chief as to the –

(a) character of the claimant; or

(b) circumstances under which the libel or slander was published,

with a view to mitigating damages unless particulars are given in a witness statement served at least 42 days before the trial.

PART 59

Proceedings by and against the Crown

Contents of this Part

Scope of this Part	Rule 58.1
Service of claim form	Rule 59.2
Claimant's duty to give particulars	Rule 59.3
Applications in certain revenue matters	Rule 59.4
Proceedings relating to postal packets	Rule 59.5
Applications under section 24 (2) or section 25 (2) of the Act	Rule 59.6

Scope of this Part

59.1 (1) This Part deals with claims to which the Crown or the State is a party.

(2) In this Part –

"**Act**" means in –

(a) Anguilla – the Crown Proceedings Ordinance (Cap. 22);

(b) Antigua and Barbuda – the Crown Proceedings Act (Cap. 121);

(c) Dominica – the State Proceedings Act (Cap. 7.80);

(d) Grenada – the Crown Proceedings Act (Cap. 74);

(e) Montserrat – the Crown Proceedings Ordinance (Cap. 22);

(f) Saint Christopher and Nevis – the Crown Proceedings Act (Cap.22);

(g) Saint Lucia – the Crown Proceedings Act (Cap. 13);

(h) Saint Vincent and the Grenadines – the Crown Proceedings Act (Cap. 85); and

(i) the Virgin Islands – the Crown Proceedings Ordinance (Cap. 21);

"**Crown**" means, for the purpose of Dominica, the State; and

"Dominica" means the Commonwealth of Dominica.

(3) References in these Rules to a claim for possession of land are to be construed as including references to a claim against the Crown for an order declaring that the claimant is entitled as against the Crown to the land or to possession of the land.

Service of claim form

59.2 (1) Part 5 (service of claim form) and Part 6 (service of other documents) do not apply in civil proceedings against the Crown.

(2) Service of any document including a claim form on the Crown must be effected in accordance with the relevant Act.

Claimant's duty to give particulars

59.3 (1) If a claim is made against the Crown, the claim form or statement of claim must contain reasonable information as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the government department and officers of the Crown involved.

(2) At any time during the period for entering an acknowledgment of service under rule 9.3(1) the defendant may request information under rule 34.1.

(3) The defendant's time for filing an acknowledgment of service is then extended until 7 days after the –

(a) court on the application of the claimant decides that no further information is reasonably required; or

(b) defendant gives notice in writing to the claimant that it is satisfied with the information supplied,

whichever first occurs.

(4) The defendant's time for filing a defence is extended to 21 days after the earlier event in paragraph (3).

Applications in certain revenue matters

59.4 (1) This rule applies to applications under section 11 of the Acts of Dominica and Grenada and section 12 of the Act of Saint Vincent and the Grenadines only.

(2) An application must be made by fixed date claim in Form 2.

(3) The person from whom an account or information is claimed or by whom any books are required to be produced must be made defendant to the claim.

(4) The claim form or the statement of claim must —

(a) refer to the enactment under which the account or information or payment or the production of books is claimed; and

(b) where information is claimed must show (by appropriate questions or otherwise) what information is required.

(5) An affidavit by a duly authorised officer of the government department concerned setting out the facts on which the application is based and stating the deponent's belief in such facts is evidence of the facts so set out.

(6) If the defendant files evidence disputing any fact the Crown may file further evidence.

(7) The court may order that the deponents or any of them attend to be cross-examined.

(8) The court may –

(a) decide the matter upon the affidavit evidence after any cross-examination that may be ordered; or

(b) direct that it be decided by oral evidence in court.

(9) If the court makes an order in favour of the Crown, it must specify a date by which the defendant is to comply with each of the terms of the order.

- Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

Proceedings relating to postal packets

59.5 (1) This rule deals with applications under the Act for leave to bring a claim in the name of a sender or addressee of a postal packet or that person's personal representative.

(2) An application must be by fixed date claim in Form 2.

(3) The defendants to the claim must be the Attorney General and the person in whose name the applicant seeks to bring the claim.

(4) No acknowledgment of service need be entered to the claim.

- Rules 8.1(5) and 27.2 deal with the procedure relating to fixed date claims.

Applications under section 24(2) or section 25(2) of the Act

59.6 An application under section 24 (2) of the Act of Saint Lucia or section 25 (2) of the Acts relating to other Member States and Territories may be made in accordance with Part 11.

PART 60
Appeals to the High Court

Contents of this Part

Scope of this Part	Rule 60.1
How to appeal to the court	Rule 60.2
Effect of appeal	Rule 60.3
Persons on whom claim form must be served	Rule 60.4
Time within which claim form must be served	Rule 60.5
Amendment of statement of case	Rule 60.6
First hearing	Rule 60.7
Hearing of appeal	Rule 60.8
Right of minister to be heard	Rule 60.9

Scope of this Part

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

(2) In this Part –

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"decision" means the award, decision, determination or order appealed against; and

"tribunal" means any tribunal other than a court of law established under an enactment.

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

How to appeal to the court

60.2 (1) An appeal to the court is made by issuing a fixed date claim form in Form 2.

(2) The claim form must be intituled with the name of the enactment under which the appeal is made.

(3) The claim form must set out particulars of the –

(a) decision against which the appeal is made;

(b) enactment enabling an appeal to be made to the Court;

(c) name of the tribunal or person whose decision is being appealed;

(d) facts found by that tribunal or person;
(e) grounds of appeal; and
(f) any finding of –
(i) fact; and
(ii) law,
which the claimant seeks to challenge.

Effect of appeal

60.3 The making of an appeal does not operate as a stay of the decision and the enforcement of that decision unless –
(a) the court or tribunal or person whose decision is being appealed so orders; or
(b) an enactment so provides.

Persons on whom claim form must be served

60.4 The claimant must serve the claim form on –
(a) every party to the proceedings in which the decision was made; and
(b) the clerk to the tribunal, minister or other person by whom the decision appealed against was made.

Time within which claim form must be served

60.5 The claim form must be served within 28 days of the date on which notice of the decision was given to the claimant.

Amendment of claim form

60.6 (1) The claimant may amend the claim form without permission not less than 7 days before the first hearing.

(2) Permission to amend the claim form may be given at the first hearing.

(3) The court may not give permission to amend the claim form after the first hearing unless the claimant satisfies the court that the change is necessary because of some change in circumstance which became known after the first hearing.

First hearing

60.7 (1) The claimant must file at the court office a signed copy of any note made by the person presiding at the proceedings in which the decision was made not less than 7 days before the first hearing.

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

Hearing of appeal

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

(2) The court may receive further evidence on matters of fact.

(3) The court may draw any inferences of fact which might have been drawn in the proceedings in which the decision was made.

(4) The court may–

(a) give any decision or make any order which ought to have been given or made by the tribunal or person whose decision is appealed; and

(b) make such further or other order as the case requires; or

(c) remit the matter with the opinion of the court for rehearing and determination by the tribunal or person.

(5) The court is not bound to allow an appeal because of –

(a) a misdirection; or

(b) the improper admission or rejection of evidence,

unless it considers that a substantial wrong or a miscarriage of justice has been caused.

Right of minister to be heard

60.9 A minister is entitled to be heard on any appeal against a decision made by that minister.

PART 61

Appeals to the Court by way of Case Stated

Contents of this Part

Scope of this Part	Rule 61.1
Application for order to state a case	Rule 61.2
Persons on whom application must be served	Rule 61.3
Time within which application must be served	Rule 61.4
Signing and service of case	Rule 61.5
How to commence proceedings in the High Court to determine a case	Rule 61.6
How to commence proceedings in the Court of Appeal to determine a case	Rule 61.7
Determination of Case	Rule 61.8
Time within which case must be stated	Rule 61.9

Scope of this Part

61.1 (1) An appeal by case stated is an appeal to a superior court on the basis of a set of facts specified by the inferior court for the superior court to make a decision on the application of the law to those facts.

(2) This Part deals with the way in which the court determines –

(a) (i) an appeal which lies to the court by way of case stated; or

(ii) a question of law brought by way of case stated,

referred to it, by a minister, magistrate, judge of a tribunal, a tribunal or other person; or

(b) an application for an order directing a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to refer a question of law to the court by way of case stated, where under any enactment the High Court or the Court of Appeal has power to determine such matters.

(3) In this Part –

"case" includes a special case;

"clerk to the tribunal" means the clerk, secretary or other person responsible for the administration of the tribunal;

"court" means the High Court or the Court of Appeal as required by the particular enactment;

"enactment" includes the Constitution of the relevant Member State or Territory; and

"tribunal" means in relation to –

(a) proceedings brought under the Constitution – a court other than the High Court, the Court of Appeal or a court martial; and

(b) any other proceedings in any tribunal other than a court of law constituted by or under any enactment.

Application for order to state a case

61.2 (1) An application for an order requiring a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person to -

(a) state a case for the decision of the court, or

(b) refer a question of law to the court by way of case stated,

must be made to the court which would be the appeal court if the case were stated.

(2) An application -

(a) to the High Court shall be made by a fixed date claim in Form 2 and must –

(i) identify the question of law upon which it is sought to have a case stated;

(ii) set out any reasons given by the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person for the failure or refusal to state a case; and

(iii) state the grounds of the application;

(b) to the Court of Appeal shall be made by a notice of appeal in Form 23 and must –

(i) identify the question of law upon which it is sought to have a case stated;

(ii) set out any reasons given by the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person for the failure or refusal to state a case; and

(iii) state the grounds of the application.

(3) The application must be filed at the court and served on –

(a) the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person as the case may be; and

(b) every party to the proceedings to which the application relates,

within 14 days after the appellant receives notice of the failure or refusal of his request to state a case.

(4) The court office must fix a date for a hearing of the application and specify the date, time and place of that hearing.

(5) The applicant must file at the court office a copy of the proceedings to which the application relates not less than 7 days before the date fixed for the hearing.

Persons on whom application must be served

61.3 (1) The claimant must serve the application on –

(a) the clerk, secretary, president or head of the tribunal, the minister, magistrate, arbitrator or other person authorised to accept service on behalf of a tribunal or body as the case may be; and

(b) every party to the proceedings to which the application relates.

(2) If the application relates to a claim brought under the relevant Constitution, the claimant must serve the application on –

(a) the Attorney General;

(b) the clerk to the tribunal; and

(c) every other party to the proceedings to which the application relates.

- Rule 6.9 deals with service on the Attorney General
- Rule 59.2 deals with service on the Crown or State.

Time within which application must be served

61.4 The claimant must serve the application within 14 days of the date on which notice of refusal to state a case was given to the claimant.

Signing and service of case

61.5 (1) A case stated by a tribunal must be signed by the magistrate, judge, chairman or president of the tribunal.

(2) A case stated by any other person must be signed by that person.

(3) An application made under the Constitution must be served on the Attorney General and all parties to which the application relates.

(4) An application other than an application under rule 61.5(3) must be served on –

(a) the party whose application it is to state the case;

(b) the party who requested the case stated; and

(c) all parties to which the case relates.

How to commence proceedings in the High Court to determine a case

61.6 (1) Proceedings to determine a case must be commenced by filing a fixed date claim form in Form 2 at the court office.

(2) The claim form may be issued by –

(a) a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person entitled by any enactment to state a case or to refer a question of law by way of case stated to the court; or

(b) any other party to the claim to which the case relates.

(3) The claim form must have the case stated annexed.

(4) Where an application has been granted under rule 61.2, the fixed date claim filed for that application may be deemed to have commenced proceedings and the claimant must –

(a) file the case stated at the court office within 14 days of receipt of the case stated by the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person entitled by any enactment to state a case or to refer a question of law by way of case stated to the court; and

(b) within 7 days serve a notice of filing on the persons set out in rule 61.3.

(5) The claim form must set out the particulars of the claimant's contentions on the question of law to which the claim relates.

(6) The claim form shall be accompanied by skeleton arguments.

(7) The court office must fix a date, time and place for the determination of the case.

(8) The claim must be served on the persons set out in rule 61.3.

(9) The claim must be served within 14 days after the service of the case stated.

How to commence proceedings in the Court of Appeal to determine a case

61.7 (1) Proceedings to determine a case must be commenced by filing a notice of appeal in Form 23 at the court office.

(2) The notice of appeal may be issued by –

(a) a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person entitled by any enactment to state a case or to refer a question of law by way of case stated to the court; or

(b) any other party to the claim to which the case relates.

(3) The case stated must be annexed to the notice of appeal.

(4) Where an application has been granted under rule 61.2, the notice of appeal filed for that application may be deemed to have commenced proceedings and the claimant must –

(a) file the case stated at the court office within 14 days of receipt of the case stated by the minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person entitled by any enactment to state a case or to refer a question of law by way of case stated to the court; and

(b) within 7 days serve a notice of filing on the persons set out in rule 61.3.

(5) The notice of appeal must set out the particulars of the claimant's contentions on the question of law to which the case relates.

(6) The notice of appeal shall be accompanied by skeleton arguments.

(7) The court office must fix a date, time and place for the determination of the case.

(8) The notice of appeal must be served on the persons set out in rule 61.3.

(9) The notice of appeal must be served within 14 days after the service of the case stated.

Determination of case

61.8 (1) Not less than 7 days before the date fixed to determine the case, the claimant must file a copy of the proceedings to which the case relates.

(2) The court may amend the case stated or order it to be returned to the person or tribunal stating the case for amendment.

(3) The court may draw inferences of fact from the facts stated in the case.

(4) A minister is entitled to be heard on any case stated by that minister.

Time within which case must be stated

61.9 Where a minister, magistrate, judge of a tribunal, tribunal, arbitrator or other person has received a request or is expected to state a case, this must be done within 14 days of either the request or the date of the order of the court requiring the relevant person to state a case.

PART 62
Appeals to the Court of Appeal

Contents of this Part

Scope of this Part	Rule 62.1
How to obtain leave to appeal	Rule 62.2
How to appeal	Rule 62.3
Method of filing documents in an appeal	Rule 62.4
Contents of notice of appeal	Rule 62.5
Time for filing notice of appeal	Rule 62.6
Summary appeal	Rule 62.7
Expedited appeal	Rule 62.8
Service of notice of appeal	Rule 62.9
Counter notice	Rule 62.10
Respondent's notice	Rule 62.11
Action to be taken on receipt of notice of appeal	Rule 62.12
Interlocutory appeal	Rule 62.13
Skeleton arguments	Rule 62.14
The record – appeals from High Court	Rule 62.15
The record – appeals from magistrates' courts	Rule 62.16
Case management	Rule 62.17
Interlocutory applications to court	Rule 62.18
Powers of single judge of the court, master and Chief Registrar to make certain orders	Rule 62.19
Variation, discharge or revocation of an order, direction or decision of a single judge	Rule 62.20
Security for costs of appeal	Rule 62.21
Non-disclosure of payment into court, etc.	Rule 62.22
Stay of execution	Rule 62.23
General powers of the court	Rule 62.24
Failure of party to attend appeal	Rule 62.25
Application to set aside a decision made in party's absence	Rule 62.26
Adjournment of appeal	Rule 62.27
Certificate of result of appeal or application	Rule 62.28
Withdrawal or discontinuance	Rule 62.29
Liability for costs on withdrawal or discontinuance	Rule 62.30

Scope of this Part

62.1 (1) This Part deals with appeals to the Court of Appeal from –

(a) the High Court;

(b) a magistrate's or district court; or

(c) a tribunal, not being –

(i) appeals or applications to the court for which other provision is made by these Rules or any other law; or

(ii) appeals by way of case stated on a question of law for determination by the court.

- Part 60 deals with appeals to the High Court and cases stated are dealt with in Part 61.

(2) In this Part -

"appellant" means the party who first files a notice of appeal;

"core bundle" means a bundle containing only such documents listed in rule 62.15 which the court will need to pre-read or to which it will be necessary to refer repeatedly at the appeal;

"court" means the Court of Appeal;

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

"interlocutory appeal" means an appeal from an interlocutory judgment or an interlocutory order;

"respondent" means any party to the appeal other than the appellant whether or not the respondent files a counter-notice.

(3) In this Part -

(a) a determination whether an order or judgment is final or interlocutory is made on the "application test";

(b) an order or judgment is final if it would be determinative of the issues that arise on a claim, whichever way the application could have been decided; and

(c) an order on an application for disclosure against a person who is not a party is a final order.

How to obtain leave to appeal

62.2 (1) Where an appeal may be made only with the leave of the court below or the court, a party wishing to appeal must apply for leave within 21 days of the order against which leave to appeal is sought.

(2) Where an application for leave has been refused by the court below, an application for leave may be made to the court within 7 days of such refusal.

(3) Where an application for leave has been refused by the court below, an application for leave may be made to the court within 7 days of such refusal or within 21 days of the date of the order against which leave to appeal is sought, whichever is later.

(4) An application for leave to appeal a judgment or order may be made orally at the time when such judgment or order is given, otherwise, the application for leave to appeal must be made in writing and set out concisely the grounds of the proposed appeal.

(5) An application for leave to appeal made to the court may be considered by a single judge of the court.

(6) The judge considering an application under rule 62.2(5) may give leave without an oral hearing.

(7) If the judge considering an application under rule 62.2(5) is minded to refuse the application for leave, the judge must direct –

(a) that an oral hearing be fixed; and

(b) whether that oral hearing is to be by a single judge or the court.

- Rule 2.7 deals with how, when and where the court may deal with cases.

(8) Leave to appeal may be given only where -

(a) the court considers that the appeal would have a realistic prospect of success; or

(b) there is some other compelling reason why the appeal should be heard.

(9) An application for leave to appeal shall be made without notice, unless the court directs otherwise.

How to appeal

62.3 (1) In the case of an appeal from the High Court, the appeal is made by filing a notice of appeal in Form 23 –

(a) at the court office where the judgment was entered;

(b) by electronic means as provided under Part 5A; or

(c) by any other means authorised in a practice direction issued by the Chief Justice.

(2) In the case of an appeal from a Magistrate's or District Court or a tribunal, an appeal is made by filing a notice of appeal —

(a) at the court's office; or

(b) by electronic means of communication, in accordance with the relevant practice direction issued by the Chief Justice.

(3) A notice of appeal takes effect on the day that it is filed at the appropriate court office.

Method of filing documents in an appeal

62.4 A document in an appeal may be filed by —

(a) delivering it;

(b) posting it;

(c) filing it in accordance with Part 5A; or

(d) transmitting it by any other means as authorised by the Chief Justice in a practice direction,

to the court office where the appeal is proceeding or intended to proceed.

Contents of notice of appeal

62.5 (1) A notice of appeal must give details of –

(a) the decision which is being appealed, identifying so far as practicable any finding of –

(i) fact; and

(ii) law,

which the appellant seeks to challenge;

(b) the grounds of the appeal;

(c) the order the appellant seeks; and

(d) any power which the appellant wishes the court to exercise.

(2) A copy of the judgment or order which is the subject of the appeal must wherever practicable be attached to the notice of appeal.

(3) Where leave to appeal is required a copy of the order granting leave to appeal must be attached to the notice of appeal.

(4) The notice of appeal must –

(a) be signed by the appellant or the appellant's legal practitioner;

(b) give the details required by rule 3.10; and

(c) state the names and addresses and the legal practitioners and their addresses for service of all other parties affected by the appeal.

(5) The grounds of appeal under paragraph (1) (c) must set out –

(a) concisely;

(b) in consecutively numbered paragraphs; and

(c) under distinct heads,

the grounds on which the appellant relies, without any argument or narrative.

(6) The court may, on or without an application, strike out any ground which –

(a) discloses no reasonable ground of appeal;

(b) is vague and general in terms; or

(c) is argument or narrative.

(7) The appellant may, except on an interlocutory appeal, amend the grounds of appeal once without permission at any time within 28 days from receiving notice under rule 62.12(1)(a), (b) or (c) that a transcript of the evidence and the judgment have been prepared.

(8) The appellant may not rely on any ground not mentioned in the notice of appeal without the permission of the court.

(9) The court is not confined to the grounds set out in the notice of appeal, but may not make its decision on any ground not set out in the notice of appeal unless the respondent has had sufficient opportunity to contest such ground.

Time for filing notice of appeal

62.6 (1) The notice of appeal must be filed at the appropriate court office –

(a) in the case of an interlocutory appeal where leave is not required, within 21 days of the date the decision appealed against was made;

(b) in an interlocutory appeal where leave is required, within 21 days of the date when such leave was granted; or

(c) in the case of any other appeal, within 42 days of the date when judgment is delivered or the order is made, whichever is earlier.

(2) The court below making the interlocutory decision in respect of which a party intends to appeal may extend any of the time limits in this rule on application made orally at the time the decision is made.

(3) The court may extend any of the time limits in this rule on an application made under Part 11 and any such application may be determined without a hearing.

Summary appeal

62.7 (1) This rule applies to any appeal in which the appellant files with the notice of appeal –

(a) a certificate that the –

(i) appeal relates to specific issues of law and can be heard justly without the production of the full record; or

(ii) circumstances of the appellant and/or the respondent are such that the cost of preparing the record would impede that party's ability to prosecute the appeal and that the appeal can be heard justly without production of the full record; and

(b) evidence of the parties' agreement that the appeal should proceed as a summary appeal.

(2) The court office must immediately refer the notice of appeal to the Chief Registrar.

(3) The Chief Justice shall assign the matter to a single judge of the court to determine whether the appeal should be dealt with summarily, and if the judge so determines, the judge must give such case management directions as are appropriate to enable the appeal to be dealt with summarily, including dispensing with any procedural requirements in this Part with regard to an appeal proceeding under this rule.

Expedited appeals

62.8 (1) The court may dispense with the timelines under this Part and determine that an appeal is to be heard on an expedited basis.

(2) The factors to which the court shall have regard in considering whether to hear an appeal on an expedited basis include -

(a) the urgency of the matter;
(b) whether the record of appeal consists mainly of documents which are readily available;
(c) whether the appeal can be heard justly with an incomplete record of appeal;
(d) whether the appeal involves points of law and no substantial disputes of fact; and
(e) the likely prejudice to be occasioned to any party.

(3) A request for expedition must be made by filing a certificate of urgency setting out succinctly the ground(s) on which expedition is sought and served on the other party /parties to the appeal.

(4) The court may deal with a request for expedition with or without a hearing.

Service of notice of appeal

62.9 (1) The notice of appeal must be served on –
(a) all parties to the proceedings;
(b) any other person if the court directs, or if required by law; and
(c) in the case of an interlocutory appeal, on the legal practitioner for the respondent to the appeal.

(2) The notice of appeal or amended notice of appeal must be served within 14 days, or within such period as prescribed by law, or order, after the notice has been filed.

Counter notice

62.10 (1) Any party upon whom a notice of appeal is served may file a counter-notice without leave.

(2) The counter-notice must comply with rule 62.5.

(3) The counter-notice must be filed at the appropriate court office in accordance with rule 62.4 within 14 days of service of the notice of appeal.

(4) The party filing a counter-notice must serve a copy on all other parties to the proceedings within 7 days of filing.

Respondent's notice

62.11 (1) A party upon whom a notice of appeal is served and who wishes only to support the decision of the court below on grounds not set out in the judgment, must file a respondent's notice in Form 23A.

(2) No leave is required for a respondent's notice and the notice need not comply with rule 62.5.

(3) The respondent's notice must be filed at the appropriate court office within 14 days of service of the notice of appeal.

(4) The party filing the respondent's notice must serve a copy on all other parties to the proceedings within 7 days of filing.

(5) Where a party seeks to support the court's decision on different grounds but also seeks to challenge the decision on other grounds, the party must file a counter-notice.

- Rule 62.10 deals with a counter notice of appeal.

Action to be taken on receipt of notice of appeal

62.12 (1) Upon the notice of appeal being filed (unless rule 62.7 applies) the court below must forthwith, if the appeal is –

(a) from the High Court –

(i) arrange to prepare the transcript of the proceedings or other record of the notes of evidence and of the judge's reasons for giving the judgment and when these are prepared forthwith give notice to all parties that copies of the transcript or other record are available on payment of the prescribed fee; or

(ii) when these are prepared give notice to all parties that copies of the transcript are available on payment of the prescribed fee;

(b) from the magistrate's or district court, comply with any provision for appeal in the Codes of Procedure, Criminal Code or any other enactment regulating appeals from the magistrate's or district court; or

(c) from a tribunal, apply to the clerk or other officer of the court or tribunal for a -

(i) certified copy of the record of the proceedings;
(ii) certified copy of the notes of evidence given; and
(iii) statement of the judgment, the reasons for the decision and any finding on any question of law under appeal,

and forthwith upon receipt of these documents give notice to all parties that copies of the record and other documents are available on payment of the prescribed fee.

(2) Where, in any case, the transcript of the notes of evidence and of the judgment, or of the proceedings or the notes of evidence is unavailable, the court below shall inform all parties of this in writing.

(3) The parties may by agreement in writing dispense with the need for the transcript to be included in the record in whole or in part.

Interlocutory appeal

62.13 (1) On an interlocutory appeal, the appellant is required to file and serve with the notice of appeal, written submissions in support of the appeal, together with six bundles of documents (save that in respect of an appeal filed on the Electronic Litigation Portal, the appellant shall file an electronic bundle unless the court directs otherwise) comprising a copy of each of the following documents in the order set out below and where applicable the bundle must be bound, indexed and paginated –

(a) the judgment (if any) or order appealed;
(b) such affidavits, witness statements or exhibits relevant to the question at issue on the appeal which were put in evidence before the court below;
(c) any written admissions or requests for information and replies;
(d) the judge's notes of any submissions made (if any); and
(e) any other relevant documents applicable to the appeal.

(2) The appellant's notice of appeal must state in the heading that the appeal is an interlocutory appeal and is made under rule 62.13 of the Civil Procedure Rules.

(3) A respondent who intends to oppose the notice of appeal must within 7 days of service of the notice of appeal, file and serve a notice of opposition.

(4) The appellant shall, within 7 days of service of the notice of appeal on the respondent, file an affidavit of service of the notice of appeal.

(5) The respondent may within 14 days of receipt of the notice of appeal file and serve six copies of any written submissions in opposition to the appeal or in support of any cross appeal (save that in respect of an appeal filed on the Electronic Litigation Portal, the respondent shall file an electronic copy unless the court directs otherwise), together with any other documents, which have not been filed pursuant to paragraph (1) and the documents, where applicable, must be bound, indexed and paginated.

(6) Consideration of the appeal must take place not less than 14 days after the filing of the notice of appeal, unless the court otherwise directs.

(7) The court may direct that there be an oral hearing and the parties may make oral submissions as the court directs.

Skeleton arguments

62.14 (1) Within 52 days of receipt of the notice under rule 62.12(1) (a), (b) or (c), the appellant must file with the court office and serve on all other parties a skeleton argument.

(2) Within 28 days of service of the appellant's skeleton argument, any other party wishing to be heard on the appeal must file its skeleton argument and serve a copy on all other parties.

(3) The appellant may file and serve a skeleton argument in reply within 14 days of service of the skeleton argument by any other party.

(4) A skeleton argument must –

(a) set out concisely the nature of the appellant's arguments on each ground of appeal;

(b) in the case of a point of law, state the point and cite the principal authorities in support with references to the particular page where the principle concerned is set out; and

(c) in the case of questions of fact, state briefly the basis on which it is contended that the court can interfere with the finding of fact concerned, with cross references to the passages in the transcript or notes of evidence which bear on the point.

(5) The appellant's skeleton argument must be accompanied by a written chronology of events relevant to the appeal cross-referenced to the core bundle or record.

(6) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this rule.

The record – appeals from the High Court

62.15 (1) This rule applies to all appeals from the High Court other than –

(a) interlocutory appeals; or

(b) summary appeals under rule 62.7.

(2) Within 21 days of receipt of the notice under rule 62.12(1)(a), (b) or (c) that the transcript is available, all parties must inform the appellant of the documents that they wish to have included in the record or the core bundle.

(3) Subject to paragraph (4), within 42 days of receipt of such notice under rule 62.12(1)(a), the appellant must prepare and file with the court office 6 sets of the record (save that in respect of an appeal filed on the Electronic Litigation Portal, the appellant shall file an electronic copy of the record unless the court directs otherwise), for the use of the court comprising a copy of each of the following documents –

(a) affidavits (with exhibits) which were put in evidence before the court below;

(b) a transcript or other record of the —

(i) evidence given in the court below; and

(ii) judgment;

(c) the documents required by rule 39.1(5) to be lodged with the court (including any core bundle); and

(d) the notice of appeal and any counter-notices or respondents' notices that have been served on the appellant.

(4) If the record consists of more than 100 pages the appellant must prepare a core bundle and file –

(a) 4 copies of the core bundle; and

(b) 2 copies of the record in accordance with paragraph (3),

for the use of the court.

(5) Where a record of appeal is filed electronically, the appellant shall prepare and file such number of hard copies of the record and core bundle as authorised by the Chief Justice in a practice direction.

(6) The appellant must forthwith serve one copy of the record or (if paragraph (4) applies) one copy of any core bundle on every respondent.

(7) Any application to correct the record must be made in writing to the Chief Registrar no later than 21 days after the service of the record or core bundle in accordance with paragraph (4).

The record – appeals from Magistrates' Courts

62.16 (1) This rule applies to appeals from Magistrates' or District Courts.

(2) In the case of an appeal from a magistrate's or district court the record must consist of the documents referred to in rule 62.12(1)(b) together with the notice of appeal and any counter-notices that have been served on the appellant.

(3) Within 28 days of receipt of the notice under rule 62.12(1)(b) the appellant must file at the court office six copies of the record for the use of the court.

(4) The appellant must forthwith serve one copy of the record on each respondent to the appeal.

Case management

62.17 (1) Parts 25 to 27 so far as relevant apply to the case management of an appeal as they do to case management of a trial.

(2) The Chief Justice may designate a single judge of the court, a judge, master or the Chief Registrar to case manage an appeal.

(3) The person designated under paragraph (2) may –

(a) give written directions which may include a direction that a date for hearing of the appeal be fixed or that a case management conference be held; or

(b) hold a case management conference.

(4) Directions, whether or not given at a case management conference, must include directions fixing a date for the hearing of the appeal or directions fixing a date by which a listing questionnaire must be sent to all parties and may include directions -

(a) as to the length of time to be allocated to the hearing of the appeal;

(b) that the parties agree a core bundle for use at the appeal;

(c) that the parties agree and file a statement of issues for the appeal;

(d) that the parties agree and file a statement summarising the facts found at the trial; and

(e) as to the filing of written briefs and as to the length of time allowed to each party for oral argument; or

(f) that the appeal be considered solely on written briefs without oral argument and as to the time by which such briefs are to be filed.

(5) If directions are given that a listing questionnaire be sent to all parties, rules 27.9 and 27.10 apply as if the references to the trial were references to the hearing of the appeal.

(6) If the management of an appeal has been referred to a single judge of the court under paragraph (2) that judge must wherever practicable be a member of the court hearing the appeal.

(7) The Chief Justice may, by practice direction, set out those factors to which the court must have regard when considering the application of this rule.

Interlocutory applications to court

62.18 (1) Any application (other than an application for leave to appeal) to the court must be made in writing in the first instance and be considered by a single judge of the court, or if the Chief Justice directs, by –

(a) the court;

(b) a judge of the court below;

(c) a master;

(d) the Chief Registrar; or

(e) the registrar of the court below.

(2) If an appeal has been referred under rule 62.17(2) to a single judge of the court for case management, the application should, wherever practicable, be considered by that judge.

(3) So far as practicable, an interlocutory application is to be dealt with on paper or by electronic or other means of communication.

(4) The court office must give the parties to the appeal at least 7 days' notice of any hearing, unless the court otherwise directs.

Powers of single judge of the court, master and Chief Registrar to make certain orders

62.19 (1) A single judge of the court may make orders for –

(a) an injunction restraining any party from disposing of or parting with possession of the subject matter of an appeal pending the determination of the appeal;

(b) a stay of execution on any judgment or order against which an appeal has been made pending the determination of the appeal;

(c) extension or abridgement of any time limit prescribed in this Part; and

(d) the giving of security for any costs occasioned by an appeal,

and may hear, determine and make orders on any other interlocutory application in the course of an appeal.

(2) The Chief Justice may designate a master or the Chief Registrar to make orders for –

(a) extension or abridgement of any time limit prescribed in this Part; and

(b) the giving of security for any costs occasioned by an appeal.

(3) An order made by a master or the Chief Registrar may be varied or discharged by a single judge.

Variation, discharge or revocation of an order, direction or decision of a single judge

62.20 (1) Any order, direction or decision made or given by a single judge may be varied, discharged or revoked by two judges where the order, direction or

decision relates to an appeal of a class which may be heard and determined by two judges and by the full court in any case.

(2) A party may not apply to vary, discharge or revoke an order, direction or decision -

(a) allowing an extension of time for appealing from a judgment or order; or

(b) granting or giving unconditional leave to defend an action.

(3) The hearing of an application to vary, discharge or revoke an order, direction or decision made by a single judge may be made within 14 days of the date of the order, direction or decision.

(4) An application to vary, discharge or revoke an order, direction or decision made or given by a single judge may be made within 14 days of the date of the order, direction or decision.

(5) New evidence must not be filed in support of an application under paragraph (3) unless the court permits.

- See *The Windward Islands and Leeward Islands (Court's) Order in Council, 1959,* section 10(3) and rules 2.5 (4) and (5) which provide for actions that may be heard and determined by two judges of the court and actions that may be heard and determined by the full court.

Security for costs of appeal

62.21 (1) The court may order –

(a) an appellant; or

(b) a respondent who files a counter notice asking the court to vary or set aside an order of a lower court,

to give security for the costs of the appeal.

(2) An application for security may not be made unless the applicant has made a prior written request for such security.

(3) In deciding whether to order a party to give security for the costs of the appeal, the court must consider –

(a) the likely ability of that party to pay the costs of the appeal if ordered to do so; and

(b) whether in all the circumstances it is just to make the order.

(4) On making an order for security for costs the court must order that the appeal be dismissed with costs if the security is not provided in the amount, in the manner and by the time ordered.

(5) Any costs to be paid under paragraph (4) must be assessed by the court or as the court directs.

- Rule 65.12 deals with the assessment of costs.

Non-disclosure of payment into court, etc.

62.22 (1) If —

(a) any question on an appeal in a claim for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof; and

(b) an offer of settlement was made under Part 35 or payment into court in support of such an offer was made under Part 36 in the proceedings in the court below before judgment,

neither the fact nor the amount of the offer or payment is to be stated in any notice of appeal, respondent's notice or counter-notice or communicated to the court until all such questions have been decided.

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by the appellant every part which states, or refers to the fact, that money was paid into court or an offer to settle was made in the proceedings in that court before judgment.

(3) This rule does not apply to an appeal relating only to costs.

Stay of execution

62.23 Except so far as the court below or the court or a single judge of the court otherwise directs or an enactment otherwise provides -

(a) an appeal does not operate as a stay of execution or of proceedings under the decision of the court below; and

(b) any intermediate act or proceeding is not invalidated by an appeal.

General powers of the court

62.24 (1) In relation to an appeal the Court of Appeal has all the powers and duties of the High Court including in particular the powers set out in Part 26.

(2) The court may hear an appeal in a Member State or Territory other than where the decision of the court below was made.

Failure of party to attend appeal

62.25 (1) If no party appears at the appeal and the court is satisfied that the parties have received notice of the hearing in accordance with these rules, the court may strike out the appeal and any counter appeal.

(2) If one or more but not all parties appear, the court may proceed in the absence of the parties who do not appear if satisfied that the party who does not appear has received notice of the hearing in accordance with these rules.

Application to set aside decision made in party's absence

62.26 (1) A party who was not present at an appeal at which a decision was made or where an appeal was struck out may apply to set aside that order.

(2) The application must be made within 14 days after the date on which the judgment was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing –

(a) a good reason for failing to attend the hearing; and

(b) that it is likely that had the applicant attended, some other decision might have been made.

Adjournment of appeal

62.27 (1) The court may adjourn an appeal on such terms as it thinks just.

(2) The court may only adjourn an appeal to a date and time fixed by the court.

Certificate of result of appeal or application

62.28 At the conclusion of each appeal or application heard by the court, the court office must prepare a certificate of the result of the appeal or application in Form 24 and –

(a) file a copy at the court office at which the notice of appeal or application was lodged; and

(b) serve a copy on each party to the appeal.

Withdrawal or discontinuance

62.29 (1) If the appellant files a notice that he desires to withdraw or discontinue his appeal, the appeal shall stand dismissed without further order on the date on which such notice is filed.

(2) The appellant shall serve copies of the notice of withdrawal or discontinuance on all the parties with regard to whom the appellant wishes to withdraw his appeal within 2 days of filing, and shall file such notice and evidence of service within 2 days of service.

(3) Any party served in accordance with this rule shall be precluded from laying claim to any costs incurred by him after such service unless the court shall otherwise order.

(4) Notwithstanding the appeal stands dismissed, the appellant shall be liable for the costs incurred by the respondent.

Liability for costs on withdrawal or discontinuance

62.30 (1) Unless the –

(a) parties agree; or

(b) court orders otherwise,

an appellant who discontinues is liable for the costs incurred by the respondent against whom the claim is discontinued, on or before the date on which notice of discontinuance was served.

(2) If an appeal is only partly discontinued –

(a) the appellant is only liable for the costs relating to that part of the appeal which is discontinued; and

(b) unless the court orders otherwise, the costs which the appellant is liable to pay are not to be quantified until the conclusion of the rest of the appeal.

PART 63
Change of Legal Practitioner

Contents of this Part

Scope of this Part	Rule 63.1
Change of legal practitioner	Rule 63.2
Notice of appointment of legal practitioner	Rule 63.3
Party acting in person	Rule 63.4
Application by another party to remove legal practitioner from record	Rule 63.5
Application by legal practitioner to be removed from record	Rule 63.6
Time when notice or order takes effect	Rule 63.7

Scope of this Part

63.1 This Part deals with the procedure where –

(a) a legal practitioner acts in the place of a party in person;

(b) a party who has previously acted by a legal practitioner acts in person; or

(c) there is a change of legal practitioner.

Change of legal practitioner

63.2 When a party changes its legal practitioner the new legal practitioner must –

(a) file a notice of acting which states the legal practitioner's business name, address, telephone number and email address (if any);

(b) serve a copy of the notice on every other party and the former legal practitioner; and

(c) file a certificate of service.

Notice of appointment of legal practitioner

63.3 If a person who has previously acted in person instructs a legal practitioner, that legal practitioner must –

(a) file a notice of acting at the court office which states the legal practitioner's business name, address, telephone number and email address (if any);

(b) serve a copy of the notice on every other party; and

(c) file a certificate of service.

Party acting in person

63.4 If a party who has previously been represented by a legal practitioner decides to act in person, that party must –

(a) file a notice of acting in person at the court office which states the address, telephone number and email address (if any) of that party and an address for service in the Member State or Territory within the jurisdiction in which the proceedings were commenced;

(b) serve a copy of the notice on every other party and the former legal practitioner; and

(c) file a certificate of service.

Application by another party to remove legal practitioner from record

63.5 (1) If –

(a) a legal practitioner on record for a party has –

(i) become bankrupt;

(ii) been removed from the roll;

(iii) died; or

(iv) failed to take out a practising certificate; and

(b) notice of the appointment of a new legal practitioner under rule 63.2 or of the party acting in person under rule 63.4 has not been received,

any other party may apply to the court for an order declaring that the legal practitioner in question has ceased to act.

(2) An application under this Part must be supported by evidence on affidavit and must be served on the legal practitioner (if practicable) and personally on the client.

(3) Any order made must be served by the applicant on the legal practitioner or former legal practitioner (if practicable) and personally on the client.

(4) The applicant must file a certificate of service of the order.

Application by legal practitioner to be removed from record

63.6 (1) A legal practitioner who wishes to be removed from the record as acting for a party may apply to the court for an order that he or she be removed from the record.

(2) The application must be on notice to the client or former client and to all other parties.

(3) The application must be supported by evidence on affidavit which must be served on the client but must not be served on any other party to the proceedings.

(4) Any order made must be served by the applicant on the other parties' legal practitioners and personally on the former client.

(5) The applicant must file a certificate of service of the order.

Time when notice or order takes effect

63.7 (1) Any notice under rule 63.2, 63.3 or 63.4 does not take effect until service.

(2) Any order made under rule 63.5 or 63.6 takes effect from the date of service of the order.

PART 64
Costs – General

Contents of this Part

Scope of this Part	Rule 64.1
Definitions and application	Rule 64.2
Orders about costs	Rule 64.3
Costs where there is an appeal	Rule 64.4
Entitlement to recover costs	Rule 64.5
Successful party generally entitled to costs	Rule 64.6
Two or more parties having same interest	Rule 64.7
Wasted costs orders	Rule 64.8
Court's powers in relation to wasted costs orders	Rule 64.9
Costs against person who is not a party	Rule 64.10

Scope of this Part

64.1 This Part contains general rules about costs and the entitlement to costs. Part 65 deals with the quantification of such costs.

Definitions and application

64.2 (1) In this Part and in Part 65, unless the context otherwise requires –

"**assessed costs**" and "**assessment**" have the meanings given them by rules 65.11 and 65.12;

"**budgeted costs**" has the meaning given it by rule 65.8;

"**costs**" include a legal practitioner's charges and disbursements, fixed costs, prescribed costs, budgeted costs or assessed costs;

"**fixed costs**" has the meaning given it by rule 65.4; and

"**prescribed costs**" has the meaning given it by rule 65.5.

(2) If costs of –

(a) a legal practitioner to his or her client;

(b) arbitration proceedings; or

(c) proceedings before a tribunal or other statutory body,

are to be taxed or assessed by the court, they must be assessed in accordance with rule 65.12.

(3) If in any enactment there is a reference to the taxation of any costs this is to be construed as referring to the assessment of such costs in accordance with rule 65.12, unless the enactment otherwise provides.

Orders about costs

64.3 The court's powers to make orders about costs include power to make orders requiring a party to pay the costs of another person arising out of or related to all or any part of any proceedings.

Costs where there is an appeal

64.4 The court hearing an appeal may make orders about the costs of the proceedings giving rise to the appeal as well as the costs of the appeal.

Entitlement to recover costs

64.5 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.

Successful party generally entitled to costs

64.6 (1) Where the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party.

(2) The court may however order a successful party to pay all or part of the costs of an unsuccessful party or may make no order as to costs but the court must state the reasons for its decision.

(3) This rule gives the court power in particular to order a person to pay –

(a) costs from or up to a certain date only;

(b) costs relating only to a certain distinct part of the proceedings; or

(c) only a specified proportion of another person's costs.

(4) The court may not make an order under paragraph 3(a) or 3(b) unless it is satisfied that an order under paragraph 3(c) would not be more practicable.

(5) In deciding who should be liable to pay costs the court must have regard to all the circumstances.

(6) In particular it must have regard to –

(a) the conduct of the parties both before and during the proceedings, including whether a party unreasonably refused to participate in a form of alternative dispute resolution approved by the court;

(b) the manner in which a party has pursued –

(i) a particular allegation;

(ii) a particular issue; or

(iii) the case;

(c) whether a party has succeeded on particular issues, even if the party has not been successful in the whole of the proceedings;

(d) whether it was reasonable for a party to –

(i) pursue a particular allegation; and/or

(ii) raise a particular issue; and

(e) whether the claimant gave reasonable notice of intention to issue a claim.

- Rule 65.11 sets out the way in which the court must deal with the costs of procedural hearings other than a case management conference or pre-trial review.

Two or more parties having same interest

64.7 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.

Wasted costs orders

64.8 (1) In any proceedings the court may by order –

(a) direct the legal practitioner to pay; or

(b) disallow as against the legal practitioner's client,

the whole or part of any wasted costs.

(2) In this rule –

"**wasted costs**" means any costs incurred by a party –

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal practitioner or any employee of the legal practitioner; or

(b) which, in the light of any act or omission occurring after they were incurred,

the court considers it unreasonable to expect that party to pay.

(3) Where the court is to consider whether to make an order for wasted costs under this rule, the legal practitioner must be provided with a reasonable opportunity to make submissions before the court makes such an order.

(4) The court may direct the legal practitioner to serve on the client any wasted costs order made against the client's legal practitioner.

Court's powers in relation to wasted cost orders

64.9 (1) The court may make an order under this rule where –

(a) a party or his legal practitioner, fails to comply with a rule, practice direction or court order; or

(b) it appears to the court that the conduct of a party or his legal practitioner, before or during the proceedings, was unreasonable or improper.

(2) Where paragraph (1) applies, the court may –

(a) disallow all or part of the costs which are being assessed; or

(b) order the party at fault or his legal practitioner to pay costs to the court or costs to a party which he has caused the party to incur,

or both.

(3) Where the court makes an order under paragraph (2) against a legally represented party and the party is not present when the order is made, the party's legal practitioner shall serve the order on the party.

Costs against person who is not a party

64.10 (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.

(7) A notice under paragraph (2) or (3) may be given to a person outside the jurisdiction of the court.

(8) A notice under paragraph (2) or (3) is required to be served but, if the person to be served is outside of the jurisdiction of the court, leave is not required.

PART 65
Costs – Quantification

Contents of this Part

Scope of this Part	Rule 65.1
Basis of quantification	Rule 65.2
Ways in which costs are to be quantified	Rule 65.3
Fixed costs	Rule 65.4
Prescribed costs	Rule 65.5
Applications to determine value of claim for purpose of prescribed costs	Rule 65.6
What is included in prescribed costs	Rule 65.7
Budgeted costs	Rule 65.8
Client's consent to application for budgeted costs	Rule 65.9
What is included in costs budget	Rule 65.10
Assessed costs – procedural applications	Rule 65.11
Assessed costs – general	Rule 65.12
Commencement of detailed assessment proceedings	Rule 65.13
Points of dispute	Rule 65.14
Assessed costs	Rule 65.15
Administrative fees	Rule 65.16
Determination of assessment	Rule 65.17
Appeals from assessment	Rule 65.18
Procedure where costs are agreed	Rule 65.19
Costs of Proceedings in Court of Appeal	Rule 65.20
Costs capping orders – General	Rule 65.21
Application for a costs capping order	Rule 65.22
Application to vary a costs capping order	Rule 65.23

Appendix A – Fixed Costs
Appendix B – Prescribed Costs
Appendix C – Prescribed Costs: Percentage to be allowed at various stages of claim

Scope of this Part

65.1 This Part deals with the way in which any costs awarded by the court are quantified.

Basis of quantification

65.2 (1) If the court has a discretion as to the amount of costs to be allowed to a party, the sum to be allowed is –

(a) the amount that the court deems to be reasonable were the work to be carried out by a legal practitioner of reasonable competence; and

(b) which appears to the court to be fair both to the person paying and the person receiving such costs.

(2) If the court has a discretion as to the amount of costs to be paid to a legal practitioner by his or her client, the sum to be allowed is –

(a) the amount that the court deems to be reasonable; and

(b) which appears to be fair both to the legal practitioner and the client.

(3) In deciding what would be reasonable the court must take into account all the circumstances, including –

(a) any order that has already been made;

(b) the care, speed and economy with which the case was prepared;

(c) the conduct of the parties before as well as during the proceedings;

(d) the degree of responsibility accepted by the legal practitioner;

(e) the importance of the matter to the parties;

(f) the novelty, weight and complexity of the case;

(g) the time reasonably spent on the case; and

(h) in the case of costs charged by a legal practitioner to his or her client –

(i) any agreement about what grade of legal practitioner should carry out the work;

(ii) any agreement that may have been made as to the basis of charging; and

(iii) whether the legal practitioner advised the client and took the client's instructions before taking any unusual step or one which was unusually expensive, having regard to the nature of the case.

Ways in which costs are to be quantified

65.3 Costs of proceedings under these rules are to be quantified as follows –

(a) where rule 65.4 applies – in accordance with the provisions of that rule; and

(b) in all other cases if, having regard to rule 64.6, the court orders a party to pay all or any part of the costs of another party, in one of the following ways –

(i) costs determined in accordance with rule 65.5 ("prescribed costs");

(ii) costs in accordance with a budget approved by the court under rule 65.8 ("budgeted costs"); or

(iii) (if neither prescribed nor budgeted costs are applicable), by assessment in accordance with rules 65.11 and 65.12.

Fixed costs

65.4 (1) A party is entitled to the costs set out in column 3 of Appendix A to this Part in the circumstances set out in column 2 of that Appendix.

(2) The court may however direct that some other amount of costs be allowed for the work covered by any item in Part 2 of Appendix A.

(3) If it does so, the court must assess such costs.

- Rule 65.11 and 65.12 deal with the assessment of costs.

Prescribed costs

65.5 (1) The general rule is that where rule 65.4 does not apply and a party is entitled to the costs of any proceedings, those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2) to (4) of this rule.

(2) In determining such costs, the value of the claim is -

(a) in the case of the claimant -

(i) the amount agreed or ordered to be paid; or

(ii) the amount determined in accordance with sub-paragraph (d);

(b) in the case of the defendant -

(i) the amount claimed by the claimant in the claim form;

(ii) the amount determined in accordance with sub-paragraph (c); or

(iii) the amount determined in accordance with sub-paragraph (d);

(c) if the claim is for damages and the claim form does not specify an amount that is claimed, such sum as may be agreed between the party entitled to and the party liable to such costs or, if not agreed, a sum stipulated by the court as the value of the claim; or

(d) if the claim is not for a monetary sum, it is to be treated as a claim for $50,000 unless the court makes an order under rule 65.6(1)(a).

(3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentages specified in column 3 of Appendix B against the appropriate value.

(4) The court may –

(a) in appropriate circumstances, vary such sum having taken into account the matters set out in rule 64.6(4) and (5); and

(b) order a party to pay costs –

(i) from or to a certain date; or

(ii) relating only to a certain distinct part of the proceedings, in which case it must specify the proportion of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.

Applications to determine value of claim for purpose of prescribed costs

65.6 (1) A party may apply to the court at any time before pre-trial review –

(a) to determine the value to be placed on a case which has no monetary value; or

(b) where the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

(2) If an application is made for costs to be prescribed at a higher level, rules 65.8(4)(c) and 65.9 apply.

What is included in prescribed costs

65.7 (1) Prescribed costs include all work that is required to prepare the proceedings for trial including, in particular, the costs involved in –

(a) instructing any expert;

(b) considering and disclosing any report made by the expert;

(c) arranging the expert witness' attendance at trial; and

(d) attendance and advocacy at the trial, including attendance at any case management conference or pre-trial review.

(2) Prescribed costs exclude –

(a) expert's fees for preparing a report and attending any conference, hearing or trial;

(b) costs incurred in enforcing any order (which are generally fixed in accordance with rule 65.4 but may, in certain cases, be assessed in accordance with rule 65.12);

(c) the cost of obtaining a daily transcript of the evidence if the trial judge certifies this as a reasonable disbursement in all the circumstances of the case; and

(d) the making or opposing of any application except at a case management conference or pre-trial review.

Budgeted costs

65.8 (1) A party may apply to the court to set a costs budget for the proceedings.

(2) An application for a costs budget must be made at a case management conference.

(3) The application may be made by either or both parties but an order setting a costs budget may not be made by consent unless all relevant parties are bodies corporate.

(4) An application for a costs budget must be accompanied by –

(a) a statement of the amount that the party seeking the order wishes to be set as the costs budget;

(b) a statement showing how the budget has been calculated and setting out in particular –

(i) a breakdown of the costs incurred to date;

(ii) the anticipated amount of any expert witness fees and whether or not such fees are included in the budget;

(iii) the disbursements other than expert fees that are included in the budget;

(iv) the fees that are anticipated to be paid to any legal practitioner other than the legal practitioner on record for advocacy (including advocacy by a King's Counsel, a Senior Counsel or more than one legal practitioner), advising or settling any document;

(v) the hourly rate charged by the legal practitioner (or other basis of charging);

(vi) a statement of the number of hours of preparation time (including attendances upon the party, any witness and any other party to the proceedings) that the legal practitioner for the party making the application has already spent and anticipates will be required to bring the proceedings to trial; and

(vii) what procedural steps or applications are or are not included in the budget; and

(c) the written consent from the client in accordance with rule 65.9.

(5) A party may apply to vary the terms of an order made under this rule at any time prior to the commencement of the trial but no order may be made increasing the amount of the budgeted costs unless the court is satisfied that there has been a change of circumstances which became known after the order was made.

Client's consent to application for budgeted costs

65.9 (1) The court may not make an order for budgeted costs unless –

(a) the court satisfies itself that each party fully understands the consequences of the order that is being sought as to –

(i) the party's liability for costs to the party's own legal practitioner, whether the party obtains an order for costs against any other party or not;

(ii) the party's liability to pay costs in the budgeted sum to the other party if that other party obtains an order for costs against the party; and

(iii) what the party's liability might be under paragraphs (i) and (ii) if rule 65.5 applied;

(b) the consent under sub-paragraph (c) is in a separate document which –

(i) deals only with the question of budgeted costs;

(ii) gives an estimate of the total costs of the proceedings as between the legal practitioner and the client;

(iii) is signed by the party in person;

(iv) states the legal practitioner's estimate of what the prescribed costs appropriate to the proceedings would be; and

(v) sets out the basis of that estimate including the amount of any hourly charge;

(c) there has been filed a document recording the express consent of the party in person to the application and to any order made as a consequence of the application; and

(d) the party seeking the order is present in person when the application is made except where–

(i) that party is a body corporate; or

(ii) for some exceptional reason this is impracticable.

(2) The written consent of the client must not be disclosed to the other party.

(3) This rule also applies to any other party personally who consents to or does not oppose an order for a costs budget.

What is included in costs budget

65.10 Unless the costs budget approved by the court specifies otherwise, rule 65.7 applies to budgeted costs as it does to prescribed costs.

Assessed costs – procedural applications

65.11 (1) On determining any application except at a case management conference, pre-trial review or the trial, the court must –

(a) decide which party, if any, should pay the costs of that application;

(b) assess the amount of such costs; and

(c) direct when such costs are to be paid.

(2) In deciding which party, if any, should pay the costs of the application the general rule is that the unsuccessful party must pay the costs of the successful party.

(3) The court must take into account all the circumstances including the factors set out in rule 64.6(6) but where the application is –

(a) an application to amend a statement of case;

(b) an application to extend the time specified for doing any act under these rules or an order or direction of the court;

(c) an application for relief under rule 26.8 (relief from sanctions); or

(d) one that could reasonably have been made at a case management conference or pretrial review,

the court must order the applicant to pay the costs of the respondent unless there are special circumstances.

(4) In assessing the amount of costs to be paid by any party, the court must take into account any representations as to the time that was reasonably spent in making the application and preparing for and attending the hearing and must allow such sum as it considers fair and reasonable.

(5) A party seeking assessed costs must supply to the court and to all other parties a brief statement showing –

(a) any fees incurred by their legal practitioner;

(b) how that party's legal practitioner's costs are calculated; and

(c) the disbursements incurred.

(6) The statement under paragraph (5) must comply with any relevant practice direction.

Assessed costs – general

65.12 (1) This rule applies where costs fall to be assessed in relation to any matter or proceedings, or part of a matter or proceedings, other than a procedural application.

(2) If the assessment relates to part of court proceedings it must be carried out by the judge, master or registrar hearing the proceedings.

(3) If the assessment does not fall to be carried out at the hearing of any proceedings, then the person entitled to the costs must apply to a master or the registrar for directions as to how the assessment is to be carried out.

(4) The application must be accompanied by a bill or other document showing the sum in which the court is being asked to assess the costs and how such sum was calculated.

(5) On hearing any such application, the master or registrar must either –

(a) assess the costs if there is sufficient material available to do so; or

(b) fix a date, time and place for the assessment to take place.

(6) The master or registrar may direct that the party against whom the bill is assessed pay the costs of the party whose bill is being assessed and, if so, must assess such costs and add them to the costs ordered to be paid.

Commencement of detailed assessment proceedings

65.13 (1) Detailed assessment proceedings are commenced by the receiving party serving on the paying party –

(a) a notice of commencement in Form 24A; and

(b) a copy or copies of the bill of costs.

(2) The receiving party must also serve a copy of the notice of commencement and the bill of costs on any other person specified in the relevant Practice Direction.

(3) A person on whom a copy of the notice of commencement is served under paragraph (2) is deemed to be a party to the detailed assessment proceedings (in addition to the paying party and the receiving party).

Points of dispute

65.14 (1) The paying party and any other party to the detailed assessment proceedings may dispute any item in the bill of costs by serving points of dispute on –

(a) the receiving party; and

(b) every other party to the detailed assessment proceedings.

(2) The period for serving points of dispute is 21 days after the date of service of the notice of commencement.

(3) If a party serves points of dispute after the period set out in paragraph (2), that party may not be heard further in the detailed assessment proceedings unless the court gives permission.

(4) The receiving party may file a request for a default costs certificate if –

(a) the period set out in paragraph (2) for serving points of dispute has expired; and

(b) the receiving party has not been served with any points of dispute.

(5) If an application for a default costs certificate is made pursuant to paragraph (4), the court office shall refer the application for consideration by a judge, master, the Chief Registrar or a registrar who shall assess the costs in accordance with rule 65.15 and notice of the decision shall be given to the parties in the form of the default costs certificate in Form 24C.

(6) If any party (including the paying party) serves points of dispute before the issue of a default costs certificate the court may not issue the default costs certificate.

- Form 24B is for requesting a default costs certificate.

Assessment of costs

65.15 (1) The judge, master, Chief Registrar or registrar shall assess costs having regard to the factors set out in rule 65.2, as applicable.

(2) The court shall give the receiving party and the paying party written notice of the date of the assessment.

(3) The court may make a provisional assessment of costs without the attendance of the parties.

(4) The court must inform the parties in writing of the outcome of a provisional assessment and, if a party is dissatisfied with the outcome and the points of disagreement cannot be resolved, the dissatisfied party shall request from the court office a date for an oral hearing.

(5) Any request for an oral hearing following a provisional assessment of costs must be made within 14 days of the receipt of the court's decision on the assessment.

- Form 24A is for commencing a detailed assessment.

Administrative fees

65.16 (1) Subject to paragraph (2), there shall be an administrative fee payable on -

(a) the filing of a bill of costs, which shall be a percentage of the total amount claimed (excluding VAT or similar tax where applicable) as set out in a Practice Direction issued by the Chief Justice; and

(b) the assessment of a bill of costs, which shall be a percentage of the amount allowed (including the costs of the assessment and VAT or similar tax where applicable) as set out in a Practice Direction issued by the Chief Justice.

(2) This rule shall come into effect on a date when notice is given by the Chief Justice and published in the Gazette.

(3) The administrative fees under this rule are payable to the Eastern Caribbean Supreme Court in such manner as prescribed in a Practice Direction issued by the Chief Justice.

Determination of Assessment

65.17 Upon completion of a detailed assessment the court shall within 7 days of payment of the assessment fee issue a Costs Assessment Certificate in Form 24D.

Appeals from Assessment

65.18 A party who is dissatisfied with an assessment on costs may, with leave of the court, appeal to the Court of Appeal by filing a notice of appeal in Form 23 within 14 days of the grant of leave.

Procedure where costs are agreed

65.19 (1) If the paying party and the receiving party agree the amount of costs, either party may apply for a costs certificate (either interim or final) in the amount agreed.

(2) An application for a certificate under paragraph (1) may be made to a master or the registrar.

Costs of proceedings in Court of Appeal

65.20 (1) Costs of any -

(a) appeal; or

(b) withdrawal or discontinuance of an appeal,

shall be assessed.

(2) If the appellant discontinues part of the appeal only, the amount of costs must be assessed by the court when the remainder of the appeal is resolved.

(3) In determining the appropriate amount of costs to be paid where an order has been made under rule 65.8 (budgeted costs), the court may take into account any written information provided by either party when the costs budget was made.

Costs capping orders – General

65.21 (1) A costs capping order is an order limiting the amount of future costs (including disbursements) which a party may recover pursuant to an order for costs subsequently made.

(2) In this rule -

"future costs" means costs incurred in respect of work done after the date of the costs capping order but excluding the amount of any additional liability.

(3) A cost capping order may be in respect of –

(a) the whole litigation; or

(b) any issues which are ordered to be tried separately.

(4) The court may at any stage of proceedings make a costs capping order against all or any of the parties, if –

(a) it is in the interests of justice to do so;

(b) there is a substantial risk that without such an order costs will be disproportionately incurred; and

(c) it is not satisfied that the risk in 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; and

(c) the stage reached in the proceedings and the costs 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.

Application for a costs capping order

65.22 (1) An application for a costs capping order must be made on notice in accordance with Part 11.

(2) The application must –

(a) set out –

(i) whether the costs capping order is in respect of the whole of the litigation or a particular issue which is ordered to be tried separately; and

(ii) why a costs capping order should be made; and

(b) be accompanied by an estimate of costs 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 to –

(i) file a schedule of costs;

(ii) 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.

Application to vary a costs capping order

65.23 An application to vary a costs capping order must be made in accordance with Part 11.

APPENDIX A
FIXED COSTS

Part 1

This Part of the Appendix sets out the fixed costs applicable to a claim for a specified sum of money –

(a) which a defendant who does not defend must pay to the claimant, in addition to the amount claimed and interest and the court fees paid by the claimant, in order to avoid judgment being entered under Part 12. These sums are to be entered on the claim form. The table also deals with claims for delivery of goods and an application for an order for attachment of debts – Table 1 refers; and

(b) which a claimant is entitled to include as costs in any default judgment under Part 12 in addition to the costs set out in Table 1 - Table 2 refers.

Scale of Fixed Costs

Table 1

1. This table shows the amounts to be entered on a claim form or provisional attachment of debts order in respect of a legal practitioner's charges in –

(a) a claim for payment of a specified sum of money; or

(b) attachment of debt proceedings.

2. In addition to the fixed costs the appropriate court fee is to be allowed together with the sum of $100 for personal service of the claim form.

Column 1	Column 2	Column 3
1	Claim exceeding $5,000 but not exceeding $15,000 or a claim for delivery of goods	$1,500
2	Claim exceeding $15,000 but not exceeding $50,000	$2,000
3	Claim exceeding $50,000 but not exceeding $100,000	$3,000
4	Claim exceeding $100,000 but not exceeding $500,000	$4,000
5	Claim exceeding $500,000	$5,000

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. 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 default judgment.

Column 1	Column 2	Column 3
1	Where there is only one defendant and items (3) to (6) of this table do not apply	$350
2	Where there is more than one defendant, in respect of each additional defendant served against whom judgment is entered	$50
3	Where an order is made under rule 5.14 (specified method of service) for each defendant served	$500
4	Where an order is made under Part 7 for service out of the jurisdiction (to cover the obtaining of an order under Part 7 and service)	$500
5	Where judgment is entered on an admission and the claimant accepts the defendant's proposals as to method of payment under rule 14.10	$350
6	Where judgment is entered on an admission and the time and rate of payment are not agreed under rule 14.11	$500

Part 2

Miscellaneous enforcement proceedings

The following table shows the amount to be allowed in respect of a legal practitioner's charges in the circumstances set out. The appropriate court fee is to be added. The court may order that the costs of any such matter be assessed.

Column 1	Column 2	Column 3
1	For filing a request for the issue of a writ of execution	$150
2	For each attendance at a hearing of - (i) an application for time to pay where the debt is admitted; (ii) an application to suspend a writ of execution; or (iii) an oral examination.	$300
3	For the costs of the judgment creditor where allowed in proceedings for an attachment of debts order or an application for payment out of money in court under rule 50.15, where the amount recovered - (i)does not exceed $1000; (ii) exceeds $1000	 ½ of the amount recovered $500
4	For the costs of the judgment creditor where allowed in an application for a charging order	$500
5	In addition, for the personal service of any application requiring such service	$100

APPENDIX B

Scale of prescribed costs

Column 1	Column 2	Column 3
	Value of Claim	Percentage
1	Not exceeding $50,000	20%
2	Exceeding $50,000.00 but not exceeding $100,000.00	15%
3	Exceeding $100,000 but not exceeding $250,000	12.5%
4	Exceeding $250,000 but not exceeding $500,000	10%
5	Exceeding $500,000 but not exceeding $1,000,000	7%
6	Exceeding $1,000,000 but not exceeding $2,500,000	3%
7	Exceeding $2,500,000	0.5%

- The costs for each stage of the scale are cumulative.

(Example	Claim for	$750,000
First	$50,000	$10,000
Next	$50,000	$7,500
Next	$150,000	$18,750
Next	$250.000	$25,000
Next	$250,000	$17,500
Total	$78,750)	

APPENDIX C

Prescribed Costs: Percentage to be allowed at various stages of claim

Table showing the percentage of the prescribed costs to be allowed under Appendix B where a claim concludes prior to trial.

Column 1	Column 2	Column 3
	Stage	Percentage
1	Up to and including service of defence	45%
2	After defence and up to and including the case management conference	55%
3	Up to default judgment and including assessment of damages	60%
4	From the case management conference and up to and including listing questionnaire	70%
5	From listing questionnaire and up to and including pre-trial review (if any)	75%
6	To trial	100%

(Example
Claim for $750,000 — full costs as in Appendix B: $78,750
Claim discontinued after case management conference —
therefore defendant entitled to 70% of total costs: $55,125)

PART 66
Mortgage Claims

Contents of this Part

Scope of this Part	Rule 66.1
Mortgage claim to be by fixed date claim	Rule 66.2
Evidence at first hearing	Rule 66.3
Claim for possession or payment of mortgage debt	Rule 66.4

Scope of this Part

66.1 (1) This Part deals with claims by a mortgagor or mortgagee for any of the following forms of relief –

(a) foreclosure;
(b) delivery of possession by the mortgagee;
(c) payment of money secured by a mortgage;
(d) possession of a mortgaged property;
(e) reconveyance of the property or release from the mortgage;
(f) redemption of a mortgage;
(g) sale of a mortgaged property; and
(h) judgment fixing the amount due to the mortgagee under an equitable mortgage, pursuant to the relevant statute.

(2) In this Part —
"**mortgage**" includes a legal or equitable charge and a legal or equitable mortgage;
"**mortgage claims**" means the claims by a mortgagee or mortgagor for any of the forms of relief referred to in paragraph (1);
"**mortgagee**" means the person to whom the mortgage was granted;
"**mortgagor**" means the person who has granted a mortgage of the mortgaged property.

(3) This Part does not apply to Saint Lucia.

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

Mortgage claim to be by fixed date claim

66.2 (1) A mortgage claim is made by issuing a fixed date claim in Form 2.

(2) Notice of the claim must be given to all other mortgagees of the land.

- Rules 8.1 and 27.2 deal with the procedure relating to fixed date claims.

Evidence at first hearing

66.3 A claimant who seeks final judgment at the first hearing must –

(a) file evidence on affidavit in support of the claim;

(b) serve –

(i) a copy of the affidavit but not the exhibits; and

(ii) with the claim form, a notice stating what relief is sought; and

(c) file a certificate of service not less than 7 days before the first hearing.

- Rule 28.16 enables a party to require copies of any document referred to in an affidavit.

Claim for possession or payment of mortgage debt

66.4 (1) On a claim for possession of the mortgaged property or for payment of the mortgage debt, the claimant must file with the claim form evidence by affidavit –

(a) exhibiting a copy of the original mortgage;

(b) exhibiting a copy of any other document which sets out the terms of the mortgage; and

(c) giving particulars of –

(i) the amount of the advance;

(ii) the interest payable under the mortgage;

(iii) the amount of any periodic payments required to be made stating whether or not such payments include interest;

(iv) the amount of repayments that have been made;

(v) the amount of any repayments or interest due but unpaid at the date of the claim and at the date of the affidavit;

(vi) the amount remaining due under the mortgage; and

(vii) if the claim includes a claim for interest– the daily rate at which such interest accrues.

(2) If the claimant seeks possession of the mortgaged property, the claimant must also file with the claim form evidence by affidavit –

(a) giving details of any person other than the defendant and the defendant's family who to the claimant's knowledge is in occupation of the mortgaged property; and
(b) stating the circumstances under which the right to possession arises.

(3) If the mortgage creates a tenancy other than a tenancy at will between the mortgagor and the mortgagee, the affidavit must show how and when the tenancy was determined and if by service of a notice when and how that notice was served.

PART 67
Administration Claims

Contents of this Part

Scope of this Part	Rule 67.1
Parties	Rule 67.2
Claims by third parties	Rule 67.3
Determination of questions without administration claim	Rule 67.4
Judgments and orders in administration claims	Rule 67.5
Conduct of sale of trust property	Rule 67.6

Scope of this Part

67.1 (1) This Part deals with –

(a) claims for –

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

(ii) the execution of a trust under the direction of the court,

which are referred to as "administration claims"; and

(b) claims to determine any question or grant any relief relating to the administration of the estate of a deceased person or the execution of a trust.

(2) Such claims must be brought by a fixed date claim in Form 2.

(3) In this Part –

"**administration claims**" mean claims for –

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

(b) the execution of a trust under the direction of the court.

Parties

67.2 (1) An administration claim or a claim under rule 67.4 may be brought by any -

(a) executor or administrator of the relevant estate;

(b) person having or claiming to have a beneficial interest in the estate of a deceased person or under a trust; or

(c) trustee of the relevant trust.

(2) Any executor or administrator of the relevant estate or trustee of the relevant trust who is not a claimant must be a defendant to the claim.

(3) The general rule is that the claimant need not join as a defendant any person having a beneficial interest under the estate or trust.

(4) The claimant may make any such person a defendant and the court may direct that any such person be made a defendant.

Claims by third parties

67.3 (1) This rule applies where –

(a) there are proceedings under a judgment or order made in an administration claim relating to the estate of a deceased person; and

(b) a person not a party to the claim makes a claim against the estate.

(2) Any person other than the executors or administrators may not appear in proceedings relating to that claim unless the court otherwise directs.

Determination of questions without administration claim

67.4 (1) An executor, administrator or trustee may issue a claim for –

(a) any relief; or

(b) the determination of any question,

without bringing an administration claim.

(2) The "**determination of any question**" includes any question –

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

(b) arising in the execution of or under a trust;

(c) as to the composition of any class of persons having a claim against –

(i) a beneficial interest in the estate of a deceased person;

(ii) any property subject to a trust; or

(iii) the estate of a deceased person; and

(d) as to the rights or interests of a person claiming to be –

(i) a creditor of the estate of a deceased person;

(ii) beneficially entitled under a trust; or

(iii) entitled under a will or on the intestacy of a deceased person.

(3) "**Any relief**" includes an order –

(a) approving any sale, purchase, compromise or other transaction by a person in the capacity of executor, administrator or trustee;

(b) directing any act to be done in the administration of the estate of a deceased person or in the execution of a trust, which the court could order to be done if the estate or trust were being administered or executed under the direction of the court;

(c) directing a person to do or abstain from doing a particular act in the capacity of executor, administrator or trustee;

(d) requiring an executor, administrator or trustee to furnish and verify accounts; or

(e) requiring the payment into court of money held by a person in the capacity of executor, administrator or trustee.

Judgments and orders in administration claims

67.5 (1) The court need not make any judgment or order in an administration claim unless satisfied that the question in issue cannot be determined by other means.

(2) If an administration claim is brought by a –

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

(b) person claiming to be beneficially entitled under a trust; or

(c) person claiming to be entitled under the will or the intestacy of a deceased person,

and the claimant alleges that no or no sufficient accounts have been furnished by the executors, administrator or trustees, the court may –

(i) stay the proceedings until a specified date and direct the executors, administrators or trustees to supply proper accounts to the claimant; or

(ii) if it is necessary to prevent proceedings by other creditors or claimants, give judgment or make an order for the administration of the estate and include an order that no proceedings are to be taken under the judgment or order, or under any particular account or inquiry directed without the court's permission.

Conduct of sale of trust property

67.6 If in an administration claim an order is made for the sale of any property vested in administrators, executors or trustees, they are to have conduct of the sale unless the court otherwise directs.

PART 68
Contentious Probate Proceedings

Contents of this Part

Scope of this Part	Rule 68.1
How to commence probate proceedings	Rule 68.2
Parties to proceedings for revocation of grant	Rule 68.3
Lodgement of grant in proceedings for revocation	Rule 68.4
Affidavit of testamentary scripts	Rule 68.5
Failure to file acknowledgment of service	Rule 68.6
Counterclaim	Rule 68.7
Contents of statements of case	Rule 68.8
Discontinuance and dismissal	Rule 68.9
Compromise of claim: trial on affidavit evidence	Rule 68.10
Application for order to bring in will, etc.	Rule 68.11
Probate counterclaim in other proceedings	Rule 68.12

Scope of this Part

68.1 (1) This Part applies to probate causes and matters, including applications for the rectification of a will, and the other provisions of these rules apply to those causes and matters subject to this Part.

(2) In this Part –

"**probate claim**" means a claim for the grant of probate of the will or letters of administration of the estate of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being a claim which is non-contentious or common form probate business.

"**will**" includes a codicil.

How to commence probate proceedings

68.2 (1) Probate proceedings must be commenced by issuing a fixed date claim form in Form 2.

(2) The claim form must state the nature of the interest of the claimant and of the defendant in the estate of the deceased person to which the claim relates.

(3) The claimant must file a statement of claim with the claim form.

Parties to proceedings for revocation of grant

68.3 Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of the deceased person's will or letters of administration of the estate must be made a party to any proceedings for revocation of the grant.

Lodgement of grant in proceedings for revocation

68.4 (1) If, at the commencement of proceedings for the revocation of a grant of probate or letters of administration, the probate or letters of administration, as the case may be, have not been lodged in court, the –

(a) claimant must lodge the probate or letters of administration at the court within 7 days after the issue of the claim where the proceedings are commenced by a person to whom the grant was made; or

(b) applicable defendant must lodge the probate or letters of administration at the court within 14 days after the service of the claim form, if in the possession or under the control of that defendant.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the proceedings, be ordered by the court to lodge the probate or letters of administration within a specified time.

(3) If an order is made under paragraph (2), a person against whom such an order is made may not take any step in the proceedings without the permission of the court until that person has complied with the order.

Affidavit of testamentary scripts

68.5 (1) Unless the court otherwise directs, the claimant and every defendant who has entered an acknowledgment of service in probate proceedings must swear an affidavit –

(a) describing any testamentary script of the deceased person, whose estate is the subject of the claim of which he or she has any knowledge or, if such be the case, stating that he or she knows of no such script; and

(b) if the defendant has knowledge of any such script which is not in his or her possession or under his or her control –

(i) giving the name and address of the person in whose possession or under whose control it is; or
(ii) that he or she does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed.

(3) Any testamentary script referred to in the affidavit which is in the possession or under the control of the deponent must be lodged at the court –

(a) within 14 days after the filing of an acknowledgment of service by a defendant to the proceedings; or
(b) if no defendant files an acknowledgment of service and the court does not otherwise direct –before the first hearing.

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

(5) Notwithstanding rule 3.13 (2), except with the leave of the court, a party to probate proceedings may not be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the proceedings under this rule, until an affidavit sworn by the first party containing the information referred to in paragraph (1) has been filed.

(6) In this rule –
"**testamentary script**" means a will, draft will, written instructions for a will made by, at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

Failure to file acknowledgment of service

68.6 (1) Part 12 does not apply to probate proceedings.

(2) If any of several defendants to probate proceedings fails to file an acknowledgment of service or to file and serve a defence, the claimant may -

(a) after the time for entering an acknowledgment of service or filing a defence has expired; and

(b) upon filing an affidavit proving due service of the claim form and statement of claim on that defendant,

proceed with the claim as if that defendant had entered an acknowledgment of service.

(3) If the defendant, or all the defendants, to probate proceedings, fails or fail to file an acknowledgment of service or file and serve a defence, then, unless on the application of the claimant the court orders the claim to be dismissed or discontinued, the claimant may apply to the court at the first hearing –

(a) for the claim to be dealt with summarily at that hearing; or

(b) for a trial date to be fixed and any necessary directions to be given.

(4) Before applying for an order under paragraph (3) the claimant must file an affidavit proving due service of the claim form and statement of claim on the defendant.

(5) If the court grants an order under paragraph (3), it may direct the proceedings to be tried on affidavit evidence.

Counterclaim

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

Contents of statements of case

68.8 (1) If the claimant in probate proceedings disputes the interest of a defendant, the claimant must –

(a) deny the interest of that defendant; and

(b) state the claimant's reasons for so doing; in the statement of claim.

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

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

(a) at the time of the execution of the will the testator was not of sound mind, memory and understanding;

(b) the execution of the will was obtained by undue influence or fraud; or

(c) the will was not duly executed; may be made by that party unless that other plea is also set out in his or her statement of case.

Discontinuance and dismissal

68.9 (1) Part 37 does not apply to probate proceedings.

(2) At any stage of the proceedings the court may, on the application of the claimant or of any party to the proceedings who has entered an acknowledgment of service order the proceedings to be –

(a) discontinued; or

(b) dismissed,

on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate of the deceased person, as the case may be, be made to the person entitled.

Compromise of claim: trial on affidavit evidence

68.10 If, either before or after the service of the defence in probate proceedings, the parties to the proceedings agree to a compromise, the court may order the trial of the proceedings on affidavit evidence.

Application for order to bring in will, etc.

68.11 (1) Any application in probate proceedings for an order requiring a person to bring a will or other testamentary paper into court or to attend in court for examination may be made without notice but must be supported by evidence on affidavit setting out the grounds of the application.

(2) Any person against whom an order is made under paragraph (1) and who denies that the will or other testamentary paper referred to in the order is in

his or her possession or under his or her control may file an affidavit to that effect.

Probate counterclaim in other proceedings

68.12 (1) In this rule, "**probate counterclaim**" means a counterclaim in any claim other than probate proceedings by which the defendant claims any such relief as is mentioned in rule 68.1(2).

(2) Subject to the following paragraph, this Part applies with the necessary modifications to a probate counterclaim as it applies to probate proceedings.

(3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the claimant in the estate of the deceased person to which the counterclaim relates.

PART 69

Commercial Division Rules (Territory of the Virgin Islands)

Contents of this Part

Scope of this Part and interpretation	Rule 69.1
Commercial list	Rule 69.2
Application of the Civil Procedure Rules	Rule 69.3
Proceedings in the commercial list	Rule 69.4
Statement of value	Rule 69.5
Defence	Rule 69.6
Disclosure – ship's papers	Rule 69.7
Judgments and orders	Rule 69.8

Scope of this Part and Interpretation

69.1 (1) This Part applies to claims in the Commercial Division of the Supreme Court sitting in the jurisdiction of the Virgin Islands.

(2) Subject to paragraph (3), in this Part and its practice direction –

"commercial claim" means any claim or application arising out of the transaction of trade and commerce and includes any claim relating to –

(a) the law of business contracts and companies;
(b) partnerships;
(c) the law of insolvency;
(d) the law of trusts;
(e) the carriage of goods by sea, air or pipeline;
(f) the exploitation of oil and gas reserves;
(g) the insurance and re-insurance;
(h) banking and financial services;
(i) collective investment schemes,
(j) the operation of markets and exchanges;
(k) mercantile agency and usages; or
(l) arbitration.

(3) In order for a claim to qualify as a commercial claim, the claim or value of the subject matter to which the claim relates must be at least $500,000.

(4) Notwithstanding paragraphs (2) and (3), the Commercial Division judge may include in the commercial list a claim that has not satisfied the

monetary value under paragraph (3), if he considers the claim to be of a commercial nature and warrants being placed on the commercial list.

Commercial list

69.2 (1) The commercial list is a list for claims commenced or proceeding in the Commercial Division.

(2) A judge assigned to the Commercial Division shall be in charge of the commercial list.

Application of the Civil Procedure Rules

69.3 These Rules and their practice directions apply to claims in the commercial list unless this Part or a practice direction provides otherwise.

Proceedings in the commercial list

69.4 (1) A commercial claim may be placed on the commercial list at the time it is filed or pursuant to paragraph (4) at a subsequent time.

(2) The legal practitioner for the claimant or applicant filing a claim must file therewith a certificate to the effect that the claim is appropriate to be treated as a commercial claim within the meaning of rule 69.1 (2) and (3) and setting out such facts relating to the claim as shall demonstrate this.

(3) The Commercial Division judge may order a claim to be transferred to any other list on the grounds that he is not satisfied that the claim is a commercial claim.

(4) At any time before the first case management conference, a party may apply to the Commercial Division judge to have a matter placed on the commercial list.

(5) An application under paragraph (4) must be supported by an affidavit.

Statement of value

69.5 A statement of value of the claim or of the subject matter to which the claim relates must be included in the claim form.

Defence

69.6 Part 10 (defence) applies to the claims in the commercial list with the modification that the time referred to in rule 10.9 (1)(a) is varied to 21 days after the service of the defence.

Disclosure – ship's papers

69.7 (1) If, in proceedings relating to a marine insurance policy, the underwriters apply for specific disclosure under rule 28.5, the Commercial Division judge may –

(a) order a party to produce all the ship's papers; and

(b) require that party to use his best endeavours to obtain and disclose documents which are not or have not been in his control.

(2) An order under this rule may be made at any stage of the proceedings and on such terms, if any, as to staying the proceedings or otherwise, as the judge thinks fit.

Judgments and orders

69.8 (1) Except for orders made by the Commercial Division judge on his own initiative and unless he orders otherwise, every judgment or order will be drawn up by the parties, and the rule 42.5 is modified accordingly.

(2) An application for a consent order must be made and such an application must include a draft of the proposed order signed on behalf of all the parties to whom it relates.

(3) The Commercial Division judge may deal with an application under paragraph (2) without a hearing.

(4) Rule 42.7 "Consent judgment and orders" does not apply.

PART 70
Commercial Claims – Procedure

Contents of this Part

Scope of this Part	Rule 70.1
Allocation to the Commercial List	Rule 70.2
Headings of documents	Rule 70.3
Disapplications and modifications having general effect in commercial matters	Rule 70.4
Ordinary applications in commercial matters	Rule 70.5
Originating applications	Rule 70.6
Case management conferences	Rule 70.7
Pre-trial review	Rule 70.8
Trial bundles	Rule 70.9
Costs – general	Rule 70.10
Costs – ordinary applications	Rule 70.11
Costs – trials	Rule 70.12
Payment on account of costs	Rule 70.13
Conduct of assessment	Rule 70.14

Scope of this Part

70.1 This Part regulates the procedure of the Commercial Division of the Supreme Court sitting in the jurisdiction of the Virgin Islands as established by the provisions of Part 69 of these Rules; except as provided by this Part these Rules and their practice directions apply to the procedure of the Commercial Division as they otherwise apply within the jurisdiction.

Allocation to the Commercial List

70.2 (1) Except where the Chief Justice otherwise directs, only claims and applications required to be commenced in the Registry of the High Court of the Virgin Islands ("the Registry") may be placed on the commercial list.

(2) In addition to the procedure provided in rule 69.4, the Registry may place on the commercial list any claim or application of its own motion where it appears that the claim or application is a qualifying claim within the meaning of rules 69.1(2) and (3) and that it is appropriate for the claim to be placed on the commercial list.

(3) Any party to a claim or application placed on the commercial list pursuant to paragraph (2) may apply, in the case of a claim proceeding by way of claim form, at any time before the close of pleadings and in the case of a claim proceeding by way of originating application, at any time before the close of evidence, for the claim or application to be transferred from the commercial list to another list.

(4) An application under paragraph (3) shall be made by way of ordinary application to the Commercial Division judge.

Headings of documents

70.3 The claim form and every document required to be filed at court in a commercial claim proceeding or intended to proceed in the Commercial Division shall be headed:

"In the Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands Commercial Division
Claim No: BVIHC (COM) [ ] of 20[ ]",

and rule 8.1(4) shall be modified accordingly.

Disapplications and modifications having general effect in commercial matters

70.4 (1) Rule 20.1(3) shall not apply in a commercial matter and an application to change a statement of case may be made at any time and whether or not the application is necessitated by a change in circumstances.

(2) Rule 22.1 shall apply in a commercial matter to partnerships carrying on business without, as well as within the jurisdiction and the remainder of rule 22.1 (with the exception of rule 22.1(7)) shall apply accordingly in a commercial matter.

(3) Rule 22.2 shall apply in a commercial matter to persons carrying on business without, as well as within the jurisdiction.

(4) Rule 22.3 shall not apply in a commercial matter and bodies corporate must be represented by a legal practitioner in all commercial matters.

(5) Where in a commercial matter a party responds to a request for information from another party made under Part 34 or complies with any

order that it respond to a request for information made under Part 34, each separate response must be preceded by the exact wording of the request in respect of which that response is supplied.

Ordinary applications in commercial matters

70.5 (1) All applications in a commercial matter shall be made to and heard by the Commercial Division judge.

(2) Part 11 (as modified by this Part) applies to applications ("ordinary applications") made before, during or after a commercial matter including a commercial matter commenced by way of originating application, but shall not apply to the evidence given on or to the conduct of an originating application itself, which shall be governed by rules 70.6(1) to (4).

(3) Rule 11.3 shall not apply in a commercial matter.

(4) In the case of ordinary applications made on notice, the Registry's Commercial Division Case Management Unit ("the Unit") will allocate a date for the hearing when the application is issued; if that date or the time available for the hearing of the application is unsuitable for any reason the legal practitioners for the parties must within 7 days after the application has been served arrange for duly authorised individuals to attend the Unit in person or contact the Unit by telephone to arrange an alternative date and time for hearing of the application.

(5) Ordinary applications estimated to require a hearing of less than two hours are classed as short applications; ordinary applications estimated to require a hearing of more than two hours are classed as special applications.

(6) Rule 11.8(3) shall not apply in a commercial matter; evidence in support of every ordinary application must be filed and served together with the application except in case of urgency or where circumstances do not permit (in which case the evidence should be filed and served as soon as reasonably practicable) or in cases where the application does not turn on any question of fact.

(7) Rule 11.9 shall not apply in a commercial matter; unless the application is made in a case where (apart from rule 11.9) these Rules require that

evidence be given by affidavit, evidence in support of or in response to an ordinary application should be given by way of witness statement.

(8) Rule 30.3(2) shall apply to a witness statement made in an ordinary application in a commercial matter as if the words 'witness statement' were substituted for the word 'affidavit' where it occurs in rule 30.3(2);

(9) Rules 29.5(1)(d) and (e) shall not apply in a commercial matter; a witness statement made in an ordinary application in a commercial matter must include a statement by its maker that that person believes that the statements of fact it contains are true to the best of the maker's knowledge, information or belief and if the witness statement contains matters of information or belief the witness statement must include a statement by its maker that to the best of his knowledge, information or belief such information is accurate or that such belief is well founded.

(10) Evidence in answer to an ordinary application must be served within 14 days of service of the evidence in support and evidence in reply within 7 days after service of evidence in answer. This timetable may be extended or abridged by agreement in writing between the parties. If an extension is agreed between the parties which are likely to affect the date of the hearing, the parties must inform the Unit forthwith and arrange for the hearing to be re-listed.

(11) In an appropriate case the court may abridge the timetable prescribed by paragraph (10) either of its own motion or upon application made, notwithstanding any agreement between the parties to the contrary.

(12) If the court or the Unit or any party to a special application is of the view that a case management conference ("CMC") or pre-hearing review ("PHR") would enable the court to dispose of the special application more efficiently, then upon its own motion or at the suggestion of the Unit or on the application of any party the court may direct that a CMC or, as the case may be, a PHR be held.

(13) If the court directs a CMC under paragraph (12), it shall direct that the CMC be held on the first available date not earlier than 7 days after making the direction and rule 70.7(7) and (8) shall apply with such modifications as may be necessary or appropriate.

(14) If the court directs a PHR under paragraph (12), it shall direct the PHR to be held not later than 14 days before the date fixed for the hearing of the application and rule 70.8(1) and (2) shall apply with such modifications as may be necessary or appropriate.

Originating applications

70.6 (1) If a commercial matter is commenced by way of originating application pursuant to rule 13 of the Insolvency Rules, 2005 the evidence in support must be filed and served together with the originating application except in case of urgency or where circumstances do not permit (in which case the evidence should be filed as soon as reasonably practicable). Rule 70.5(4) applies in a commercial matter commenced by way of originating application.

(2) All evidence given on an originating application shall be given by affidavit.

(3) Evidence in answer to an originating application must be served within 21 days of service of the originating application and any evidence in reply within 14 days of service of the evidence in answer; this timetable may be extended or abridged by agreement in writing between the parties.

(4) In an appropriate case the court may abridge the timetable set out in paragraph (3), either of its own motion or upon application made, notwithstanding any agreement between the parties to the contrary.

Case management conferences

70.7 (1) Rules 27.3, 27.5 and 27.6 shall not apply in a commercial matter.

(2) In a commercial matter proceeding by way of originating application, the applicant must, not later than 14 days after the last of the respondents to do so has served his evidence in answer, provide the Unit with an agreed written statement of the parties' best estimate of the length of the hearing of the originating application, or, if no agreement can be reached, then separate estimates by each party.

(3) In a commercial matter proceeding otherwise than by way of originating application, the claimant must, not later than 14 days after the last party to

do so has served his defence, provide the Unit with an agreed written statement of the parties' best estimate of the length of the trial or, if no agreement can be reached, then separate estimates by each party.

(4) If, in a commercial matter proceeding by way of originating application, the parties' estimate, or the longest of the parties' estimates, of the length of the hearing is more than one full hearing day, the Unit will fix a CMC for the first available date after the date when the respondent is due to serve any evidence in answer.

(5) If, in a commercial matter proceeding otherwise than by way of originating application, the parties' estimate, or the longest of the parties' estimates of the length of trial is more than one full hearing day, the Unit will fix a CMC for the first available date six weeks after the last of all defendants intending to defend the claim has filed his defence.

(6) The claimant (or applicant) must three clear days before the date set for the CMC lodge with the Judicial Assistant to the Commercial Division judge ("the Judicial Assistant") a case management bundle.

(7) At a CMC in a commercial matter proceeding otherwise than by way of originating application, in addition to any orders or directions given pursuant to the court's general powers of management conferred by rule 26.1, the court will ordinarily give directions as to -

(a) the nature and extent of any disclosure to be given;

(b) whether and to what extent witness statements are required and whether in all the circumstances certain issues or factual matters can more conveniently and economically be dealt with by witness summaries (whether or not a party is or is not able to obtain a witness statement from the witness in question);

(c) the nature of any expert evidence to be called and the identity of the respective parties' experts and the timetable for exchange of experts' reports;

(d) whether it is appropriate for evidence on one or more matters in issue to be given by a single expert pursuant to rules 32.9 and 32.11;

(e) whether the services of an interpreter will be necessary at trial;

(f) whether or not a pre-trial review should be held; and

(g) such other matters as appear appropriate.

(8) Provided that he has sufficiently indicated to the other parties and to the court his intention to apply at the CMC, it is not necessary for a party to make an application under rule 28.5 for the disclosure of specific documents or under rule 32.6 for permission to call expert evidence.

(9) At a CMC in a commercial matter proceeding by way of originating application, the court will ordinarily consider -

(a) whether points of claim and defence should be served;
(b) whether any disclosure should be given;
(c) whether any witness should attend for cross examination;
(d) whether any expert evidence is required and, if so, what directions are required for the taking of such expert evidence; and
(e) such other matters as appear appropriate.

Pre-trial review

70.8 (1) Rule 38.5 shall not apply to a pre-trial review ("PTR") in a commercial matter; if the court directs that a PTR is to be held in a commercial matter, the claimant or applicant must three clear days before the hearing of the PTR lodge with the Judicial Assistant a copy of the original case management bundle, updated by the inclusion of such subsequent material (only) as will enable the court to conduct an efficient and useful PTR, together with an agreed trial timetable.

(2) The parties must attempt to agree in advance a trial timetable for inclusion in the updated case management bundle for use at a PTR and if agreement cannot be reached, then the parties must put in separate timetables.

(3) If a PTR is held, the court will give directions as to the timetable to be followed at trial; such timetable may (among other things) dispense with or limit opening or closing oral submissions.

(4) If no PTR is held, the parties must agree and not later than two weeks before the trial is to commence lodge with the Judicial Assistant an agreed trial timetable or, if agreement cannot be reached, then separate trial timetables. The Judicial Assistant will as soon as convenient thereafter inform the parties what trial timetable the trial judge proposes to adopt. If any party is dissatisfied with the timetable proposed by the judge, then that party must apply to the Unit to fix a conference for the purpose of settling

the trial timetable. If the judge decides that the party at whose instigation the conference was convened acted unreasonably in asking for it, then that party may be ordered to pay to the other parties their costs of attending the conference.

(5) A party who elects not to call a witness in respect of whom a witness statement, witness summary or affidavit has been put in must notify all other parties of that decision immediately after it has been taken.

Trial bundles

70.9 (1) Rule 39.1(5) shall not apply in commercial matters. Not later than six weeks before the date fixed for trial (which includes the trial of a contested originating application), the claimant or applicant must begin the process of agreeing with the other parties what documents should be included in the trial bundles. If any party objects to the judge reading any particular document before trial, that party must ensure that notice of objection is provided to the claimant or applicant for inclusion in the trial bundle. The completed trial bundles must be served on the other parties no later than two weeks before the date fixed for the commencement of the trial.

(2) Not later than ten days before the start of the trial the claimant or applicant must lodge with the Judicial Assistant a full copy of the trial bundles.

Costs - general

70.10 Rules 65.3 to 65.10 (inclusive) shall not apply in commercial matters.

Costs – ordinary applications

70.11 (1) Rule 65.11(1) shall not apply in commercial matters.

(2) The court will, after giving its decision on an ordinary application, determine, either forthwith or at a hearing fixed for the purpose, -

(a) which (if any) party should pay costs to another party; and

(b) how much in principle (taking into account the provisions of rule 64.6 and any other matter appearing to the court to be relevant in all the circumstances) of the costs of the party to be paid ("the receiving party") are to be paid by the paying party.

(3) The statement required to be provided by rule 65.11(5) must be provided to the court before the hearing in question and must (in addition to the information required by rule 65.11(5)) particularise the amount of time spent upon the application by the legal practitioner or his partners or employees, specifying, in each case -

(a) the charge out rate of the relevant legal practitioner, partner or employee (and in the case of employees, identifying the positions held by them within the legal practitioner's firm);

(b) the task or tasks undertaken by the respective legal practitioner, partner or employee; and

(c) the precise time spent upon each such task by the relevant practitioner, partner or employee.

(4) If the hearing of an application has occupied the time of the court for one hearing day or less, the court will summarily assess the quantum of such costs forthwith after giving its determination under paragraph (2); in other cases the court may either fix a hearing for the assessment to be carried out by the Commercial Division judge or direct that there be a detailed assessment of those costs by the judge.

(5) Where after the hearing of an ordinary application the court orders one party to pay costs to another party, those costs shall, unless the court otherwise orders, be paid within 14 days of the making of the order or the final determination of any assessment, as the case may be.

Costs - trials

70.12 (1) Rule 65.12 does not apply in commercial matters. After trial or earlier conclusion of the proceedings the court will (in the absence of agreement) determine -

(a) which (if any) party should pay costs to another party; and

(b) how much in principle (taking into account the provisions of rule 64.6 and any other matter appearing to the court to be relevant in all the circumstances to the incidence of costs in the proceedings) of the costs of the receiving party are to be paid by the paying party.

(2) Having made its determination under paragraph (1), the court will direct that the costs be the subject of a detailed assessment upon the principles as so determined; the court may direct that the assessment be carried out by the Commercial Division judge or may direct that they be assessed by the master

(or such other officer of the court as may from time to time be charged with making such assessment).

(3) Unless the court otherwise orders, the costs payable by the paying party pursuant to paragraph (1) shall be paid within 14 days after final determination of the assessment made pursuant to paragraph (2).

(4) The provisions of rules 65.13 to 65.19 shall apply to the quantification of any costs which the court orders.

Payment on account of costs

70.13 (1) The court may, upon application (with or without notice of application) by the receiving party, order the paying party to make a payment on account of costs to be paid by him upon assessment. Unless the court otherwise orders, the paying party is liable to make such payment on account within 14 days of being ordered to do so. If upon assessment the amount assessed as payable by the paying party is less than the amount paid by him on account, then the excess shall be a debt payable forthwith upon the making of the assessment by the receiving party to the paying party, together with interest at 5% per annum from the date upon which the payment on account was made until the date of repayment.

(2) A party intending to ask the court to make an order under paragraph (1) must provide to the court and serve on all parties affected an itemized schedule of its costs, such schedule to include the information specified in rule 70.11(3)(a) to (c).

Conduct of assessment

70.14 When the court has directed pursuant to rule 70.11(4) or rule 70.12 (2) that costs be assessed, any party may apply to the Commercial Division judge or master or other officer charged with carrying out the assessment to have the quantum of such costs assessed and the Commercial Division judge or master or other such officer shall give directions for the conduct of such assessment.

PART 71

Commercial Claims (Commercial Division of Saint Lucia)

Contents of this Part

Scope of this Part	Rule 71.1
Commercial list	Rule 71.2
Proceedings in the Commercial Division	Rule 71.3
Certificate of value	Rule 71.4
Defence	Rule 71.5
Judgments and orders	Rule 71.6
Headings of documents	Rule 71.7
Disapplications and modifications having general effect in commercial claims	Rule 71.8
Applications in commercial claims	Rule 71.9
Case management conference in commercial claims	Rule 71.10
Pre-trial review	Rule 71.11
Trial bundles	Rule 71.12
Costs - general	Rule 71.13
Application for assessment	Rule 71.14

Scope of this Part

71.1 (1) This Part –

(a) applies to a claim in the Commercial Division of the Supreme Court sitting in the Member State of Saint Lucia;

(b) regulates the procedure of the Commercial Division of Saint Lucia in which this Part has come into effect; and

(c) shall be read with the practice directions made for the purposes of this Part.

(2) Subject to paragraph (3), a "commercial claim" means any claim, application or petition arising out of the transaction of trade and commerce and includes any claim relating to –

(a) a commercial contract;

(b) a provision of the law governing –

(i) a company,

(ii) an international business company,

(iii) a domestic and international banking and financial service,

(iv) a domestic insurance, re-insurance and international insurance,
(v) a domestic and international mutual fund,
(vi) a domestic and international trust,
(vii) a registered agent and trustee licensing, and
(viii) the registration of business names;
(c) a partnership;
(d) an insolvency;
(e) carriage of goods by sea, air or pipeline;
(f) exploitation of natural resources;
(g) operation of markets and exchanges including securities markets and exchanges;
(h) mercantile agency and usages;
(i) an intellectual property right;
(j) unfair competition; and
(k) arbitration.

(3) Subject to paragraph (4), in order for a claim to qualify as a commercial claim, the claim or value of the subject matter to which the claim relates must be $200,000.00 or above; except that the amount referred to in this paragraph may be varied with respect to Saint Lucia by the Chief Justice and two other judges by notice in the Gazette.

(4) The judge may include on the commercial list a claim that does not satisfy the value under paragraph (3).

Commercial list

71.2 (1) The commercial list is a list of commercial claims commenced or proceeding in the Commercial Division.

(2) A judge assigned to the Commercial Division shall be in charge of the commercial list.

(3) Notwithstanding rule 2.2(3)(b), these Rules and the practice direction relating to any rule apply to a claim on the commercial list unless this Part or a practice direction provides otherwise.

Proceedings in the Commercial Division

71.3 (1) A commercial claim may be placed on the commercial list at the time it is filed or pursuant to paragraphs (4), (5) and (6).

(2) The legal practitioner for the claimant or applicant filing a claim or application under Part 17 shall–

(a) file with the claim or application, a statement; and

(b) set out such facts relating to the claim,

to the effect that the claim is appropriate to be treated as a commercial claim within the meaning of rule 71.1(2) and (3).

(3) The judge may order a claim to be transferred to any other list on the grounds that the judge is not satisfied that the claim is a commercial claim.

(4) Subject to paragraph (5), a party may apply to the judge to have a matter placed on the commercial list at any time before the first case management conference.

(5) The legal practitioner for a claimant or applicant who has filed a claim or application prior to the commencement of this Part, may apply to have that matter placed on the commercial list –

(a) in the case of a claim, no later than 3 months prior to the trial date; and

(b) in the case of an application, no later than 14 days prior to the date fixed for hearing.

(6) A claim may be placed on the commercial list by the Registrar of the court in consultation with the judge where it appears that the claim is a qualifying claim within the meaning of rule 71.1(2), (3) and (4) and that it is appropriate for the claim to be placed on the commercial list.

(7) A party to a claim placed on the commercial list, pursuant to paragraph (6), may apply to the judge at any time before the close of the case management conference for the claim to be transferred from the commercial list to another list.

(8) An application made under this rule must be supported by an affidavit.

Certificate of value

71.4 A certificate stating that the value of the claim or value of the subject matter that meets or exceeds the amount referred to in the rule 71.1(3), must be included in the claim form.

Defence

71.5 (1) Part 10 applies to claims on the commercial list.

(2) For the purposes of this Part, the days referred to in rule 10.9 (1)(a) are varied to 21 days after the date of service of the defence.

Judgments and orders

71.6 (1) Notwithstanding rule 42.5, every judgment or order must be drawn up by one or more of the parties, except for a judgment or order made by the judge on his or her own initiative or unless he or she directs otherwise.

(2) An application for a consent order must –

(a) be made by one or more of the parties; and

(b) include a draft order signed by or on behalf of all the parties.

(3) The judge may consider an application under paragraph (2) without a hearing.

(4) Rule 42.7 does not apply to a claim made under this Part.

Headings of documents

71.7 The claim form and every document required to be filed at the court office in a commercial claim must be headed –

"In the Eastern Caribbean Supreme Court
In the High Court of Justice
Saint Lucia Commercial Division
Claim No: [ ]HCM [year]/[no.]",

and rule 8.1(4) shall be read with such modifications as are consistent with this rule and for the purposes of this Part.

Exceptions and modifications for commercial claims

71.8 (1) For the purposes of this Part—

(a) rule 22.1(b) applies in a commercial claim relating to partnership; and

(b) rule 22.2 applies in a commercial claim relating to a person,

carrying on business within or outside Saint Lucia in which this Part has come into effect.

(2) Rule 22.3 does not apply in a commercial claim and a body corporate must be represented by a legal practitioner in a commercial claim.

(3) Where in a commercial claim a party–

(a) responds to a request for information from another party served under Part 34; or

(b) complies with any order directing that the party respond to a request for information served under Part 34, each separate response must be preceded by the exact wording of the request in respect of which that response is supplied.

Applications in commercial claims

71.9 (1) An application in a commercial claim shall be made to and heard by the judge.

(2) The lodging of bundles for the hearing of an application must be in accordance with the practice direction.

(3) Rule 11.11(1)(b) does not apply in a commercial claim and an application must be served as soon as practicable after the day on which it is issued.

(4) In the case of an application made on notice, the legal practitioner for the applicant shall within 7 days after the application has been served, arrange for the parties to contact the Case Management Unit of the Commercial Division in person or by telephone to arrange a date and time for hearing of the application.

(5) An application that is estimated to require a hearing of less than 2 hours is classed as a short application.

(6) The hearing of a short application shall be in accordance with the practice direction.

(7) An application in a commercial claim shall be supported by evidence on affidavit and the application and affidavit shall be filed and served together.

(8) Evidence in answer to an application must be served within 14 days of the application and any evidence in reply within 7 days after service of any evidence in answer.

(9) The time referred to in paragraph (8) may be extended or abridged by agreement in writing between the parties.

(10) The parties shall immediately inform the Case Management Unit of the Commercial Division and arrange for the hearing to be re-listed if –

(a) an extension is agreed between the parties before the respondent files his or her evidence; and

(b) the extension is likely to affect the date of the hearing.

(11) Notwithstanding any agreement between the parties to the contrary, in an appropriate case, the court may abridge the time referred to in paragraph (8) –

(a) either of its own motion; or

(b) on an application by a party.

(12) If the court or the Case Management Unit of the Commercial Division or any party to an application is of the view that a case management conference or pre-hearing review would enable the court to dispose of an application more efficiently, the court may direct that a case management conference or, as the case may be, a pre-hearing review be held –

(a) on its own motion;

(b) at the suggestion of the Case Management Unit of the Commercial Division; or

(c) on the application of any party.

(13) If the court directs a case management conference under paragraph (12), it shall direct that the case management conference be held on the first available date not earlier than 7 days after making the direction and rule 71.10(7) applies with such modifications as may be necessary or appropriate.

(14) Where the court directs a pre-hearing review under paragraph (12), it shall direct the pre-hearing review to be held not later than 14 days before the date fixed for the hearing of the application and rule 71.11(1) to (6) shall apply with such modifications as may be necessary or appropriate.

Case management conference in commercial claims

71.10 (1) Rule 27.3(3) does not apply in a commercial claim under this Part.

(2) In a commercial claim the claimant or applicant shall not later than 7 days after the last party has served his or her defence or reply, as the case may be, provide the Case Management Unit of the Commercial Division with –

(a) an agreed written statement of the parties' best estimate of the length of the trial or hearing; or

(b) if an agreed written statement cannot be provided, separate estimates by each party.

(3) Where, in a commercial claim the parties' estimate, or the longest of the parties' estimates of the length of the trial or hearing is more than one day, the Case Management Unit of the Commercial Division shall fix a case management conference for the first available date 6 weeks after the time limited by these Rules for the filing of a statement of case.

(4) Rule 27.5 does not apply in a commercial claim under this Part.

(5) The claimant or applicant shall, at least 3 clear days before the date set for the case management conference, lodge with the Case Management Unit of the Commercial Division a case management bundle.

(6) The content and preparation of case management bundles must be in accordance with the practice direction.

(7) In addition to rule 26.1, the court may give directions for a case management conference in a commercial claim as to –

(a) the nature and extent of any disclosure to be given;

(b) whether and to what extent witness statements are required and whether in all the circumstances certain issues or factual matters can more conveniently and economically be dealt with by witness

summaries, whether or not a party is or is not able to obtain a witness statement from the witness in question;

(c) the nature of any expert evidence to be called, the identity of the respective parties' experts and the timetable for exchange of experts' reports or alternatively whether it is appropriate for evidence on one or more matters in issue to be given by a single expert pursuant to rules 32.9 and 32.11;

(d) whether the services of an interpreter will be necessary at trial;

(e) whether or not a pre-trial review should be held; and

(f) such other matters as it appears appropriate to provide for in the circumstances.

(8) If a party has sufficiently indicated to the other party and to the court his or her intention to make an application at the case management conference, it is not necessary for a party to make a standalone application under –

(a) rule 28.5 for the disclosure of specific documents; or

(b) rule 32.6 for permission to call expert evidence.

Pre-trial review

71.11 (1) Rule 38.5 does not apply to a pretrial review in a commercial claim under this Part.

(2) Where the court directs that a pre-trial review is to be held in a commercial claim, the claimant shall lodge with the Case Management Unit of the Commercial Division, within 3 clear days before the hearing of the pre-trial review, a copy of the original case management bundle, updated by the inclusion of such subsequent material, only, as will enable the court to conduct an efficient and useful pre-trial review, together with an agreed trial timetable.

(3) The parties shall attempt to agree, in advance, a trial timetable for inclusion in the updated case management bundle for use at a pretrial review.

(4) If agreement cannot be reached the parties shall submit separate timetables.

(5) The trial timetables must be determined in accordance with the practice direction.

(6) Notwithstanding paragraph (5), if a pre-trial review is held the court shall give –

(a) directions as to the timetable to be followed at trial and such timetable may, among other things, dispense with or limit opening or closing oral submissions; and

(b) such other directions as may appear appropriate.

(7) Where no pre-trial review is held, the parties shall agree and not later than 14 days before the trial is to commence lodge with the Case Management Unit of the Commercial Division –

(a) an agreed timetable complying with the practice direction referred to in paragraph (5); or

(b) if an agreed trial timetable cannot be provided, then separate trial timetables.

(8) The Case Management Unit of the Commercial Division shall as soon as convenient inform the parties of the trial timetable that the judge proposes to adopt.

(9) Where a party is dissatisfied with the timetable proposed by the judge, that party shall apply to the Case Management Unit of the Commercial Division to fix a conference for the purpose of settling the trial timetable.

(10) Where the judge decides that the party at whose request the conference was convened acted unreasonably in requesting the conference, the judge may make an order that the party pay to the other party the costs of attending the conference.

(11) A party who elects not to call a witness in respect of whom a witness statement, witness summary or affidavit has been filed shall notify all other parties of that decision immediately after it has been taken.

Trial bundles

71.12 (1) Rule 39.1(5) does not apply in a commercial claim under this Part.

(2) Not later than 6 weeks before the date fixed for trial, which includes the trial of a contested originating application, the claimant or in the case of a contested originating application, the applicant shall begin the process of

agreeing with the other parties what documents should be included in the trial bundles.

(3) Trial bundles must be in accordance with the practice direction.

(4) Trial bundles must be completed and filed no later than 10 days before the date fixed for the commencement of the trial.

(5) Where a party objects to the admission in evidence of a particular document contained in the trial bundle, that party shall file a notice of objection within 7 days of the service of the trial bundle on that party.

Costs - general

71.13 (1) Rules 65.3 to 65.10, 65.11(1) and 65.12 do not apply in a commercial claim under this Part.

(2) The court shall, after giving its decision in a trial or on an application, in the absence of agreement, determine, either immediately or at a hearing fixed for the purpose which, if any, party should pay costs to another party and the quantum of such costs.

(3) The statement required to be provided by rule 65.11(5) must be provided to the court before the hearing in question and must particularize the amount of time spent on the application by the legal practitioner or his or her partners or employees, specifying, in each case–

(a) the charge out rate of the relevant legal practitioner, partner or employee, and in the case of employees, identifying the positions held by them within the legal practitioner's firm;

(b) the task or tasks undertaken by the respective legal practitioner, partner or employee; and

(c) the precise time spent upon each such task by the legal practitioner, partner or employee.

(4) If the hearing of an application has occupied the time of the court for one hearing day or less, the court shall immediately summarily assess the quantum.

(5) In cases where the hearing is more than one day the court may fix a hearing for the assessment of the quantum to be carried out by a judge or master.

Application for assessment

71.14 When the court has determined pursuant to rule 71.13 that costs be the subject of a detailed assessment -

(a) the procedure in rules 65.13 to 65.19 shall apply; and

(b) any party may apply to a judge, master, the Chief Registrar or a registrar to have the quantum of such costs assessed and the judge, master, Chief Registrar or registrar shall give directions for the conduct of the assessment.

PART 72
Admiralty Proceedings

Contents of this Part

Scope of this Part	Rule 72.1
Claims to be dealt with under this Part	Rule 72.2
Admiralty claims in rem	Rule 72.3
How to make Admiralty claim	Rule 72.4
Service of claim form in rem	Rule 72.5
Service on ships, etc. – how effected	Rule 72.6
Service of claim form out of jurisdiction	Rule 72.7
Acknowledgment of service	Rule 72.8
Warrant of arrest	Rule 72.9
Caveat against arrest	Rule 72.10
Committal of legal practitioner for failing to comply with undertaking	Rule 72.11
Execution etc. of warrant of arrest	Rule 72.12
Directions with respect to property under arrest	Rule 72.13
Release of property under arrest	Rule 72.14
Caveat against release etc.	Rule 72.15
Duration of caveats	Rule 72.16
Bail	Rule 72.17
Intervenors	Rule 72.18
Preliminary acts	Rule 72.19
Failure to file preliminary act: proceedings against party in default	Rule 72.20
Special provisions as to statements of case in collision, etc. proceedings	Rule 72.21
Judgment by default	Rule 72.22
Order for sale of ship: determination of priority of claims	Rule 72.23
Appraisement and sale of property	Rule 72.24
Undertakings as to expenses, etc.	Rule 72.25
Payment into and out of court	Rule 72.26
Case management conferences	Rule 72.27
Trial	Rule 72.28
Stay of proceedings in collision, etc. proceedings until security given	Rule 72.29
Inspection of ship, etc.	Rule 72.30
Examination of witnesses and other persons: evidence by affidavit	Rule 72.31
Proceedings for apportionment of salvage	Rule 72.32

Applications in proceedings in rem	Rule 72.33
Limitation proceedings: parties	Rule 72.34
Limitation proceedings: payments into court	Rule 72.35
Application for decree or directions in limitation proceedings	Rule 72.36
Limitation proceedings: proceedings under decree	Rule 72.37
Limitation proceedings: proceedings to set aside decree	Rule 72.38

Scope of this Part

72.1 (1) This Part applies to Admiralty proceedings including those proceedings listed in rule 72.2 and any other Admiralty jurisdiction of the High Court.

(2) The other provisions of these Rules apply to Admiralty proceedings subject to the provisions of this Part.

(3) In this Part –

"Act" means any relevant enactment relating to merchant shipping in force in the particular Member State or Territory;

"**caveat against arrest**" means a caveat entered in the caveat book under rule 72.10;

"**caveat against release and payment**" means a caveat entered in the caveat book under rule 72.15;

"**caveat book**" means the book in which caveats issued under this Part are entered;

"**claim in rem**" means any such claim as is mentioned in rule 72.3;

"**collision regulations**" means regulations made under the Act or in accordance with any international convention or treaty applicable to the relevant Member State or Territory;

"**limitation claim**" means any proceedings by ship owners or other persons under the Act for the limitation of the amount of their liability in connection with a ship or other property;

"**relevant person**" means the person referred to in rule 72.9(3)(b) that is the person who would be liable on the claim in a claim in personam; and

"ship" includes every description of vessel used in navigation and not propelled by oars and, where the context so admits, includes an aircraft.

Claims to be dealt with under this Part

72.2 The following claims, questions and proceedings, namely –

(a) all proceedings to enforce a claim for damage, loss of life or personal injury arising out of –

(i) a collision between ships;

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

(iii) compliance, on the part of one or more of two or more ships, with the collision regulations;

(b) any application to the court under the Act;

(c) any claim arising out of an act which is or is claimed to be a general average act;

(d) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(e) any claim arising out of bottomry;

(f) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(g) any claim for damage done by a ship;

(h) any claim for damage received by a ship;

(i) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or fault of –

(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible,

being an act, neglect or default in the navigation or management of a ship or in the loading, carriage or disembarkation of persons on, in or from the ship;

(j) any claim for loss or damage to goods carried in a ship;

(k) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty;

(l) any claim in respect of a mortgage of or charge on a ship or any share therein;

(m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(n) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues;

(o) any claim in the nature of pilotage in respect of a ship or an aircraft;

(p) any claim in the nature of towage in respect of a ship or an aircraft;

(q) any claim to the possession or ownership of a ship or to the ownership of any share therein, including power –

(i) to settle any account outstanding and unsettled between the parties in relation to the ship; and

(ii) to direct that the ship, or any share thereof, must be sold, and to make such other order as the court thinks fit;

(r) any claim –

(i) under the International Convention on Salvage 1989; or

(ii) under any contract for or in relation to salvage services; or

(iii) the nature of salvage not falling within (i) or (ii) above; or

(iv) any corresponding claim in connection with an aircraft;

(s) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(t) every limitation claim, in relation to –

(i) all ships or aircraft whether of any Member State or Territory or not and whether registered or not and wherever the residence or domicile of their owners may be;

(ii) all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(iii) (so far as they relate to ships or aircraft) all mortgages or charges, whether registered or not and whether legal or equitable including mortgages and charges created under foreign law;

(u) subject to any limitations imposed by the Act, any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages),

are to be dealt with as Admiralty claims.

Admiralty claims in rem

72.3 (1) In the case of any such claim or question as is mentioned in rule 72.2(b), (1), (q) or (s) a claim in rem may be brought against the ship or property in connection with which the claim or question arises.

(2) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, a claim in rem may be brought against that ship, aircraft or property.

(3) In the case of any such claim as is mentioned in rule 72.2(c) to (g), (i) to (k), (m) to (p), (r) and (u), where –

(a) the claim arises in connection with a ship; and

(b) the person who would be liable in a claim in personam was, when the cause of action arose, the owner or charterer, or in possession or in control, of the ship,

a claim in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought against –

(i) that ship, if at the time when the claim is made the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii) any other ship of which, at the time when the claim is made, the relevant person is the beneficial owner as respects all the shares in it.

(4) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, a claim in rem may be brought against that aircraft if, at the time when the claim is made, it is beneficially owned by the person who would be liable on the claim in a claim in personam.

(5) For the purpose of determining under paragraphs (3) and (4) whether a person would be liable on a claim in personam it shall be assumed that that person has an habitual residence or place of business within the jurisdiction.

(6) In this rule –

"**the time when the claim is made**" means the date on which the claim is issued in accordance with rule 8.1(2).

(7) If, as regards any claim mentioned in rule 72.3(3), a ship has been served with a claim form or arrested in a claim in rem brought to enforce that claim, no other ship may be –

(a) served with a claim form; or

(b) arrested,

in that or any other claim in rem brought to enforce that claim.

(8) Paragraph (7) does not prevent the issue, in respect of any one such claim, of a claim form naming more than one ship or two or more claim forms each naming a different ship.

(9) A claim in rem may not be brought against the Crown.

How to make Admiralty claim

72.4 (1) An Admiralty claim in rem is begun by a claim form in Form 25.

(2) An Admiralty claim in personam is begun by a claim form in Form 1.

(3) A limitation claim is begun by a claim form in Form 26.

(4) A claim in rem and a claim in personam may not be combined in the same claim form.

- Part 6 deals with the service of other documents.
- Part 8 deals with the issue of a claim form.

Service of claim form in rem

72.5 (1) Subject to paragraph (2), a claim form by which a claim in rem is begun must be served on the property against which the claim is brought, except where the property –

(a) has been sold by the marshal, in which case the claim form may not be served on that property but a sealed copy of it must be filed and the claim is deemed to have been duly served on the day on which the copy was filed; and

(b) is freight, in which case the claim form must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried.

(2) A claim form need not be served or filed as mentioned in paragraph (1) if it is deemed to have been duly served on the defendant by virtue of rule 5.19(2) or (3).

(3) If by virtue of this rule a claim form is required to be served on any property, the claimant may request service of the claim form to be effected by the marshal only if a warrant of arrest has been issued for service against the property or the property is under arrest.

(4) Where paragraph (3) applies the claimant must file a request in the appropriate practice form and lodge –

(a) the claim form and a copy thereof; and

(b) an undertaking to pay on demand all expenses incurred by the marshal in respect of the service of the claim form,

and thereupon the marshal must serve the claim form on the property described in the request.

(5) If a claim form is served on any property by the marshal, the person effecting service must endorse on the claim form the following particulars –

(a) the day of the week and the date on which it was served;

(b) the manner in which it was served;

(c) the name and the address of the person effecting service;

(d) the property on which it was served; and

(e) where it was served,

and the endorsement is evidence of the facts stated.

(6) If the –

(a) claimant; or

(b) claimant's legal practitioner,

in a claim in rem becomes aware that there is in force a caveat against arrest with respect to the property against which the proceedings are brought, that person must serve the claim form forthwith on the person at whose instance the caveat was entered.

(7) The general rule is that if a claim form by which a claim in rem is begun is amended after service under Part 20, the amended claim form must be served on any –

(a) defendant who has acknowledged issue or service of the claim form; and

(b) intervener.

(8) However, if no defendant has acknowledged issue or service of the claim form, it must be served or filed –

(a) in accordance with paragraph (1); or

(b) as the court otherwise directs.

(9) An application for a direction under paragraph (8)(b) may be made without notice but must be supported by evidence on affidavit.

Service on ships, etc. – how effected

72.6 (1) The general rule is that service of a warrant of arrest or claim form in proceedings in rem against a ship, freight or cargo is to be effected by –

(a) affixing the warrant or claim form for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and

(b) on removing the warrant or claim form, leaving a copy of it affixed –

(i) (in the case of the warrant) in its place; or

(ii) (in the case of the claim form) on a sheltered, conspicuous part of the ship.

(2) However, service of a warrant of arrest or claim form in proceedings in rem against freight or cargo or both, if the cargo has been landed or transhipped, is to be effected –

(a) by placing the warrant or claim form for a short time on the cargo and, on removing the warrant or claim form, leaving a copy of it on the cargo; or

(b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or claim form with that person.

Service of claim form out of jurisdiction

72.7 (1) A claim form under rule 72.2 (1), (g) or (u) other than a claim form in rem may be served out of the jurisdiction with the permission of the court if –

(a) the defendant's habitual residence or place of business is within the jurisdiction;

(b) the facts out of which the claim arises took place within the waters or within the limits of a port of a Member State or Territory; or

(c) a claim arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(2) An application to serve a claim form out of the jurisdiction must be made in accordance with rule 7.4.

(3) In this rule –

"**port**" includes a place and a harbour.

Acknowledgment of service

72.8 A defendant to a claim form in rem which has not been served, or a defendant to a limitation claim who has not been served with the claim form, who desires to take part in the proceedings, may acknowledge the issue of the claim form by filing an acknowledgment of service substituting for the references to service of the claim form references to issue of the claim.

Warrant of arrest

72.9 (1) In a claim in rem the claimant or defendant who counterclaims may, after the issue of the claim form and subject to the provisions of this rule, issue a warrant in Form 27 for the arrest of the property against which the claim or counterclaim is brought.

(2) The party intending to issue the warrant must first cause a search to be made in the caveat book to see whether there is a caveat against arrest in force with respect to that property.

(3) The general rule is that a warrant of arrest may not be issued until the party intending to issue the same has filed an affidavit made by the party or its agent containing the following particulars –

(a) in every case –

(i) the nature of the claim or counterclaim and that it has not been satisfied;

(ii) if the claim arises in connection with a ship, the name of that ship;

(iii) the nature of the property to be arrested; and

(iv) if the property is a ship, the name of the ship and her port of registry;

(b) in the case of a claim against a ship under rule 72.2(c) to (g), (i) to (k), (m) to (p), (r) and (u) –

(i) the name of the person who would be liable on the claim in a claim in personam;

(ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and

(iii) that at the time of the issue of the claim form the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and

(c) in the case of a claim for possession of a ship or for wages –

(i) the nationality of the ship in respect of which the warrant is required; and

(ii) that the notice (if any) required by paragraph (7) has been sent.

(4) Where appropriate a copy of any notice sent to a consul under paragraph (7) must be exhibited to an affidavit required by paragraph (3).

(5) The court may, however, give permission to issue the warrant notwithstanding that the affidavit does not contain all those particulars.

(6) A warrant of arrest may not be issued without the permission of the court in the case of property whose beneficial ownership has, since the issue of the claim, changed as a result of a sale or disposal by the court.

(7) The general rule is that a warrant of arrest may not be issued in a claim in rem against a foreign ship registered at a port of a State having a consulate in the jurisdiction, being a claim for possession of the ship or for wages, until notice that the proceedings have begun has been sent to the consul or the court gives permission.

(8) Issue of a warrant of arrest takes place upon it being sealed by the court office.

Caveat against arrest

72.10 (1) Except in a case to which paragraph (2) applies, a person who wishes to prevent the arrest of any property must file a request in the appropriate practice form signed by that person or that person's legal practitioner undertaking –

(a) to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be made against the property described in the request; and

(b) within 3 days after receiving notice that such a claim has been made, to give bail in that claim in a sum not exceeding an amount specified in the request or to pay the amount so specified into court.

(2) On the filing of the request under paragraph (1) the court office must enter a caveat against the issue of a warrant to arrest the property described in the request in the caveat book.

(3) If a claimant in limitation proceedings –

(a) has constituted a limitation fund in accordance with Article 11 of the Convention on Limitation of Liability for Maritime Claims 1976 and rule 72.35; and

(b) desires to prevent the arrest of any property for a claim which may be or has been made against the fund,

the claimant must file in the court office a request, in the appropriate practice form signed by the claimant or the claimant's legal practitioner –

(i) stating that a limitation fund in respect of damage arising from the relevant incident has been constituted; and

(ii) undertaking to acknowledge issue or service (as may be appropriate) of the claim form in any claim that may be begun against the property described in the request,

and on the filing of the request a caveat against the issue of a warrant to arrest the property described in the request must be entered in the caveat book.

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

(5) If any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the

caveat was entered may apply to the court for an order discharging the warrant.

(6) On the hearing of an application under paragraph (5), the court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may –

(a) by order discharge the warrant; and

(b) order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Committal of legal practitioner for failing to comply with undertaking

72.11 If the legal practitioner for a party to a claim in rem fails to comply with a written undertaking given by him or her to any other party or legal practitioner to –

(a) acknowledge issue or service of the claim form;

(b) give bail; or

(c) pay money into court in lieu of bail,

the legal practitioner is liable to committal.

- Part 53 deals with committal orders.

Execution etc. of warrant of arrest

72.12 (1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest may not be executed until an undertaking to pay on demand —

(a) the fees of the marshal; and

(b) all expenses incurred by the marshal in respect of the arrest of the property and the care and custody of it while under arrest,

has been lodged in the marshal's office.

(4) A warrant of arrest may not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) The general rule is that a warrant of arrest must be served on the property against which it is issued.

(6) However, a warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed.

Directions with respect to property under arrest

72.13 (1) The marshal may at any time apply to the court for directions with respect to property under arrest in any proceedings.

(2) The marshal may, and if the court so directs must, give notice of the application under paragraph (1) to any or all of the persons referred to in paragraph (3).

(3) The marshal must send by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have –

(a) acknowledged issue or service of the claim form in any claim in which the property is under arrest;

(b) caused a warrant for the arrest of the property to be executed by the marshal;

(c) entered a caveat which is still in force; or

(d) intervened in any claim in which the property is under arrest.

(4) A person other than the marshal may make an application under this rule.

(5) The application together with copies of any affidavits in support must be served upon the marshal and all persons referred to in paragraph (3) unless the court otherwise orders.

(6) An application for an order dispensing with service may be made without notice.

Release of property under arrest

72.14 (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, such property may only be released under the authority of a release in the appropriate practice form.

(2) A release may not be issued with respect to property as to which a caveat against release is in force, unless –

(a) at the time of the issue of the release the property is under arrest in one or more other proceedings; or

(b) the court so orders.

(3) A release may be issued at the instance of any party to the claim in which the warrant of arrest was issued if –

(a) the court so orders; or

(b) subject to paragraph (2), if all the other parties, except a defendant who has not acknowledged issue or service of the claim form, consent.

(4) Before a release is issued, the party applying for its issue must, unless paragraph (2)(a) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to that person's legal practitioner, requiring the caveat to be withdrawn.

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

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

(b) lodge in the marshal's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(6) The court, on the application of any party who objects to directions given to that party by the marshal under paragraph (5), may vary or revoke the directions.

Caveat against release etc.

72.15 (1) A person –

(a) claiming to have a right to claim in rem against any property which is under arrest or the proceeds of sale thereof; and

(b) who wishes to be served with notice of any application to the court in respect of that property or those proceeds,

must file a request in the appropriate practice form.

(2) On the filing of a request under paragraph (1) the court office must enter a caveat in the caveat book.

(3) If the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the court for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay.

(4) On hearing an application under paragraph (3) the court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

(5) If the court makes an order under paragraph (4), it must decide who should pay the costs of the application and assess the costs in accordance with rule 65.11.

Duration of caveats

72.16 (1) A caveat entered in the caveat book is valid for 12 months beginning with the date of its entry.

(2) The person at whose instance a caveat was entered may withdraw it by filing a request in the appropriate practice form.

(3) The period of validity of a caveat may not be extended, but this provision is not to be taken as preventing the entry of successive caveats.

Bail

72.17 (1) Unless a ship or aircraft has been arrested in respect of a claim under rule 72.2(q) or (s), the court must permit the release of a ship or aircraft which has been arrested upon sufficient bail being provided.

(2) If a ship or aircraft has been arrested in respect of a claim under rules 72.2(q) or (s), the court may –

(a) permit the person in possession of the ship or aircraft to continue trading upon such person providing sufficient bail; or

(b) deal otherwise with the operation of the ship or aircraft during the period of arrest.

(3) In default of agreement between the parties as to the amount of bail, the court must determine the nature and amount of such bail.

(4) Bail on behalf of a party to a claim in rem may be given by–

(a) bond in the appropriate practice form; or

(b) a bank guarantee or other security from a reputable financial institution acceptable to the marshal.

(5) Sureties to a bond must enter into the bond before a commissioner for oaths or justice of the peace, not being a commissioner who, or whose partner or associate, is acting as legal practitioner or agent for the party on whose behalf the bail is to be given.

(6) Subject to paragraph (7), a surety to a bail bond must make an affidavit stating that the surety is able to pay the sum for which the bond is given.

(7) If a corporation is a surety to a bail bond given on behalf of a party, no affidavit need be made under paragraph (6) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(8) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on that party's behalf and of the commissioner for oaths or justice of the peace before whom the bail bond was entered into.

(9) After the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) the party on whose behalf bail is given may file the bond and must at the same time file –

(a) the affidavits (if any) made under paragraph (6); and

(b) an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

Intervenors

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

(2) An application for permission may be made without notice.

(3) The application must be supported by an affidavit showing the interest of the applicant in the property against which the proceedings are brought or in the money in court.

(4) A person to whom leave is granted under this rule becomes a party to the proceedings.

(5) The court may order that a person to whom it grants leave to intervene in proceedings must, within the period or periods specified in the order, serve on any other party to the proceedings such notice of the intervention and such pleading as is specified.

Preliminary acts

72.19 (1) This rule deals with proceedings relating to damage, loss of life or personal injury arising out of a collision between ships.

(2) The following provisions apply unless the court otherwise orders.

(3) The claimant must within 2 months after service of the claim form on any defendant and the defendant must within 2 months of acknowledging issue or service of the claim file in the court office a document in 2 parts (in these Rules referred to as a "**preliminary act"**) containing a statement of the following —

Part One

(a) the names of the ships which came into collision and their ports of registry;

(b) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;

(c) the date and time (including the time zone) of the collision;

(d) the place of the collision;
(e) the direction and force of the wind;
(f) the state of the weather;
(g) the state, direction and force of the tidal or other current;
(h) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
(i) the lights or shapes (if any) carried by the ship;
(j) (i) the distance and bearing of the other ship if and when her echo was first observed by radar; and

(ii) the distance, bearing and approximate heading of the other ship

when first seen;
(k) what lights or shapes or combinations of lights or shapes (if any) of the other ship were first seen;
(l) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
(m) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (h) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision and when;
(n) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact, what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
(o) what sound signals (if any) were given, and when; and
(p) what sound signals (if any) were heard from the other ship, and when.

Part Two
(a) a statement that the particulars in Part One are incorporated in Part Two;
(b) any other facts and matters upon which the party filing the preliminary act relies;
(c) all allegations of negligence or other fault which the party filing the preliminary act makes; and

(d) the remedy or relief which the party filing the preliminary act claims.

(4) Part Two of the preliminary act shall be deemed to be the statement of claim of the person filing the preliminary act including, in the case of the defendant, a counterclaim, and rules 8.4 to 8.9 and 10.5 to 10.8 apply to it save in so far as this rule and rule 72.21 provide otherwise.

(5) The court may order that Part Two of the preliminary act need not be filed by the claimant or defendant and give directions for the further conduct of the proceedings.

(6) Every preliminary act must be sealed before filing and be filed in a sealed envelope which must not be opened except as provided in paragraph (8) or by order of the court.

(7) A claimant must serve notice of filing the preliminary act on every defendant who acknowledges issue or service of the claim within 3 days of receiving notice of that acknowledgment or upon filing the preliminary act, whichever is the later. A defendant must, upon filing the preliminary act, serve notice that the defendant has done so on the claimant and on every other defendant who has acknowledged
issue or service of the claim.

(8) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing a consent signed by that other party or its legal practitioner.

(9) Within 14 days after the last preliminary act in the proceedings is filed each party must serve on every other party a copy of its preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the court for an order that –

(a) one or more parties file a schedule of the damages claimed by them and serve a copy thereof on every other party; and

(b) the damages be assessed prior to or at the trial on liability.

(11) Wherever practicable such an application must be dealt with at the case management conference.

Failure to file preliminary act: proceedings against party in default

72.20 (1) If in a claim covered by rule 72.19(1) the claimant fails to file a preliminary act within the prescribed period –

(a) any defendant who has filed such an act may apply to the court for an order to dismiss the proceedings; and

(b) the court may –

(i) dismiss the proceedings; or

(ii) make such other order on such terms as it thinks fit.

(2) If in a claim in personam covered by rule 72.19 (1) a defendant fails to file a preliminary act within the prescribed period, Part 12 applies as if the defendant's failure to file the preliminary act within that period were a failure to file a defence on the claimant within the period fixed for service of the defence, and the claimant, if it has filed a preliminary act may, subject to rule 12.3(1)(b), enter judgment against that defendant.

- Rule 12.3(1)(b) deals with default judgment in proceedings against a State.

(3) If in a claim in rem within rule 72.19(1) a defendant fails to file a preliminary act within the prescribed period, the claimant, if the claimant has filed such an act –

(a) may apply to the court for judgment against that defendant; and

(b) need not file or serve a statement of case or an affidavit before the hearing.

(4) On the hearing of an application under paragraph (3), if –

(a) the defendant does not appear at the hearing; and

(b) the court is of the opinion that judgment should be given for the claimant provided the claimant proves the claimant's case,

it must order the claimant's preliminary act to be opened and require the claimant to satisfy the court that the claim is well founded.

(5) If paragraph (4) applies, the claimant's evidence may, unless the court otherwise orders, be given by affidavit without any order or direction in that behalf.

(6) If the claimant satisfies the court that the claim is well founded, the court may –

(a) give judgment on the claim; and

(b) at the same time order the property against which the claim is brought to be appraised and sold and the proceeds to be paid into court; or

(c) make such order as it thinks fit.

(7) The court may, on such terms as it thinks fit, set aside any judgment entered in pursuance of this rule.

(8) In this rule references to the prescribed period are to be construed as references to the period within which by virtue of –

(a) rule 72.19(3); or

(b) any order of the court,

a party is required to file a preliminary act.

Special provisions as to statements of case in collision, etc. proceedings

72.21 (1) The claimant in any such claim as is referred to in rule 72.2 (a) may not serve a reply or a defence to counterclaim on the defendant without the permission of the court.

(2) Subject to paragraph (3), in any such proceedings there is an implied joinder of issue on the facts set out in the preliminary acts and those acts stand as the statements of case of the claimant and the defendants.

(3) Paragraph (2) does not apply to a counterclaim if the claimant has served a defence to counterclaim pursuant to leave given under paragraph (1).

Judgment by default

72.22 (1) If a claim form is served under rule 72.5(5) on a party at whose instance a caveat against arrest was issued, then if —

(a) the sum claimed in the proceedings begun by the claim does not exceed the amount specified in the undertaking given by that party or that party's legal practitioner to procure the entry of that caveat; and

(b) that party or its legal practitioner does not within 14 days after service of the claim fulfil the undertaking given as aforesaid,

the claimant may, after filing an affidavit verifying the facts on which the proceedings are based, apply to the court for judgment by default.

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

(3) If a defendant to a claim in rem fails to acknowledge service of the claim within the time limited for doing so, then –

(a) on the expiration of 14 days after service of the claim form; and

(b) upon filing –

(i) an affidavit proving due service of the claim form;

(ii) an affidavit verifying the facts on which the proceedings are based; and

(iii) if a statement of claim was not filed and served with the claim form, a copy of the statement of claim,

the claimant may apply to the court for judgment by default and an order for sale.

(4) If the claim is deemed to have been duly served on the defendant by virtue of rule 5.19(2) (deemed service where defendant's legal practitioner accepts service), or was served by the marshal under rule 72.5(4), an affidavit proving due service of the claim need not be filed under this paragraph, but the certificate of service of the defendant's legal practitioner or the endorsement of the marshal under rule 72.5(5) must be lodged with the affidavit verifying the facts on which the claim is based.

(5) If a defendant to a claim in rem fails to serve a defence before the expiration of the period fixed by or under these Rules for service of the defence, the claimant, upon filing –

(a) an affidavit stating that no defence has been served by that defendant;

(b) an affidavit verifying the facts on which the proceedings are based; and

(c) if a statement of claim was not served with the claim, a copy of the statement of claim,

may apply to the court for judgment by default and an order for sale.

(6) If a defendant to a counterclaim in a claim in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (7) –

(a) after the expiration of the period fixed by or under these Rules for service of the defence to counterclaim; and

(b) upon filing -

(i) an affidavit stating that no defence to counterclaim has been served on the defendant making the counterclaim by the first-mentioned defendant;

(ii) an affidavit verifying the facts on which the counterclaim is based; and

(iii) a copy of the counterclaim,

the defendant making the counterclaim may apply to the court for judgment by default.

(7) No application may be made under paragraph (6) against the claimant in any such proceedings as is referred to in rule 72.2(a).

(8) If the court is satisfied that the applicant's claim is well founded, it may –

(a) give judgment for the claim or counterclaim; and

(b) order the property against which the claim or counterclaim is brought to be appraised and sold and the proceeds to be paid into court; or

(c) make such other order as it thinks just.

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

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

(11) Part 12 does not apply to a claim in rem.

Order for sale of ship: determination of priority of claims

72.23 (1) If in a claim in rem against a ship the court has ordered the ship to be sold, any party who has obtained or obtains 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 for an order determining the order of priority of the claims against the proceeds of sale of the ship.

- Part 11 deals with applications to the court.

(2) If in a claim in rem against a ship the court orders the ship to be sold, it may further order that –

(a) the order of priority of the claims against the proceeds of sale of the ship is not to be determined until after the expiration of 90 days, or such other period as the court specifies, beginning with the day on which the proceeds of sale are paid into court;

(b) any party to the proceedings or to any other claim in rem against the ship or the proceeds of sale thereof may apply to the court in the proceedings to which it is a party to extend the period specified in the order; and

(c) within 7 days after the date of payment into court of the proceeds of sale, the marshal must send for publication in the Official Gazette of the Member State or Territory concerned and such other newspaper, if any, as the court directs, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2) (c) must state that –

(a) the ship (naming her) has been sold by order of the High Court in a claim in rem, identifying the claim;

(b) the gross proceeds of the sale as specified have been paid into court;

(c) the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period specified in the order for sale; and

(d) any person with a claim against the ship or the proceeds of sale thereof, on which that person intends to proceed to judgment should do so before the expiration of that period.

(4) The marshal must lodge in the court a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the marshal in complying with an order of the court under this rule are to be included in the marshal's expenses relating to the sale of the ship.

(6) A copy of any application to the court to extend the period referred to in paragraph (2)(a) must be served on each party who has begun a claim in rem against the ship or the proceeds of sale thereof at least 3 days before the day fixed for the hearing.

Appraisement and sale of property

72.24 (1) A commission for the appraisement and sale of any property under an order of the court may not be issued until the party applying for it has filed a request in the appropriate practice form.

(2) Such a commission must be –

(a) in the appropriate practice form; and

(b) executed by the marshal unless the court otherwise orders.

(3) A commission for appraisement and sale may not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The sale must be by public auction unless the court gives permission for a sale by private treaty.

(5) The court may allow the sale to be completed at a price lower than the value shown in the appraisement.

(6) The marshal must pay into court the gross proceeds of the sale of any property sold by the marshal under a commission for sale and bring into court the account relating to the sale (with vouchers in support) for assessment.

(7) On the assessment of the marshal's account relating to a sale any person interested in the proceeds of the sale is entitled to be heard.

- Rule 65.12 deals with the assessment of costs.

Undertakings as to expenses, etc.

72.25 (1) Every undertaking under rule 72.5(4), 72.12(3), 72.14(5) or 72.24(3) must be given in writing to the satisfaction of the marshal.

(2) If a party is required by any of the rules mentioned in paragraph (1) to give to the marshal an undertaking to pay any fees or expenses, the marshal may accept, instead of an undertaking, the deposit with the marshal of such sum as the marshal considers reasonable to meet those fees and expenses.

(3) The court may on the application of any party who is dissatisfied with a direction or determination of the marshal under this rule, vary or revoke the direction or determination.

Payment into and out of court

72.26 (1) Parts 35 and 36 apply in relation to an Admiralty claim (other than limitation proceedings).

(2) However money paid into court may not be paid out except in pursuance of an order of a judge of the High Court.

Case management conference

72.27 (1) Parts 25 to 27 and 38 apply to an Admiralty claim except that –

(a) the date, time and place for the case management conference must be fixed by the court office on the happening of the following events –

(i) in any proceedings other than one to which rule 72.19 or 72.36 applies – on the filing of a defence;

(ii) where rule 72.19 applies – on the filing of the second preliminary act;

(b) where rule 72.36 applies then, if the court does not make a decree limiting the claimant's liability, it must treat the hearing of the application under that rule as a case management conference; and

(c) the case management conference must be conducted by a judge of the High Court.

(2) At the case management conference the court must determine whether the trial is to be without assessors or with one or more assessors and the qualifications for such assessors.

(3) Rules 38.5, 38.6 and 39.1 apply to Admiralty claims subject to the following and any other necessary modifications –

(a) the bundles referred to in rules 38.6 and 39.1 must include any preliminary acts; and

(b) if trial with one or more assessors has been ordered, an additional bundle of the documents listed in rule 39.1(5) as amended by paragraph (a) must be lodged for the use of each assessor.

Trial

72.28 (1) Part 39 applies to the trial of Admiralty proceedings.

(2) If the claim has been ordered to be tried with an assessor or assessors, the legal practitioner of the party with conduct of the claim must file in the court office an undertaking to pay the proper fees and expenses of such assessor or assessors.

(3) If all the parties to a claim consent, the proceedings may be withdrawn without the leave of the court at any time before trial by producing to the court a written consent to the proceedings being withdrawn signed by all the parties.

Stay of proceedings in collision, etc. proceedings until security given

72.29 If a claim in rem, being proceedings to enforce any claim as referred to in rule 72.2(a), is begun and a cross claim in rem arising out of the same collision or other occurrence as the first mentioned proceedings is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned proceedings –

(a) if the ship in respect of or against which the first mentioned proceedings is brought has been arrested or security given to prevent her arrest; but

(b) the ship in respect of or against which the cross proceedings are 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 proceedings or making the counterclaim,

the court may stay proceedings in the first mentioned claim until security is given to satisfy any judgment given in favour of that party.

Inspection of ship, etc.

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

Examination of witnesses and other persons: evidence by affidavit

72.31 (1) The powers under rules 33.7 to 33.16 extend to the making of an order authorising the examination of a witness or person on oath before a judge sitting in court as if for the trial of the claim.

(2) In proceedings in which preliminary acts fall to be filed under rule 72.19, an order must not be made authorising any examination of a witness before the preliminary acts have been filed unless for special reasons the court otherwise orders.

(3) Unless the court otherwise directs, affidavits made for the purpose of rules 72.20(5), 72.22(3) and 72.36(2) may contain statements of information and belief provided that the sources and grounds are given.

Proceedings for apportionment of salvage

72.32 (1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be commenced by a fixed date claim.

(2) The claimant need not file or serve a statement of claim but must file an affidavit in support of the claim.

(3) At the first hearing the judge may exercise any jurisdiction conferred by the Act or may give directions as on a case management conference.

Applications in proceedings in rem

72.33 (1) The affidavits, if any, in support of an application in a claim in rem must be filed unless the court gives permission to the contrary.

(2) Notice of an application, except an application for judgment in default, must be served on all caveators together with copies of the affidavits in support of the application, if any, at least 7 clear days before the hearing, unless the court gives permission to the contrary.

Limitation proceedings: parties

72.34 (1) In a limitation claim the person seeking relief is to be the claimant and must be named in the claim by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The claimant must make one of the persons with claims against it in respect of the casualty to which the proceedings relates a defendant to the proceedings and may also make any or all of the others defendants.

(3) At least one of the defendants to the proceedings must be named in the claim by name but the other defendants may be described generally and not named by their names.

(4) The claim form must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 72.36, 72.37 and 72.38, "name" includes a firm name or the name under which a person carries on business.

(6) If any person with a claim against the claimant in respect of the casualty to which the proceedings relates is described for the purposes of the claim –

(a) merely as the owner of; or

(b) as bearing some other relation to,

a ship or other property, that person may be so described as defendant in the claim and, if so described, is deemed for the purposes of the rules mentioned in paragraph (5) to have been named in the claim by name.

Limitation proceedings: payments into court

72.35 (1) The claimant may constitute a limitation fund by paying into court the Eastern Caribbean (or in the case of the Virgin Islands, the United States) dollar equivalent of the number of special drawing rights to which the claimant claims to be entitled to limit its liability under the Act together with

interest thereon from the date of the occurrence giving rise to its liability to the date of payment into court.

(2) If the claimant does not know the appropriate equivalent of the said number of special drawing rights on the date of payment into court, it may calculate the same on the basis of the latest available published Eastern Caribbean or United States (as the case may be) dollar equivalent of a special drawing right as fixed by the International Monetary Fund.

(3) In the event of the appropriate dollar equivalent of a special drawing right on the date of payment into court being different from that used under paragraph (2), the claimant may –

(a) make up any deficiency by making a further payment into court which, if made within 14 days after the payment into court under paragraph (1), is to be treated, except for the purposes of the rules relating to the accrual of interest on money paid into court, as if it had been made on the date of that payment into court; or

(b) apply to the court for payment out of any excess amount (together with any interest accrued thereon) paid into court under paragraph (1).

(4) An application under paragraph (3)(b) may be made without notice.

(5) The application must be supported by evidence on affidavit proving the appropriate dollar equivalent of the appropriate number of special drawing rights on the date of payment into court.

(6) On making any payment into court under this rule, the claimant must give notice thereof in writing to every defendant, specifying the –

(a) date of payment in;

(b) amount paid in;

(c) amount of interest included therein;

(d) rate of such interest; and

(e) period to which such interest relates.

(7) The claimant must also give notice to every defendant of any excess amount (and any interest thereon) paid out to the claimant under paragraph (3)(b).

Application for decree or directions in limitation proceedings

72.36 (1) The claimant must within 7 days after the –

(a) acknowledgment of issue or service of the claim by one of the defendants identified by name; or

(b) time limited for entering an acknowledgment of service if none of the defendants acknowledges issue or service,

apply to the court for a decree limiting liability or, in default of such a decree, for directions as to the future proceedings in the claim.

(2) The application must be supported by an affidavit –

(a) verifying the claimant's case in the proceedings;

(b) proving service of the claim on at least one of the defendants identified by name if no such defendant has acknowledged service; and

(c) stating –

(i) the names of all the persons who, to the knowledge of the claimant, have claims against the claimant in respect of the casualty to which the proceedings relate, not being defendants to the claim who are identified in the claim form by their names; and

(ii) the address of each of those persons if known to the claimant.

(3) The application and every affidavit in support must be served on every defendant who has acknowledged issue or service of the claim at least 4 days before the hearing of the application.

(4) Any defendant who –

(a) disputes the claimant's claim to limit his liability; or

(b) alleges inability to decide whether to dispute that claim,

must, within 14 days of the service of the summons and any affidavit in support upon that defendant, serve upon the claimant an affidavit stating –

(i) the grounds upon which the defendant relies to dispute the claimant's claim to limit his liability; or

(ii) such facts and matters as could justify the court in giving a direction under paragraph (7) of this rule.

(5) The claimant may, within 7 days of service upon it of any affidavit under paragraph (4), serve such further affidavit evidence as it may wish upon any defendant who has served an affidavit under paragraph (4) of this rule.

(6) If, on the hearing of the application, it appears to the court that the claimant's claim to limit its liability is not disputed, the court must make an order limiting the claimant's liability to a specified amount.

(7) If, on the hearing of the application, the court is satisfied that any defendant has not sufficient information to enable the defendant to decide whether to dispute the claimant's claim to limit its liability, the court may, on such terms as seem just –

(a) give such directions as appear to be appropriate to enable the defendant to obtain such information; and

(b) adjourn the hearing to a specified date, time and place.

(8) Any defendant who thereafter disputes the claimant's claim to limit its liability must –

(a) file an affidavit stating the grounds upon which the defendant relies; and

(b) serve the affidavit on the claimant at least 7 clear days before the adjourned hearing of the application.

(9) If, on the hearing or the adjourned hearing of the application, the court does not make a decree limiting the claimant's liability, the court must proceed to deal with the application as a case management conference.

(10) Any defendant who, after the court has given directions under paragraph (7) or (9), ceases to dispute the claimant's right to limit its liability must –

(a) forthwith file a notice to that effect; and

(b) serve a copy on the claimant and on any other defendant who has acknowledged issue or service of the claim.

(11) If every defendant who disputes the claimant's right to limit its liability serves a notice on the claimant under paragraph (10), the claimant may apply to the court for an order limiting its liability and paragraphs (3) and (6) apply to such an application.

Limitation proceedings: proceedings under decree

72.37 (1) If –

(a) the only defendants in a limitation proceeding are those named in the claim form by their names; and

(b) all the persons so named have either been served with the claim form or acknowledged the issue thereof,

any order in the claim limiting the claimant's liability –

(i) need not be advertised; but

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

(2) In any case not falling within paragraph (1), any order in the claim limiting the claimant's liability must –

(a) be advertised by the claimant in such manner and within such time as may be provided by the order;

(b) fix a time within which persons with claims against the claimant in respect of the casualty to which the proceedings relate may file their claims and, in cases to which rule 72.38 applies, apply to set the order aside.

(3) The advertisement required under paragraph (2)(a) must, unless for special reasons the court otherwise directs, be a single advertisement in each of 3 newspapers specified in the order –

(a) identifying the claim, the casualty and the relation of the claimant thereto (whether as owner of a ship involved in the casualty or otherwise);

(b) stating that the order has been made; and

(c) specifying the –

(i) amounts fixed thereby as the limits of the claimant's liability; and

(ii) time allowed for the filing of claims and applying to set the order aside.

(4) The claimant must within the time fixed under paragraph (2)(b) file a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(5) The time to be allowed under paragraph (2)(b) must, unless for special reasons the court otherwise directs, be not less than 2 months from the latest date allowed for the acknowledgment of service of the advertisements.

(6) After the expiration of the time allowed under paragraph (5), no claim may be filed or application made to set aside the order except with the permission of the court.

(7) Save as aforesaid, on the making of any order limiting the claimant's liability arising out of a casualty to which the proceedings relate the court may –

(a) distribute the limitation fund; and

(b) stay any proceedings relating to any claim arising out of that occurrence which is pending against the claimant.

Limitation proceedings: proceedings to set aside decree

72.38 (1) If an order limiting the claimant's liability fixes a time in accordance with rule 72.37(2), any person with a claim against the claimant in respect of the casualty to which the proceedings relate who –

(a) was not named by name in the claim as a defendant to the proceedings; or

(b) if so named –

(i) was not served with; or

(ii) has not acknowledged the issue of,

the claim form, may, within that time, after acknowledging issue of the claim, apply for the order to be set aside.

(2) The application must be supported by an affidavit or affidavits showing that the defendant in question has –

(a) a bona fide claim against the claimant in respect of the casualty in question; and

(b) sufficient prima facie grounds for the contention that the claimant is not entitled to the relief given by the decree.

(3) At least 7 clear days before the hearing of the application, the application and every affidavit in support thereof must be served on the claimant and any defendant who has acknowledged issue or service of the claim.

(4) On the hearing of the summons the court, if satisfied that the defendant in question has a bona fide claim against the claimant and sufficient prima facie grounds for the contention that the claimant is not entitled to the relief given to the claimant by the decree, must set the decree aside and give directions as if the hearing were a case management conference.

PART 73

Obtaining Evidence for Foreign Courts

Contents of this Part

Scope of this Part	Rule 73.1
Application for order	Rule 73.2
Application by Attorney General in certain cases	Rule 73.3
Person to take and manner of taking examination	Rule 73.4
Dealing with depositions	Rule 73.5
Claim to privilege	Rule 73.6

Scope of this Part

73.1 (1) This Part deals with the procedure by which evidence may be obtained from a witness in a State or Territory for the purpose of proceedings in a court or tribunal outside the jurisdiction.

(2) Except where the enactment provides otherwise, the power of the High Court to make an order under any relevant enactment may be exercised by a judge in chambers, a master or the registrar.

Application for order

73.2 (1) Subject to paragraph (3) and rule 73.3, an application for an order may be made without notice but must be supported by affidavit evidence.

(2) There must be exhibited with the affidavit the request in pursuance of which the application is made, and if the request is not in the English language, a translation of the request into English.

(3) After an application has been made under paragraph (1) any application for a further order or directions must be on notice.

Application by Attorney General in certain cases

73.3 If a request is to be received by the –

(a) court in pursuance of a Civil Procedure Convention providing for the taking of the evidence of any person in a State or Territory for the assistance of a court or tribunal in the foreign country, and no person is named in the document as the person who will make the necessary application on behalf of the party; or

(b) minister with responsibility for foreign affairs and sent by the minister to the court office with a intimation that effect should be given to the request without requiring an application for that purpose,

the court office must send the document to the Attorney General.

Person to take and manner of taking examination

73.4 (1) Any order made in pursuance of this Part for the examination of a witness may direct the examination to be taken before any fit and proper person nominated by the person applying for the order or before an examiner of the court or before any other qualified person as the court deems fit.

(2) Subject to rule 73.6 and to any special directions contained in any order made in pursuance of this Part for the examination of any witness, the examination must be taken in the manner provided by rules 33.8 to 33.12 and an order may be made under rule 33.13 for payment of the fees and expenses due to the examiner.

Dealing with depositions

73.5 Unless any order made in pursuance of this Part for the examination of any witness otherwise directs, the examiner before whom the examination is taken must send the deposition of that witness to the court, and the court must –

(a) give a certificate sealed with the seal of the Supreme Court identifying the documents annexed thereto, that is to say, the request, the order of the court for examination and the deposition taken in pursuance of the order; and

(b) send the certificate with the documents annexed thereto to the minister with responsibility for foreign affairs, or, if sent to the court office by some other person in accordance with a Civil Procedure Convention, to that other person,

for transmission to the court or tribunal out of the jurisdiction requesting the examination.

Claim to privilege

73.6 (1) This rule applies where –

(a) a witness claims a right to withhold evidence; and

(b) that claim is contested.

(2) The examiner may require the witness to give the evidence to which the claim relates.

(3) If the examiner does not do so the person who obtained the order under rule 73.2 may apply to the court to do so.

(4) Such an application may be made without notice.

(5) If such evidence is taken –

(a) it must be recorded in a document separate from that witness' deposition;

(b) the examiner must send to the court office with the deposition –

(i) that document; and

(ii) a statement signed by the examiner setting out the claim and the ground on which it was made;

(c) on receipt of the document the court office must, notwithstanding anything in rule 73.5 –

(i) retain the document containing the evidence to which the claim related; and

(ii) send the statement with a request to determine the claim to the foreign court or tribunal with the documents mentioned in rule 73.5.

(6) If the claim is rejected by the foreign court or tribunal, the court office must send to that court or tribunal the document containing the evidence to which the claim related.

(7) If the claim is upheld the court must send the document to the witness.

(8) In either case the court must notify the witness and the person who obtained the order under rule 73.2 of the court's or tribunal's determination.

PART 74
Reciprocal Enforcement of Judgments

Contents of this Part

Scope of this Part	Rule 74.1
Application for registration	Rule 74.2
Security for costs	Rule 74.3
Order for registration	Rule 74.4
Register of judgments	Rule 74.5
Notice of registration	Rule 74.6
Application to set aside registration	Rule 74.7
Issue of execution	Rule 74.8
Certified copy of High Court judgment for enforcement in another country	Rule 74.9

Scope of this Part

74.1 (1) This Part deals with the procedure whereby under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory.

(2) In this Part –

"**relevant enactment**" means any enactment in force in a Member State or Territory in question which relates to the reciprocal enforcement of judgments.

(3) This Part is subject to the requirements of any relevant enactment.

Application for registration

74.2 An application to have a judgment registered in the High Court may be made without notice to the court but must be supported by affidavit evidence –

(a) exhibiting the judgment or a verified, certified or otherwise duly authenticated copy of it and, if the judgment is not in the English language, an English translation of it certified by a notary public or authenticated by affidavit;

(b) specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application;

(c) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent; and

(d) stating to the best of the information or belief of the deponent –

(i) that the judgment creditor is entitled to enforce the judgment; and either:

(A) that at the date of the application the judgment has not been satisfied; or

(B) the amount in respect of which it remains unsatisfied;

(ii) that the judgment may be ordered to be registered for enforcement under any relevant enactment; and

(iii) that the registration would not be or be liable to be, set aside under any relevant enactment.

Security for costs

74.3 The court may order the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration.

Order for registration

74.4 (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) Except where the order is made following an application on notice, it need not be served on the judgment debtor.

(3) The order must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period.

(4) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, extend the period (either as originally fixed or as subsequently extended) within which an application to have the registration set aside may be made.

(5) The court hearing the application may order that notice of the application be given to any person.

Register of judgments

74.5 (1) A register of the judgments ordered to be registered must be kept in the court office.

(2) There must be included in each such register particulars of any execution issued on a judgment ordered to be so registered.

Notice of registration

74.6 (1) Notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.

(2) Service of such a notice out of the jurisdiction is permissible without leave, and rules 7.9, 7.12 and 7.13 apply to such a notice as they apply to a claim form.

(3) The notice of registration must state –

(a) full particulars of the judgment registered and the order for registration;

(b) the name and address of the judgment creditor or of the legal practitioner or agent on whom any summons issued by the judgment debtor may be served;

(c) the period within which an application to set aside the registration may be made; and

(d) the right of the judgment debtor to apply to have the registration set aside.

Application to set aside registration

74.7 (1) An application to set aside the registration of a judgment must be supported by affidavit evidence.

(2) If the court hearing an application to set aside the registration of a judgment is satisfied that –

(a) it is not just or convenient that the judgment should be enforced within the jurisdiction; or

(b) the judgment falls within any of the cases in which a judgment may not be registered under the provisions of any relevant enactment,

it may order the registration of the judgment to be set aside on such terms as it directs.

Issue of execution

74.8 (1) Unless the court otherwise orders, execution may not issue on a judgment registered under the Act until after the expiration of the period which, in accordance with rule 74.4(3), is specified in the order for registration as the period within which an application may be made to set aside the registration or, if that period has been extended by the court, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution on the judgment may not issue until after the application is finally determined.

(3) Any party wishing to issue execution on a registered judgment must produce to the court office an affidavit of service of the notice of registration of the judgment and any order made by the court in relation to the judgment.

Certified copy of High Court judgment for enforcement in another country

74.9 (1) An application under any relevant enactment for a certified copy of a judgment entered in the High Court for the purpose of enforcement in some other country must be made without notice supported by affidavit evidence.

(2) The certified copy of the judgment must be an office copy sealed with the seal of the Supreme Court and indorsed with a certificate signed by a master or registrar that it is a true copy of a judgment obtained in the High Court and that it is issued in accordance with the relevant enactment.

PART 75
Transitional Provisions

Contents of this Part

Scope of this Part	Rule 75.1
New proceedings	Rule 75.2
Old proceedings	Rule 75.3
Exercise of discretion	Rule 75.4

Scope of this Part

75.1 (1) This Part deals with the way in which actions, matters and other proceedings in existence at the commencement date become subject to these rules.

(2) In this Part –

"commencement date" means the date on which these Rules come into force.

New proceedings

75.2 These rules apply to all proceedings commenced on or after the commencement date.

Old proceedings

75.3 (1) These rules do not apply to proceedings commenced before the commencement date in which a trial date has been fixed unless that date is adjourned.

(2) In proceedings commenced before the commencement date, an application to adjourn a trial date is to be treated as a pre-trial review and these rules apply from the date that such application is heard.

(3) If a trial date has not been fixed in proceedings commenced before the commencement date –

(a) the court office must fix a date, time and place for a case management conference under Part 27 after a defence has been filed and give all parties at least 28 days' notice of the conference; and

(b) these rules apply from the date of the case management conference.

Exercise of discretion

75.4 If in proceedings commenced before the commencement date the court has to exercise its discretion, it may take into account the principles set out in these rules and, in particular, Parts 1 and 25.

Appendix

PRESCRIBED FORMS

Form 1	Claim Form
Form 1A	Notes for Defendant
Form 2	Fixed Date Claim Form
Form 3	Application to Pay by Instalments
Form 4	Acknowledgment of Service of Claim Form
Form 4A	Acknowledgment of Service of Fixed Date Claim Form
Form 5	Defence and Counterclaim
Form 6	Application
Form 7	Request for Default Judgment
Form 8	Request for Entry of Judgment on Admissions
Form 9	Ancillary Claim Form
Form 10	Listing Questionnaire
Form 11	List of Documents
Form 12	Witness Summons
Form 12A	Judicial Settlement Conference Directions
Form 12B	Report on Outcome of Judicial Settlement Conference
Form 12C	Agreement Following Judicial Settlement Conference
Form 13	Notice to Non-Party Served With Order
Form 14	Order for Oral Examination
Form 15	Notice of Adjourned Examination
Form 16	Financial Position Notice
Form 17	Writ of Execution Against Goods (Fieri Facas)
Form 18	Writ of Possession
Form 19	Writ of Delivery or Value
Form 20	Writ of Specific Delivery
Form 20A	Stop Notice
Form 21	Judgment Summons
Form 22	Writ of Habeas Corpus
Form 23	Notice of Appeal
Form 23A	Respondent’s Notice
Form 24	Certificate of Result of Appeal [or Application]
Form 24A	Notice of Commencement of Detailed Assessment
Form 24B	Request for Default Costs Certificate
Form 24C	Default Costs Certificate
Form 24D	Costs Assessment Certificate
Form 25	Admiralty Claim In Rem

Form 26	Admiralty Limitation Claim
Form 27	Warrant of Arrest (Admiralty)
Form 28	Request for Claim to be recorded as satisfied
Form 29	Request for Order for Oral Examination of an individual
Form 30	Request for Order for Oral Examination of an officer of a debtor company
Form 31	Hearing on Assessment of Damages
Form 32	Form of Judgment for amount to be decided by the Court

Form 1: Claim Form
[Rule 8.1(4)]

The Eastern Caribbean Supreme Court
In the High Court of Justice
[State/Territory]
Claim No…

Between:

A.B.	Claimant
and	
C.D.	Defendant

The claimant, A.B. (full names), of (full address) claims against the defendant, C.D. (full names), of (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

(to be completed only where the claim is for a specified amount)

Amount claimed	$ …….
Court fees	$ …….
Legal practitioner's fixed costs on issue	$ …….
Together with interest from to date	$ …….
(Daily rate thereafter = $ per day)	
Total Claim	$ …….

NOTICE TO THE DEFENDANT — See the notes served with this claim form.

This claim form must contain or have served with it either a statement of claim or a copy of a court order entitling the claimant to serve the claim form without a statement of claim. If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/21 days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you. The form

of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. a.m.] and […….. p.m.] …… to …….. except public holidays.

The claimant's address for service is:

Form 1A: Notes for Defendant
[Rule 8.15 (1)]

Notes for Defendant

This form is important.

When you get this document, you should consider getting legal advice.

You should have also received together with the claim an authorisation code generated by the Electronic Litigation Portal. This authorisation code is important. If you are represented by a legal practitioner, it allows your legal practitioner to access the Electronic Litigation Portal and file and serve court documents electronically on your behalf. Upon receipt of the authorisation code in the prescribed form, it is advised that you provide your legal practitioner with it as soon as possible. For further information on the use of the Electronic Litigation Portal, you may wish to review Part 5A of these Rules.

If you choose not to be represented by a legal practitioner, you must consult the service bureau at the relevant court office to obtain assistance with filing and serving your court documents electronically via the Electronic Litigation Portal.

Action to be Taken on Receipt of this Form
The claimant is making a claim against you in the court. If you do nothing judgment may be entered against you. That means that the claimant will be entitled to take steps to enforce payment from you of any money the claimant is claiming and you will have no right to be heard except as to the amount of any costs claimed or as to the way in which you can pay the judgment, unless you apply to set judgment aside.

WHAT YOU CAN DO

You can -

A. Defend the claim:

If you would like to do this you must:

— Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.

— AND, if a statement of claim was served on you with the claim form:

— Complete the form of defence or submit some other form of defence showing why you dispute the claim giving full details of all the facts on which you intend to rely if there is a trial;

— Deliver or send the form of defence to the court office so that they receive it within 28/42 days of the date on which you received this form;

— Serve a copy of the form of defence on the claimant's legal practitioner (or the claimant if the claimant has no legal practitioner) at the address given on the claim form;

— If no statement of claim is served with the claim form you need not file and serve a defence until 28/42 days after the statement of claim is served on you;

— After you have filed your defence you will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.

— You must attend the case management conference.

B. Admit the whole of the claim:

If you would like to do this you must:
— Complete the form of acknowledgment of service stating that you admit the claim and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.

— If you can pay the amount stated on the claim form including fees, costs and interest you should pay this to the claimant within 8/21 days and no further steps can be taken against you. You must add interest at the daily rate shown from the date stated on the claim form.

— If you cannot pay this sum in full you may apply to the court to pay by instalments. If you wish to do so you must complete the Application to Pay by Instalments form and return it to the court with your acknowledgment of service.

C. Admit part of the claim and defend the rest:

If you would like to do this you must:

— Complete the form of acknowledgment of service stating how much you admit and return it to the court office so that they receive it within 14/21 days of the date on which you received this form;

AND complete the form of defence as under section A above.

— You may also:
    — pay the amount that you admit direct to the claimant; OR
    — apply to pay that sum by instalments.

If so you should follow the procedure indicated under B.

D. Make a claim against the claimant:

If you would like to do this you must:

— Complete the form of acknowledgment of service and return it to the court office so that they receive it within 14/21 days of the date on which you received this form.

— Complete the form of defence giving details of your defence (if any) to the claim as under A above and also the claim that you are making against the claimant and return it to the court office so that they receive it within 28/42 days of the date on which you received this form.

— If you admit the claim but wish to counterclaim you should say so. If your counterclaim is for a lower sum than the claim you may pay the difference between the amount that the claimant claims from you and the amount that you claim from him direct to the claimant OR apply (using the procedure indicated under B) to pay that sum by instalments. You will be given details of the date, time and place of a case management conference at which a judge will decide what issues have to be determined by the court and give directions about what needs to be done before the case is tried.

REMEMBER THAT IF YOU DO NOTHING, JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT ANY FURTHER WARNING.

Form 2: Fixed Date Claim Form

[Rule 8.1(5)]

The Eastern Caribbean Supreme Court
In the High Court of Justice
[State/Territory]
Claim No…

Between:

A.B.

Claimant

and

C.D.

Defendant

The claimant, A.B. (full names), of (full address) claims against the defendant, C.D. (full names), of (full address)

(Set out briefly the nature of the claim and state any specific amount or remedy that you are claiming)

Notice to the Defendant —

The first hearing of this claim wilt take place at [xxx xxx xxx] on day the day of 20…, at a.m./p.m.

If you do not attend at that hearing, judgment may be entered against you in accordance with the claim.

If you do attend, the judge may —

(a) deal with the claim, or

(b) give directions for the preparation of the case for a further hearing.

A statement of claim or an affidavit giving full details of the claimant's claim should be served on you with this claim form. If not and there is no order permitting the claimant not to serve the statement of claim or affidavit you should contact the court office immediately.

You should complete the form of acknowledgment of service served on you with this claim form and deliver or send it to the court office (address below) so that they receive it within 14/28 days of service of this claim form on you. The form of acknowledgment of service may be completed by you or a legal practitioner acting for you.

You should consider obtaining legal advice with regard to this claim. See the notes on the back of this form or on the next page.

This claim form has no validity if it is not served within 6 months of the date below unless it is accompanied by an order extending that time.

Dated [SEAL]

The court office is at [xxx xxx xxx] telephone number xx-xxxx. The office is open between […… am.] and […… p.m.] …….. to …… except public holidays.

The claimant's address for service is:

NOTES FOR DEFENDANT (FIXED DATE CLAIM)

The claimant is seeking an order from the court as set out in the claim form on the basis of the facts or evidence set out in the statement of claim or affidavit served with it. The claimant will not be entitled to enter judgment against you without a hearing.

You may:

A. Admit the claim:

If so, you should complete and return the form of acknowledgment of service to the court office within 14/28 eight days stating this. You may attend the first hearing if you wish to do so.

B. Dispute the claim

If so, you should complete and return the form of acknowledgment of service as under A. You should also file at the court office and serve on the claimant's legal practitioner (or the claimant if the claimant has no legal practitioner):

(a) a defence if the claim form was accompanied by the claimant's statement of claim, OR

(b) an affidavit in answer if the claim form is accompanied by an affidavit sworn by or on behalf of the claimant,

within 28/42 days of the day on which the claim form was served on you. Your defence or affidavit must set out briefly ALL the facts on which you will rely to dispute the claim made against you. You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

C. Make a claim against the claimant

If so, you should complete and return the form of acknowledgment of service as under A. You must file a statement of claim (a counterclaim) setting out full details of what you claim against the claimant and the facts on which you will rely. This must be done within 28/42 days of the date on which the claim form was served on you. The statement of claim should set out ALL the facts on which you rely in disputing any part of the claimant's claim against you. You should also attend the first hearing. If you do not the judge may deal with the claim in your absence.

Form 3: Application to Pay by Instalments
[Rule 8.15(1)]

(Heading as in Form 6)

The Applicant, AB. (full names), of (full address), owes the claimant the amount of $ ……. claimed on the claim form and cannot pay the amount in one lump sum.

The Applicant applies to the court for an order to pay the amount due by instalments of $ …… per week/month and provides the following information:

1. Marital status: Married, Single, Other *(specify)*
2. Age:
3. Dependants: Children: *(state names and ages)*
4. Other Dependants: *(state names* and *give details)*
5. If employed state nature of employment and name and address of employer:
6. If self-employed, give particulars of annual receipts of the business:
7. Give details of any job other than main job:
8. Give details of -
    (a) contracts and other work in hand; and
    (b) any sums due for work done:
9. If unemployed, say how long unemployed:
10. Pensioner: Yes/No
11. List cash assets:
12. I live in my own property jointly owned property rented property lodgings other *(specify)*

(a) My usual take home pay is	$ ……
(b) My pension is	$ ……
(c) Other income	$ ……
Total Income	$ ……

13. My regular expenses are as follows:

(a) Mortgage	$ ……
(b) Rent	$ ……
(c) Electricity	$ ……
(d) Water	$ ……
(e) Cooking gas	$ ……
(f) Telephone	$ ……
(g) Hire Purchase repayments	$ ……

(h) Food $ ……
(i) School fees $ ……
(j) Travelling expenses $ ……
(k) Children's clothing $ ……
(i) Maintenance payments $ ……
(m) Others (do not include court orders and debts listed in 14, 15 and 16)
…….…… $ ……
…….…… $ ……
…….…… $ ……
…….…… $ ……
Total expenses $ ……

14. I am in arrears as follows:
(a) Rent arrears $ ……
(b) Mortgage arrears $ ……
(c) Water arrears $ ……
(d) Electricity arrears $ ……
(e) Telephone arrears $ ……
(f) Maintenance arrears $ ……
(g) Others $ ……
…….…… $ ……
…….…… $ ……
…….…… $ ……
…….…… $ ……
Total arrears $ ……

15. I am making court ordered payments as follows: (specify particulars of case(s) and instalments or amounts ordered to be paid)
$ ……

16. I have loans and credit card debts as follows:
…….…… $ ……
…….…… $ ……

Of the above payments, I am behind with payments to (please list)
…….…… $ ……
…….…… $ ……
…….…… $ ……
…….…… $ ……

I declare that the details I have given above are true to the best of my knowledge.

Dated

Signed …….
Applicant

NOTICE:
This application will be heard by [the Judge in Chambers/Master xxxxx] on the day of …., 20…at a.m./p.m. at [xxx xxx xxx]

If you do not attend this hearing an order may be made in your absence.

OR

The [Judge in Chambers] [Master] will deal with this application by —

NB This notice of application must be served as quickly as possible on the respondent to the application.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […… a.m.] and […….. p.m.] ……. to …… except public holidays.

Form 4: Acknowledgment of Service of Claim Form
[Rule 9.2(1)]

(Heading as in Form 1)

Acknowledgment of Service

WARNING: If this form is not fully completed and returned to the court at the address below within 14/28 days of service of the claim form on you, the claimant will be entitled to apply to have judgment entered against you. If the claimant does so, you will have no right to be heard by the court except as to costs or the method of paying any judgment unless you apply to set judgment aside.

1. Have you received the claim form with the above claim number? YES/NO
2. If so, when?
3. Did you also receive the claimant's statement of claim? YES/NO
4. If so, when?
5. Did you also receive an authorisation code generated by the Electronic Litigation Portal in the prescribed form? YES/NO
6. If so, on what date did you receive it? __/__/__
7. Are your names properly stated on the claim form? YES/NO
8. If not, what are your full names? …….
9. Do you intend to defend the claim? YES/NO (If so you must file a defence within 28/42 days of the service of the claim form on you.)
10. Do you admit the whole of the claim? YES/NO

(If you do you should either -

(a) pay the claim direct to the claimant or the claimant's solicitor, or

(b) complete the application form to pay the claim by instalments.

If you pay the whole debt together with the costs and interest as shown on the claim form within 14/28 days you will have no further liability for costs.)

11. Do you admit any part of the claim? YES/NO

(If you do you may—

(a) pay the money that you admit direct to the claimant or the claimant's legal practitioner, or

(b) complete the application form to pay the claim by instalments.)

12. If so, how much do you admit?

……..

(If you dispute the balance of the claim you must also file a defence within 28/42 days of service of the claim form on you or judgment may be entered against you for the whole amount claimed.)

13. What is your own address?
……..
14. If unrepresented, what is your address for service? ……..

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and email address, if any.

Dated ……..
Signed …….

[Defendant in person] [Defendant's legal practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….. a . m .] and [……. p.m.] …… to …….. except public holidays.

Form 4A: Acknowledgment of Service of Fixed Date Claim Form
[Rule 9.2(1)]

(Heading as in Form 1)

Acknowledgment of Service of Fixed Date Claim Form

WARNING: This form should be completed and returned to the court at the address below within 14/28 days of service of the claim form on you. However, the claimant will not be entitled to have judgment entered against you except at the first or subsequent hearing of the claim.

1. Have you received the claim form with the above number? YES/NO
2. If so, when did you receive it? __/__/___
3. Did you receive the claimant's statement of claim or affidavit in support? YES/NO
4. If so, on what date did you receive them? __/__/___
5. Did you also receive an authorisation code generated by the Electronic Litigation Portal in the prescribed form? YES/NO
6. If so, on what date did you receive it? __/__/__
7. Are your names properly stated on the claim form? YES/NO
If not, what are your full names? ……..
8. Do you intend to defend the claim?
……..
……..
9.If unrepresented, what is your address for service?
……..

If you are acting in person you must give an address to which documents may be sent either from other parties or from the court. You should also give your telephone number and email address, if any.

Dated ……..
Signed ……..
[Defendant in person] [Defendant's Legal Practitioner]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx.. The office is open between […… a.m.] and […… p.m.] ……. to …… except public holidays.

Form 5: Defence and Counterclaim
[Rule 10.2 (1)]

(Heading as in Form 1)

Defence

I dispute the claim on the following grounds —

I certify that all the facts set out in my defence are true to the best of my knowledge information and belief.

My address for service is
Telephone no.
Dated …….
Signed …….
[Defendant in person]

We are acting for the defendant; our address for service is:
Signed (Legal Practitioner for the Defendant)

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [**……** a.m.] and **[……..** p.m.] …… to ……. except public holidays.

Counterclaim

I claim against the claimant on the following grounds —
(set out details of the remedy or relief sought)

I certify that all the facts set out in my counterclaim are true to the best of my knowledge information and belief and that I am entitled to the remedy claimed
Dated ……
Signed ……..
[Defendant in person]

We are acting for the defendant; our address for service is:
Signed (Legal practitioner for the defendant)

Notes:

(a) The defendant may set out the defendant's defence in another manner — it is not necessary to use this form.

(b) the defendant must:

— state which allegations in the claim are admitted

— which are denied

— which are neither admitted or denied because the defendant does not know whether they are true.

— identify any documents considered necessary to the defendant's case.

(c) The defendant must give reasons for denying any allegations made by the claimant.

(d) The defendant must set out clearly all the facts on which the defendant relies to dispute the claim and must set out any different version of events on which the defendant relies.

(e) The defendant may not be allowed to give evidence about any fact which is not set out in the defence.

(f) If the defendant wishes to counterclaim the defendant must:

— specify any remedy that the defendant seeks against the claimant

— include a short statement of all facts on which the defendant relies

— identify any documents which the defendant considers necessary to the defendant's case.

(g) If the defendant is represented by a legal practitioner, the defendant must also sign the form and give the defendant's address for service.

Form 6: Application
[Rule 11.6(1)]

Eastern Caribbean Supreme Court
In the High Court of Justice
[State/Territory]
Claim…
Between:

A.B. Applicant

and

C.D. Respondent

Notice of Application

The Applicant, A.B. (full names), of (full address) applies to the court for an order that —

A draft of the order that I seek is attached.

The grounds of the application are —

[An affidavit in support accompanies this application]

Dated …….
Signed ……
[Legal practitioner for the] Applicant

NOTICE:
This application will be heard by [the Judge in Chambers] [Master xxxxx] on the……day
of……..,20… at am/pm at [xxx xxx xxx].

If you do not attend this hearing an order may be made in your absence.

OR

The [Judge in Chambers] [Master] will deal with this application by…….

This notice of application must be served as quickly as possible on the respondent to the application.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….. am.] and […….. p.m.] …… to …… except public holidays.

Form 7: Request for Default Judgment
[Rule 12.7]

(Heading as in Form 1)

Request for Entry of Judgment in Default

I/We the claimant/claimant's legal practitioner request entry of judgment against the defendant in default of —

Acknowledgment of service YES/NO

Defence YES/NO
(in case of failure to enter acknowledgment of service)

Evidence of service of the claim form and statement of claim is filed with this form.
(in case or failure to serve defence)
I/We certify that —

(a) the time for the defendant to file and serve a defence has expired (including any extension of time
agreed between the parties);
(b) no defence or counterclaim has been served on me/us; and
(c) the defendant has not paid any monies in settlement of the claim except such sum as is stated below;
(d) (where appropriate) permission to enter judgment was given by the court on …….. (date),

Judgment should be entered for claim for a specified sum:

Amount claimed	$ …….
Court fees on claim	$ …….
Legal practitioner's fixed costs on issue	$ …….
Together with interest from date of issue to today	$ …….
Court fees on entering judgment	$ …….
Legal practitioner's fixed costs on entering judgment	$ …….
Total	$ …….
Less paid since issue of claim	$ ……..
Amount for which judgment is to enter	$ ……..

to be paid [forthwith] [on (state date)] or by weekly/monthly instalments of $ ……

OR

Judgment should be entered for claim for an amount to be decided by the Court: [Rule 12.10(1)(b)]
Is the claimant in a position to prove the amount of the damages: Yes / No
If *Yes*
State the estimate of the time the Claimant requires to deal with the assessment ……

If *No*
State the period of time that will elapse before the Claimant will be in a position to prove the amount of damages
……..

OR

Judgment should be entered for a claim for goods: [Rule 12.10(1)(c)]

Requiring the defendant either to deliver the goods or pay their value as assessed by the court: Yes / No

Requiring the defendant to pay the value of the goods as assessed by the court: Yes / No

OR

The claim for some other remedy namely [specify the remedy] is hereby abandoned: *[Rule 12.11(4)]*

Dated …….
Signed ……..
[Legal practitioner for the] Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx.. The office is open between [……. a.m.] and [……. p.m.] …… to …….. except public holidays.

Form 8: Request for Entry of Judgment on Admission

[Rule 14.6(2)]

(Heading as in Form 1)

Request for Entry of Judgment on Admission

I/We….the claimant/ claimant's legal practitioner request entry of judgment against the defendant on the defendant's admission.

(Admission of whole debt)

A. Judgment should be entered for:

Amount claimed	$ …….
Court fees on claim	$ …….
Legal practitioner's fixed costs on issue	$ …….
Together with interest from date of issue to today	$ …….
Court fees on entering judgment	$ …….
Legal practitioner's fixed costs on entering judgment	$ …….
Total	$ …….
Less paid since issue of claim	$ …….
Amount for which judgment is to enter	$ …….

(Admission of part of debt)

B. Judgment should be entered for:

Amount admitted by defendant	$ ……
Court fees on claim	$ ……
Legal practitioner's fixed costs on issue	$ ……
(Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted)	
Together with interest from date of issue to today	$ ……
Court fees on entering judgment	$ ……
Legal practitioner's fixed costs on entering judgment	$ ……
(Legal practitioner's fixed costs must be the fees and costs appropriate to the amount admitted)	
Total	$ ……

Less paid since issue of claim	$ ·····
Amount for which judgment is to enter	$ ·····

C. (i) I/We accept the claimant's offer to pay the amount due —
on (date);
or, by instalments of $ per week/month
and ask for judgment to be entered accordingly [the first payment to on]

OR
(ii) I/We do not accept the claimant's proposals for payment of the amount due but would accept payment on (date);
or, by instalments of $ per week/month
the first payment to be on (date)

OR
(iii) I/We do not accept the defendant's proposals as to payment and ask for judgment to be entered for the balance due to be paid forthwith.

D. (in cases (ii) and (iii) above) My/our reasons for objecting to the defendant's proposals are:

I/We do not accept that the defendant's financial statement is correct in the following ways:

Dated …….
Signed ……
[Legal practitioner for the Claimant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [….. a.m.] and [……. p.m.] …… to ……. except public holidays.

Form 9: Ancillary Claim Form
[Rule 18.2(2)]

(Heading as in Form 1)

Ancillary Claim Form

To of

This claim has been brought by the claimant against the defendant in accordance with the claim form and statement of claim served with this notice. Copies of the defendant's statement of claim (the defendant's defence) and of all other statements of case that have been filed in the proceedings are also served with this notice.

The defendant claims against you on the grounds that [The defendant will also ask the court to determine the following matters not only between the claimant and the defendant but also between defendant and you:]

If you wish to dispute the claimant's claim against the defendant or the defendant's claim against you, you must —

(a) send or deliver a completed form of acknowledgment of service to the court office (address below)
so that it is received by them within 14/28 days; and
(b) send or deliver a defence to this claim to the court office so that it is received by them within 28/42 days of the day on which this claim was served on you.

You must also serve a copy of your defence on the defendant's legal practitioners whose address is given below.

If you do not file a defence you will —

(a) **BE DEEMED TO HAVE ADMITTED THE DEFENDANT'S CLAIM AGAINST YOU;** and
(b) be bound by any judgment or decision in the main proceedings in so far as it is relevant to any claim made against you and judgment may be entered against you.

Dated

[SEAL]

This claim was issued by of [Legal Practitioner for the Defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. am.] and […… p.m.] …… to …… except public holidays.

Form 10: Listing Questionnaire
[Rule 27.9(1)]

(Heading as in Form 1)

Listing Questionnaire

WARNING: This is an important document. The information is required by the Court to list your case accurately. Inaccurate information may lead to a waste of court time and delays to other people's cases.

Failure to return the form to the court office within 21 days or to complete it fully will lead to a listing hearing being fixed. You may have to pay the costs of this hearing.

1. Have all the directions given by the court been carried out? YES/NO
2. If not, which directions have not been carried out?
    - Disclosure of documents YES/NO
    - Inspection of documents YES/NO
    - Service of witness statements YES/NO
    - Service of expert reports YES/NO
    - Other (state which) YES/NO
3. Why have they not been carried out?
4. When can the direction be complied with? -
5. Will any application for relief be made by you? YES/NO
6. Has ADR* been tried? YES/NO
7. If not, why not?
8. Is ADR likely to be tried? YES/NO
6. Are you ready for trial? YES/NO
7. If not, why not?
8. How many witnesses do you intend to call?……
9. What is your present estimate for trial length ?…… hours
10. What dates within the stated trial period will cause difficulty to
    - (a) the claimant/defendant
    - (b) the claimant's/defendant's legal practitioner
    - (c) the claimant's/defendant's advocate -
    - (d) any non-expert witness
    - (e) any expert witness
11. Please give names, addresses and telephone numbers of-

(a) any trial legal practitioner you propose to instruct

(b) any expert witness whom you are entitled to call to give oral evidence

12. Please state the name of the legal practitioner (if any) who has conduct of this matter and give the legal practitioner's direct telephone number.

Dated……
Signed…….
[Legal practitioner for the] Claimant/Defendant

This form must be returned to the court office within 21 days.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……am.] and [……p.m.]…….. to…….. except public holidays.

- ADR means alternative dispute resolution.

Form 11: List of Documents
[Rule 28.7(2)]

(Heading as in Form 1)

List of Documents

This list is completed in accordance with an order for:

(a) Standard disclosure YES/NO

(b) Specific disclosure YES/NO

dated
and is served on behalf of the claimant/defendant

I, [claimant] [defendant]
certify that I have had explained to me –

(a) the duty of standard disclosure, and

(b) the terms of the order dated for specific disclosure

and my duty to search for and disclose documents in accordance with that order, and that I have complied with that duty.

(In the case of a list served by a company, firm, association or other organisation, the certificate must continue –)

I am the (capacity) the…of the [claimant] [defendant] [other].

I accept responsibility for identifying any individuals who might be aware of any document which should be disclosed. I have asked the following individuals whether they are aware of any such documents -

NAME…POSITION

Part 1 of Schedule 1 contains a list of ALL the documents which –

(a) are or were in the physical possession of the [claimant] [defendant];

(b)the [claimant] [defendant] has or has had a right to possession of; or

(c) the [claimant] [defendant] has or has had a right to inspect or take copies of, and on which the [claimant] [defendant] relies or intends to rely in these proceedings, [together with such documents or classes of documents which the [claimant] [defendant] was ordered to disclose by the order of the court dated xx.xx.xxxx.

I/We claim a right to withhold disclosure and inspection of the documents listed in Part 2 of Schedule 1 on the basis stated in the Schedule.

The [claimant] [defendant] is not in physical possession of the documents listed in Schedule 2 and the Schedule states what has happened to those documents.

Neither the [claimant] [defendant] nor the [claimant's] [defendant's] legal practitioner nor anyone else on behalf of the [claimant] [defendant] now has or has ever had physical possession of, nor has the [claimant] [defendant] now or ever had the right to possession or the right to take copies of any document which should be disclosed and inspected under the terms of the court's order other than those listed in this List of Documents.

Dated.....
Signed.....
[Claimant] [Defendant]
[named representative for claimant/defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [.....a.m.] and [.... p.m.]..... to ..... except public holidays.

SCHEDULE 1

PART 1
No. Details of document or class of documents

PART 2
No. Details of documents or Reasons for claiming a right class of documents not to disclose

SCHEDULE 2
No. Details of documents or class of documents. What has happened to the document including (to the best of my/our Information and belief) where they are

NOTICE TO INSPECT
The Documents listed in Part 1 of Schedule 1 may be inspected at on any normal working day between the hours of a.m. and p.m. until (date).

Dated.....

Signed.....
[Legal practitioner for the] [Claimant] [Defendant]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [..... am.] and [..... p.m.]..... to..... except public holidays.

Form 12: Witness Summons
[Rule 33.2(2)]

(Heading as in Form 1)

Witness Summons

To (witness' name)
of (witness' address)

You are summoned to attend at the High Court of Justice at [xxx xxx xxx] at… a.m. on the …day of 20…, the day fixed for the hearing of this claim, and from [day] to [day] till the end of the trial to give evidence and to bring with you and produce the following documents -

Sum to be paid to the witness $.....

DATED

[SEAL]

This summons was issued on the application of the [claimant] [defendant] whose legal practitioner is of Tel. No…

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. am.] and […… p.m.]……. to…… except public holidays.

Form 12A: Judicial Settlement Conference Directions
[Rule 38A.11]

Eastern Caribbean Supreme Court
In the High Court of Justice/In the Court of Appeal
[State/Territory]
Claim/Appeal No.

Between:

A.B.
Claimant/Appellant

and

C.D. Defendant/Respondent

JUDICIAL SETTLEMENT CONFERENCE DIRECTIONS

Standard Directions – Judicial Settlement Conference

A judicial settlement conference of [(X) hours/day/days] duration is required and shall be held at [time] on [date].

As a pre-condition to the conference proceeding:

(a) the claimant shall file and serve a memorandum by [date] as set out below; and
(b) the defendant shall file and serve a memorandum by [date] as set out below.

Such memorandum shall provide the information requested and fully answering each of the questions set out below. Where a party fails to comply with the above pre-condition then the conference will not convene and the cancellation of the conference shall be taken into account against the defaulting party when considering the making of any orders as to costs.

INFORMATION

Attach a one page "will-say" statement from each of your key witnesses other than expert witnesses (e.g.: "Witness A will say the following: …"). Full statements and submissions need not be completed unless otherwise directed.

Submit any expert reports that you rely upon in your settlement negotiations or to substantiate your perspective. Highlight and tab those portions that you consider the most probative.

QUESTIONS:

1. What are the issues in this proceeding?
2. Which one (or more) of these issues is most significantly affecting your ability to settle?
3. Why?
4. Have you and the other party engaged in settlement negotiations? Please describe the nature of those negotiations.
5. What offers of settlement have been exchanged?
6. Upon what criteria was your settlement offer based (if one was made) or on what do you rely to support your present position (e.g. case law, industry standards, experts' reports or findings, etc.)?
7. What else do you believe that the judicial settlement conference Judge/Master should know about this matter that would enable him or her to work more productively with all participating in the conference?

NB: Judicial settlement conferences and documents filed in connection with them are treated as without prejudice and privileged save as to the recording of whether a settlement was reached or not. Thus, memoranda of the kind required above are not part of the record and (unless it be requested by any party and agreed by all otherwise) will be destroyed, returned to the legal practitioners /parties, removed from the file or sealed (e.g. if the conference is adjourned), at the conclusion of the conference.

This order has been made on the express understanding that the parties who will be in attendance for the claimant/appellant and the defendant/respondent are parties who have full and unlimited authority to settle the case in the event that an agreement is reached.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. am.] and […… p.m.]……. to…… except public holidays.

Form 12B: Report on Outcome of Judicial Settlement Conference
[Rules 38A.12(1) and 38A.13(1)]

(Heading as in Form 12A)

REPORT ON OUTCOME OF JUDICIAL SETTLEMENT CONFERENCE

I HEREBY REPORT THAT following a judicial settlement conference scheduled/conducted in these proceedings on the ... day of ……., 20… (*Date*)

(*tick as applicable*)

[ ] The Parties entered into a Settlement Agreement.

OR

[ ] The Parties did not arrive at a Settlement Agreement.

OR

[ ] The Claimant/Appellant or Defendant/Respondent did not attend the settlement conference.

Dated:
Signed: _____
(*Print name*)
Judicial Settlement Conference Judge/Master

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. am.] and […… p.m.]……. to…… except public holidays.

Form 12C: Agreement Following Judicial Settlement Conference

[Rule 38A.12(2)]

(Heading as in Form 12A)

AGREEMENT FOLLOWING JUDICIAL SETTLMENT CONFERENCE

Following on a judicial settlement conference conducted by [Name of Judicial Settlement Conference judge/master] on the…..day of……., 20…, the parties hereby agree to settle the claim/appeal on the following terms:

(1)…
(2)…
(3)…

Signed: ……. Dated:
Claimant/Appellant

Signed: ……. Dated:
Defendant/Respondent

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……. am.] and […… p.m.]……. to…… except public holidays.

Form 13: Notice to Non-Party Served with Order
[Rule 42.12(3)]

(Heading as in Form 1)

NOTICE

To

of

A judgment or order of this court was given or made on the… day of ……..,20... and a copy of that judgment or order is attached to this notice.

You are bound by the terms of the judgment or order to the same extent as you would have been had you been a party to the proceedings in which the judgment was given or order made.

However you may apply to the court within 28 days after service of this notice to

(a) set aside; or

(b) vary; or

(c) add to,

the judgment or order.

You may do this by completing and issuing a form of application at the court office whose address is given below saying what order you want the court to make and the grounds on which you make the application.

Dated

[SEAL]

This notice was issued by [legal practitioners for] the claimant/defendant whose address for service is

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […..a.m.] and […… p.m.]……. to…… except public holidays.

Form 14: Order for Oral Examination
[Rule 44.4(1)]

(Heading as in Form 1)

Order for Oral Examination

To: CD, the examinee

The claimant obtained a judgment/order against [you/the defendant company] in this court on [date] [and (in the case of a company) it appears you are an officer of the defendant company].

You are ordered to attend before an examiner of this court on [date] at……. a.m. to be examined under oath as to your financial circumstances [in the case of a company, the financial circumstances of the defendant company] including what property or other assets you/it may have, and to produce at the examination any books or documents in your possession or power containing information about your/the defendant company's financial circumstances.

And it is further ordered that the costs of this application and of the examination be in the discretion of the examiner.

Dated

[SEAL]

This order was made on the application of ..[claimant/claimant's legal practitioner]

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings maybe commenced against you for contempt of court and you may be liable to be imprisoned.

Amount due	$……
Together with interest from …to date	$……
(Daily rate thereafter =$...per day)	$……
Total	$……
Less payments made to date	$……
Amount now due	$……

Important Notes:
1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Date

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [….am.] and […. p.m.]……to……. Except public holidays.

Form 15: Notice of Adjourned Examination
[Rule 44.5(7)]

Notice of Adjourned Examination

To: [CD, the examinee]

You were ordered to attend court on the [date] at……. a.m. to be examined under oath before the examiner as to your financial circumstances (or as to the financial circumstances of the defendant company) and you failed to attend/refused to be sworn or affirmed/refused to answer a question(s).

TAKE NOTICE that your appointment for examination has been adjourned to [date] at ……. a. m. before a judge of the High Court when you are ordered to attend.

Dated

AND TAKE NOTICE that if you fail to comply with the terms of this order, proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.

Amount due	$……..
Together with interest from…to date	
(Daily rate thereafter = $ per day)	$…….
Total	$…….
Less payments made to date	$…….
Amount now due	$ ……

Important Notes:

1. It will not be necessary for you to attend the examination if you pay the amount now due to the claimant or the claimant's legal practitioner.
2. DO NOT bring or send payments to the court office. They will not be accepted.
3. You should allow at least 4 days for your payment to reach the claimant or the claimant's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.
5. If payment is made too late, you may be liable for further costs.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […. am.] and [….. p.m.]…… to…….except public holidays.

Form 16: Financial Position Notice
[Rule 44.7(1)]

(Heading as in Form 1)

Financial Position Notice

To:

An application has been made to orally examine you as to your income, assets and liabilities [the income assets and liabilities of the [defendant] [claimant] company] and the means by which the judgment debt may be paid. There is served with this notice an order giving the date time and place of the oral examination.

You are required to complete and return the attached questionnaire as to your means [the means of the company]. A copy will be sent to the judgment creditor and the judgment creditor may withdraw its application for an oral examination if satisfied with the information that you provide.

Unless you are notified by the court that your attendance is not required you must attend court on the date, time and place stated in the attached order. If you fail to do so further proceedings may be taken which may result in your being imprisoned.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [….. am.] and [….. p.m.]……..to…….except public holidays.

Form 17: Writ of Execution Against Goods (Fieri Facias)
[Part 46]

(Heading as in Form 1)

Request for Issue of Writ of Execution

To the Court
[We] [I] of…(Tel Fax) person]
[Legal practitioners for the… in….]
apply for the issue of a Writ of Execution against the judgment debtor to recover the sum stated below.

Amount of judgment	$.....
Costs	$.....
Interest to date	$.....
Total sum due	$.....
Less: Paid since judgment	$.....
Balance of judgment now due	$.....
Plus: fee on issue	$.....
Legal practitioner's costs on issue	$.....
Amount for which writ to issue	$.....

[We] [I] certify that

(a) the whole or part of any instalment due under the judgment has not been paid;

(b) the balance of judgment now due is as shown above.

Dated……
Signed……..
[Legal practitioners for the] [Claimant) [Defendant]

Writ of Execution

To: The Marshal
You are required to levy the sum stated above together with interest at the rate of…% per annum from the day of 20…, until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

Notice to Judgment Debtor

Notice of levy -

The marshal has levied on your goods. This means that you must not dispose of them as the marshal may have to take them and sell them, at a public auction.

Payment of the judgment debt -

If you pay the total amount due under this Writ including the marshal's poundage fees, costs of levying and any other legal incidental expenses, your goods will not be taken and you will not have to pay any more costs. You must pay the money to the marshal and will be given a receipt.

If you do not want the marshal to remove your goods -

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed –

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold -
You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped -
You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement
(request not to remove goods)

Please do not take my goods listed here –

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want)
- to see the goods or to complete the enforcement of this writ.

Dated……
Signed……..

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [….am.] and [……. p.m.]……. to ……. except public holidays.

Form 18: Writ of Possession
[Part 46]

(Heading as in Form 1)

Request for Issue of Writ of Possession

To the Court
[We] [I] of (Tel Fax) [in person]
[Legal practitioners for the…]
apply for the issue of a Writ of Possession against the judgment debtor to recover possession of the land and property known as

(description of property)

and also to recover the sum stated below.

Amount of judgment (if any)	$.....
Costs	$.....
Interest	$.....
Rent/mesne profits to date	$.....
Total sum due	$.....
Less: Paid since judgment	$.....
Balance of judgment now due	$.....
Plus: Fee on issue	$.....
Legal practitioner's costs on issue	$.....
Amount for which writ to issue	$.....

[We] [I] certify that

(a) the claimant is entitled to possession and that the defendant has not complied with any conditions upon which the order for possession was suspended;

(b) the balance of judgment and rent/mesne profits now due is as shown above.

Dated…….
Signed……
[Legal practitioners for the] Claimant/Defendant

Writ of Possession

To: The Marshal

You are required to take possession of the property known as
(property)
and to deliver the same to the claimant/defendant or the claimant's/defendant's
(description of representative)
and also to levy the sum stated above together with interest at the rate of % per annum from [date] until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses, and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

Notice to Judgment Debtor

Notice of taking possession -

You have failed to give up possession of the property described overleaf and the Marshal is authorised to enter the land to take possession of the property and deliver possession to the claimant.

Notice of levy -

The Marshal has levied on your goods in order to discharge the judgment for [arrears of rent] [damages] [rent] [mesne profit] and [costs]. This means that you must not dispose of them as the Marshal may have to take them and sell them, at a public auction.

Payment of the money judgment -

If you are able to pay the money judgment in full, the Marshal will not need to remove your goods. You will have to pay the full amount of the judgment plus interest and the costs of issuing this writ together with the Marshal's fees. You will be given a receipt for any money that you pay.

If your goods are removed -

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days – unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
  - these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold –

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped -
You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [….a.m.] and […..p.m.]…….. to……..except public holidays.

Form 19: Writ of Delivery or Value
[Part 46]

(Heading as in Form 1)

Request for Writ of Delivery or Value

To the Court

[We/I] (Tel Fax) of] [in person]
[Legal practitioners for the in person]
apply for the issue of a Writ of Delivery against the judgment debtor to recover possession of
(description of goods)

to recover the assessed value of the goods, namely	$.....
And also to recover	
Damages	$.....
Costs	$.....
Total sum due	$.....
Less: paid since judgment	$.....
Balance of judgment now due	$.....
Plus: fee on issue	$.....
Legal practitioner's costs on issue	$.....
Amount for which writ to issue	$.....

[We/I] certify that

(a) the claimant is entitled to recover the goods which are the subject of the court's order or the value of $..... , assessed by the court;

(b) the balance of judgment now due is as shown above

Dated…….
Signed……
[Legal practitioners for the] Claimant/Defendant

Writ of Delivery or Value

To: The Marshal

You are required to cause the goods (description of goods) to be delivered to the claimant/defendant, and if you are not able to do so to levy the sum of $..... (the assessed value).

You are also required to levy the sum of $ as stated above together with interest at the rate of …% per annum from the day of 20…, until payment together with the marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

Notice to Judgment Debtor

Notice of taking possession –

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant. If the marshal is not able to take possession of the goods the marshal is authorised to levy the sum stated above being the value of the goods as assessed by the court.

Notice of levy –

The Marshal has levied on your goods in order to

(a) discharge the claim for the assessed value of the goods

(b) discharge the judgment for [damages] and [costs].

This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

Payment of the money judgment -

If you are able to

(a) deliver the goods described overleaf; or
(b) pay the assessed value of the goods and
(c) pay the money judgment in full,

the Marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods –

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed –

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold -

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped –

You will normally have to pay a fee and any expenses incurred in removing the goods or advertising the sale.

Walking Possession Agreement
(request not to remove goods)

Please do not take my goods listed here —

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so

- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated…….
Signed……

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [……am.] and [……p.m.]…….. to……except public holidays.

Form 20: Writ of Specific Delivery
[Part 46]

(Heading as in Form 1)

Request for Writ of Specific Delivery

To the Court
[We/I] of
(Tel) [Legal Practitioners for the…] [in person]
apply for the issue of a Writ of Delivery against the judgment debtor to recover possession of

(description of goods)

And also to recover

Damages	$.....
Costs	$.....
Total sum due	$.....
Less: paid since judgment	$.....
Balance of judgment now due	$.....
Plus: fee on issue	$.....
Legal practitioner's costs on issue	$.....
Amount for which writ to issue	$.....

[We/I] certify that:

(a) the claimant is entitled to recover the goods which are the subject of the court's order and that the court has given permission for the issue of a writ of specific delivery on (date);

(b) the balance of judgment now due is as shown above.

Dated…….
Signed……
[Legal practitioners for the] Claimant/Defendant

Writ of Specific Delivery

To: The Marshal

You are required to cause the goods (description of goods) to be delivered to the claimant, A.B.

You are also required to levy the sum of $..... as stated above together with interest at the rate of % per annum from [date], until payment together with Marshal's poundage fees, cost of levying and all other legal incidental expenses and to pay the amount levied in respect of the judgment debt, fees, costs and interest to the [claimant] [defendant].

You are also required to indorse on this Writ immediately after execution a statement of the
manner in which you have executed it and send a copy to the [claimant] [defendant].

Dated

[SEAL]

Notice to Judgment Debtor

Notice of taking possession -

You have failed to deliver up the goods described overleaf and the marshal is authorised to take possession of the goods and deliver them to the claimant.

Notice of levy -

The marshal has levied on your goods in order to discharge the judgment for [damages] and
[costs]. This means that you must not dispose of them as the marshal may have to take them and sell them at a public auction.

Payment of the money judgment -

If you are able to pay the money judgment in full, the marshal will not need to remove your goods. You will have to pay the full amount plus interest and the costs of issuing this writ together with the marshal's fees. You will be given a receipt for any money that you pay.

If you do not want the marshal to remove your goods (other than the goods which the court order you to deliver up to the claimant) –

You can ask the marshal not to do so but you must sign the walking possession agreement below.

If your goods are removed –

- you will be given a list of the goods removed
- the goods will not be sold for at least [ ] days unless they are perishable
- you will be given [ ] days notice of the date and place of sale
- further fees may be charged and added to the debt
- these fees could include the cost of removing the goods and the fees charged by the auctioneer.

When the goods are sold -

You will be given a written statement as to the sale and the distribution of the proceeds of sale.

If the sale is stopped -

You will normally have to pay a fee and any expenses incurred in removing the-goods or advertising the sale.

Walking Possession Agreement
(request not to remove goods)

Please do not take my goods listed here **–**

I agree that until payment is made or the writ withdrawn, I will:

- not remove or damage the goods or allow anyone to do so
- show this form to anyone who calls and tries to take these goods
- tell you immediately if anyone tries to do so; and
- allow you to re-enter the premises at any time (and as often as you want) to see the goods or to complete the enforcement of this writ.

Dated……
Signed…….

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […a.m.] and [… p.m.]……to……..except public holidays.

Form 20A: Stop Notice
[Part 49]

The Eastern Caribbean Supreme Court
In The High Court of Justice

IN THE MATTER OF […]

AND IN THE MATTER OF AN APPLICATION PURSUANT TO PART 49 OF THE CIVIL PROCEDURE RULES (REVISED EDITION) 2023

STOP NOTICE
(Pursuant to Part 49 of the Civil Procedure Rules)

TO:
being a company incorporated under the laws of with registered company number (the
"Company)
AND TO:
AND TO:

TAKE NOTICE that:
("the Applicant")
claims to be beneficially entitled to an interest in the following stock:

[…] ordinary Shares held by […] pursuant to a Bearer Share Custody Agreement dated […] and represented by share certificate number which represents […] % of the ordinary and issued shares in ("the Stock")

This Stop Notice requires the parties on whom it is served to refrain from taking any of the following steps in respect of the Stock specified above:

(a) transferring, selling or otherwise dealing with the Stock;
(b) making any payment by way of dividend, interest or otherwise in respect of the Stock; or
(c) registering any transfer of the Stock.

NOTE: SO LONG AS THIS STOP NOTICE IS IN FORCE NEITHER……;

NOR THE KEEPER OF THE REGISTER OF MEMBERS:
MAY REGISTER ANY TRANSFER OF THE STOCK NOR MAKE ANY PAYMENT AS REFERRED TO HEREIN UNTIL 14 DAYS AFTER SENDING A NOTIFICATION OF THE PROPOSED REGISTRATION OR OTHER STEPS TO THE APPLICANT'S LEGAL PRACTITIONERS AT THE FOLLOWING ADDRESS:

Form 21: Judgment Summons
[Rule 52.3(1)]
In The Eastern Caribbean Supreme Court
In The High Court of Justice
[State/Territory]
Claim No:

Between:

A.B.

Claimant/ Judgment Creditor

and

C.D.

Defendant/Judgment Debtor

Judgment Summons

To CD:
[if judgment is entered against only one of several defendants, name that defendant or those defendants]

On [date] ("the judgment creditor") obtained an order against you in the following terms:

The judgment creditor says that you have not paid as ordered and has requested that this judgment summons be issued against you.

TAKE NOTICE, if the judge is satisfied that:

(a) the amount ordered to be paid has not been paid;
(b) you have (or since the date of the order have had) the means to pay it; and
(c) you are refusing or neglecting (or have neglected) to pay it,

the judge may order your committal to prison.

To the Defendant(s)/Judgment Debtor(s):

You are summoned to attend personally and to give good reason why you should not be committed to prison for failing to comply. The judge will consider the evidence given by the judgment creditor and any evidence you may wish to give on [date] at [time] at the High Court office [address]

Dated

A copy of the written evidence filed by the claimant/judgment creditor(s) is served with this judgment summons.

IF YOU FAIL TO ATTEND THE HEARING THE JUDGE MAY:
• MAKE AN ORDER IN YOUR ABSENCE; OR
• ISSUE A BENCH WARRANT TO SECURE YOUR ATTENDANCE AT A LATER HEARING.

Amount claimed as due and unpaid in respect of the order and any costs	$.....
Court fee paid to issue this judgment summons	$.....
Legal practitioner's costs on summons	$.....
Together with interest from [date] to [date]	$.....
Daily rate of interest thereafter at $... per day	$.....
Less Amount (if any) paid to date	$.....

AND TAKE NOTICE that the judgment creditor intends to apply to the Court for leave to enforce arrears which became due between the date of the filing of the judgment summons and the hearing of the judgment summons.

AND TAKE NOTICE: If you pay the total amount above before the hearing, an order committing you to prison will not be made. If payment is made too late to prevent the judgment creditor's attendance on the day of the hearing, you may be liable for further costs.

1. DO NOT bring or send payments to the court office. They will not be accepted.
2. Payments are to be made to the claimant/judgment creditor or the claimant's/judgment creditor's legal practitioner.
3. You should allow at least 4 days for your payment to reach the claimant/judgment creditor or the claimant/judgment creditor's legal practitioner.
4. Keep records and ensure that you can account for all payments made. Proof may be required if there is disagreement.

Dated

[SEAL]

The Court office is at [xxxxxxxx] telephone number [xxx-xxxx]. The office is open between [……...] a.m. and [……...] p.m. except public holidays.

Form 22: Writ of Habeas Corpus
[Rule 57.3(1)]

Writ of Habeas Corpus

(Heading as in Form 1)

To: the Commissioner/Superintendent of Prisons:

You are required to produce to the High Court on [date] at a.m./p.m. the body of …… by whatsoever name that person is called, said to be detained in your custody, and be prepared to state the day and cause of that person's being taken and detained so that the court may then and there examine whether such cause is legal.

TAKE NOTICE that if you fail to produce the body of…… before the court on the date and at the time stated above the court may commit you to prison for your contempt in not obeying the order.

Dated

[SEAL]

Issued by of

Legal practitioners for the Claimant

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….am.] and […… p.m.]……..to…….except public holidays.

Form 23: Notice of Appeal
[Rule 62.4(1)]

The Eastern Caribbean Supreme Court
[State/Territory]
In the Court of Appeal
High Court/Magisterial
Appeal No.

Between:

A.B.

Appellant

and

C.D.

Respondent

Notice of Appeal

(Note to Party: This is an important document - you are advised to consult a lawyer)

TAKE NOTICE that the appellant (being the [claimant] [defendant] in the court below) hereby appeals to the Court of Appeal against the decision of contained in the order dated [a copy of which is attached to this Notice].

1. Details of order appealed:

2. Details of –
(a) any finding of fact:
(b) any finding of law:
which are challenged.

3. Grounds of Appeal:
(a)…
(b)…
(c)…

4. Order sought:

5. Any specific power which the court is asked to exercise:

6. Details of the other parties to the proceedings in the court below:

Name Address for Service

Dated……
Signed……. [Legal practitioners for the] Appellant(s)

Date

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….. am.] and […….p.m.]……to……..except public holidays.

Address for service of the appellant(s) is:

Form 23A: Respondent's Notice
[Rule 62.11]

The Eastern Caribbean Supreme Court
[State/Territory]
In the Court of Appeal
High Court/Magisterial
Appeal No.
Between

A.B.

Appellant

and

C.D.

Respondent

Respondent's Notice

TAKE NOTICE that the respondent (being the [claimant] [defendant] in the court below) wishes the Court of Appeal to uphold the decision of……
……contained in the order dated [a copy of which is attached to this Notice] on different or additional grounds:

1. Order sought:

2. Any specific power which the court is asked to exercise:

3. Details of the other parties to the proceedings in the court below:

Name Address for Service

Dated……
Signed……. [Legal practitioners for the] respondent(s)

Date

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….. am.] and […….p.m.]……to…….except public holidays.

Address for service of the respondent(s) is:

Form 24: Certificate of Result of Appeal [or Application]
[Rule 62.24]

(Heading as in Form 23)

Certificate of Result of Appeal [or Application]

This appeal [or application] was heard on [date(s)] before……in the presence of…… for the Appellant(s) and……. for the Respondent(s).

I HEREBY CERTIFY that an Order was made as follows:

Dated

[SEAL]

……
Chief Registrar

Form 24A: Notice of Commencement of Detailed Assessment
[Rule 65.13]

The Eastern Caribbean Supreme Court
[State/Territory]
In the High Court of Justice

Between:

A.B. Claimant

and

C.D. Defendant

Notice of Commencement of Detailed Assessment

To:
[Name and address of paying party]

Pursuant to a judgment or order dated [date] (a copy of which is attached) the [receiving party] has prepared its Bill of Costs for assessment. The Bill totals US/EC$_____.

If you choose to dispute this Bill and your objections are not upheld at the assessment hearing, the full amount of $_____ is payable.

In addition, the [receiving party] will also seek the costs of the assessment hearing.

If you choose not to dispute this Bill, then [the receiving party] will be entitled to obtain a Default Costs Certificate in respect of the full amount of the Bill, in addition to which [the receiving party] will also seek to recover its costs associated with the detailed assessment procedure, in further sum of US/EC$_____.

Any points of dispute must include:
• Details of the items in the Bill of Costs which are disputed
• Concise details of the nature and grounds of the dispute for each item and, if you seek a reduction in those items, suggest, where practicable, a reduced figure.

Your points of dispute must be filed and served within 21 days of service of this Notice of Commencement.

You must also provide copies of your Points of Dispute to all other parties to the assessment identified below:
(1) [INSERT]
(2) [INSERT]

Dated this ……. day of …….20....

(signed)……
[Name] Legal Practitioner for [insert party]

Form 24B: Request for Default Costs Certificate
[Rule 65.14(4)]

(Heading as in Form 24A)

Request for Default Costs Certificate

I/We, [name], Legal Practitioner for the [receiving party] certify that:

1. Notice of Commencement of Detailed Assessment and the Bill of Costs attached to the Notice of Commencement in respect of the costs order dated [date] were served upon [insert] (the Paying Party) on [date] by [method of service]. A copy of the document effecting service of the Notice of Commencement is attached.
2. I/We have not received any Points of Dispute and the time for receiving them has now expired.

I/We now request that the Court consider the bill of costs and make an order for such amount of the bill of costs, together with such reasonably incurred costs, court fees and assessment fees as are appropriate in this case. A draft of the Default Costs Order is attached.

Dated this ……day of …….., 20….

(Signed) ……...
[Name] Legal Practitioner for [insert party]

FORM 24C: Default Costs Certificate

[Rule 65.14(4)]

(Heading as in Form 1)

Default Costs Certificate

BEFORE:

MADE :

UPON the Court having directed [the paying party] to pay the costs [of what issue] incurred by the [receiving party] under the Judgment or Order dated [date] (the Costs Order).

AND UPON the [receiving party] having filed a Notice of Commencement in respect of [the paying party's liability to [the receiving party] on [date].

[AND UPON the [paying party's] failure to file Points of Dispute within the period prescribed by rule 65.14(1)]

AND UPON the Court having considered the Bill of Costs and the factors set out in rule 65.2

IT IS HEREBY CERTIFIED THAT—

The [receiving party's] bill of costs filed on [date] is assessed and allowed in the following sums:

a.	Sum allowed: Together with interest at the statutory rate of ….% from the date of the order for costs until the date of payment	$.....
b.	Filing fee:	$.....
c.	Administrative fee (on filing):	$.....
d.	Administrative fee (on assessment):	$.....
e.	Costs:	$.....
	TOTAL	$.....

By the Court

Chief Registrar/ Registrar

Form 24D: Costs Assessment Certificate
[Rule 65.17]

(Heading as in Form 24A)

COSTS ASSESSMENT CERTIFICATE

I CERTIFY THAT on the [date] the [receiving party's] Bill of Costs filed on [date] was assessed by [Judge or Master] pursuant to the order of [Judicial Officer or Court making the order for costs] dated [dated of order for costs] and allowed in the following sums:

a.	Sum allowed: Together with interest at the rate of…% from the date of the order for costs until the date of this order.	$.....
b.	Filing fee:	$.....
c.	Assessment fee:	$.....
d.	Fee allowed on assessment:	$.....
e.	VAT (if applicable)	$.....
	TOTAL	$.....

By the Court

Chief Registrar/Registrar

Form 25*:* Admiralty Claim In Rem
[Rule 72.4(1)]

The Eastern Caribbean Supreme Court
In the High Court of Justice
Claim No. of .

Between:

A.B. Claimant

and

C.D. Defendant

Claim Form In Rem

Admiralty claim in rem against [The ship "X" or other res]

The claimant, A.B. (full names), of (full address) claims against the defendant, C.D. (full names), of (full address)

Set out briefly the nature of the claim and state any specific sum that you are claiming

Amount claimed	$.....
Court fees	$.....
Legal practitioner's costs on issue	$.....
Together with interest from to date	$.....
(Daily rate thereafter = **$** per day)	$.....
Total Claim	$.....

NOTICE TO THE DEFENDANTS
being the owners of and other persons interested in the ship of the port of [or cargo or as may be]

If you do not complete the form of acknowledgment of service served on you with this claim form and deliver or send it to xxx xxx xxx within 14/28 days of service of this claim form on you, the claimant will be entitled to apply to have judgment entered against you for the amount claimed. If the res described in this claim form is then under arrest of the court it may be sold by order of the court.

The form of acknowledgment of service may be completed by you or a solicitor acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within [12] months of the date below unless you are also served with an order that extends the time for service.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between […….a.m.] and […….p.m.]……..to……..except public holidays.

The claimant's address for service is:

Form 26: Admiralty Limitation Claim
[Rule 72.4(3)]

(Heading as in Form 25)

Limitation Claim Form

The claimant, A.B. (full names), of (full address) claims against the defendant, C.D (full names), of (full address)

Set out briefly the nature of the claim.

NOTICE TO THE DEFENDANT

Unless you admit the claim against you, you must complete the form of acknowledgment of service served on you with this claim form and deliver or send it to xxx xxx xxx so that it is received within 14/28 days of service of this claim form on you.

If you fail to do so the claimant may proceed with the claim without further notice to you.

The form of acknowledgment of service may be completed by you or a solicitor acting for you.

You should consider obtaining legal advice with regard to this claim.

This claim form has no validity if it is not served within [twelve] months of the date below unless you are also served with an order that extends the time for service.

Dated

[SEAL]

The court office is at [xxx xxx xxx] telephone number xxx-xxxx. The office is open between [a.m.] and [p.m.] to except public holidays.

The claimant's address for service is:

Form 27: Warrant of Arrest (Admiralty)

[Rule 72.9(1)]

(Heading as in Form 25)

Request For Warrant Of Arrest

We of

[Legal practitioners for] the claimant request a warrant to arrest

(description of property, giving name and port if a ship)

Dated:

(Signed)

Warrant Of Arrest

To: The Marshal

You are required to arrest the ship of the port of

[and the cargo now or lately laden in her together with the freight due for the transportation of it,] or [and the freight due for the transportation of the cargo now or lately laden in her] and to keep the same under safe arrest until you receive further orders from the Court.

The claimant claims:

Date

[SEAL]

Taken out by of (Tel No.)

[Legal practitioners for] the Claimant

[Marshal's indorsement as to service]

Form 28: Request for Claim to be Recorded as Satisfied

[Rule 14.2(3)]

(Heading as in Form 1)

Request for Claim to be Recorded as Satisfied

I/We, the defendant/defendant's legal practitioner hereby request that the claim in this matter be recorded as satisfied.

Dated:
Signed:
Legal practitioner for the Defendant

To: (Claimant/Legal practitioner for the Claimant)

The claimant may by application dispute satisfaction within 14 days of service of the request of satisfaction. Failure to do so within the time stipulated, the court will record that the claim has been satisfied.

The court office is at [xxx xxx xxx] telephone number xxx xxxx. The office is open between […a.m.] and […p.m.] … to … except public holidays.

Form 29: Request for Order for Oral Examination of an Individual
[Rule 44.3(1)]

(Heading as in Form 1)

Request for Order for Oral Examination of an Individual

The [claimant] [defendant] (the 'judgment creditor') applies for an order that the [defendant] [claimant] ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order of [date].

1. **Judgment Debtor**
The judgment debtor is
whose address is

2. **Judgment debt or order**
[The judgment or order required the judgment debtor to pay $ (including interest and costs). The amount now owing is $ [which includes further interest payable on the judgment debt].

[The judgment or order required the judgment debtor to]

Notes:
Normally the examiner will ask the questions set out in the Appendix A of Practice Direction 44 and the judgment debtor will be told to produce all relevant documents including:

- Pay slips
- Bank statements
- Share certificates
- Credit Union Pass books
- Mortgage statement
- Hire purchase and similar agreements
- Court orders
- Any other outstanding bills
- Electricity, gas, water, cable, telephone bills for the last year

Statement of Truth
*(I believe) (The judgment creditor believes) that the facts stated in this application are true.
*I am duly authorized by the judgment creditor to sign this statement.

Signed
Date
**(Judgment creditor) (Judgment creditor's solicitor)*
**delete as appropriate*

Full name
Name of judgment creditor's solicitor's firm

The court office is at [xxx xxx xxx] telephone number xxx xxxx. The office is open between[…a.m.] and […p.m.] … to … except public holidays.

Form 30: Request for Order for Oral Examination of an Officer of a Debtor Company
[Rule 44.3(1)]

(Heading as in Form 1)

Request for Order for Oral Examination of an Officer of a Debtor Company

The [claimant] [defendant] (the 'judgment creditor') applies for an order that the [defendant] [claimant] company or corporation ('the judgment debtor') attend court to provide information about the judgment debtor's means and any other information needed to enforce the judgment or order of [date].

1. **Judgment Debtor**
The judgment debtor is
whose address/registered office is situated at

2. **The officer**
The officer is the judgment debtor's
whose name and address is

3. **Judgment debt or order**
[The judgment or order required the judgment debtor to pay $ (including interest and costs).

The amount now owing is $ [which includes further interest payable on the judgment debt].

[The judgment or order required the judgment debtor to]

Notes:
Normally the examiner will ask the questions set out in the Appendix B of Practice Direction 44 and the judgment debtor will be told to produce all relevant documents including:

- Bank statements
- Court orders on which money is still owed
- Bills owed to the company
- Hire purchase and similar agreements
- Any other outstanding bills

2 year's accounts

Statement of Truth

*(I believe) (The judgment creditor believes) that the facts stated in this application are true.
*I am duly authorized by the judgment creditor to sign this statement.
Signed
Date

**(Judgment creditor) (Judgment Creditor's solicitor)*
**delete as appropriate*
Full name
Name of judgment creditor's solicitor's firm

The court office is at [xxx xxx xxx] telephone number xxx xxxx. The office is open between […a.m.] and […p.m.] … to … except public holidays.

Form 31: Hearing on Assessment of Damages
[Rule 12.14(a) and Rule 16.3(3)(c)]
(Heading as in Form 1)

NOTICE OF INTENTION TO BE HEARD ON ASSESSMENT

I/We..... the defendant/defendant's legal practitioner(s) wish to be heard on the issue of quantum at the assessment of damages and to be allowed to–

(a) cross-examine the following witness(es) to be called on behalf of the claimant(s):

……...…….....
……...…….....
……...…….....
……...…….....

(b) make submissions to the court: Yes/No

(c) call evidence, to be set out in the witness statements of: [*list the names of the witnesses whose witness statements you propose to file and serve]*

…….....
…….....
…….....
…….....
…….....
…….....

Dated .....
Signed: ….....
Defendant/Defendant's Legal Practitioner(s)

The court office is at [xxxxxxxxxxxxx] telephone number xxx xxxx. The court office is open between [… a.m.] and [… p.m.] … to … except public holidays and court holidays.

Form 32: Form of Judgment for amount to be decided by the Court
[Rule 12.10(1)(b)]
(Heading as in Form 1)

Form of Judgment for amount to be decided by the Court

NO ACKNOWLEDGMENT OF SERVICE/DEFENCE having been filed by the Defendant herein, it is this day adjudged that Judgment be entered for the Claimant for an amount to be decided by the Court.

BY THE COURT

REGISTRAR

NOTICE:
The matter is adjourned to Chambers for assessment of damages on the.....day of....., 20... .

The parties are to have regard to rule 16.2 of the Civil Procedure Rules (Revised Edition) 2023 in relation to the assessment of damages, and must comply with the procedures specified in rules 12.14 and 16.2 of those Rules.

Made the 23rd day of May 2023.

Chief Justice

Justice of Appeal

Justice of Appeal