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## CONSTITUTIONAL INSTRUMENT

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*THE CONSTITUTION OF SIERRA LEONE, 1991  
(Act No. 6 of 1991)*

THE HIGH COURT (AMENDMENT) RULES, 2006

Short title.

In exercise of the powers conferred upon it by section 145 of the Constitution of Sierra Leone, 1991, the Rules of Court Committee hereby makes the following Rules:–

The High Court Rules are amended as follows:–

Amendment  
of High  
Court  
Rules, Vol.  
VI p. 128.

**(a) by the insertion after Order 1 of the following new Order:–**

“Size and  
colour of  
paper.

1A. (1) Every document prepared by a party for use in the High Court shall, unless the nature of the document renders it impracticable, be on white foolscap or A4 International Standard Organisation size paper of durable quality and shall be–

(a) in black ink; and

(b) shall have a margin of not less than 3½ centimetres wide, to be left blank on the left side of the face of the paper and on the right side of the reverse so as to enable the sheet comprising the document to be conveniently bound bookwise.

(2) A carbon copy of a document to be filed in Court shall not be accepted”.

“Prohibition of conditional appearance.

**(b) by the insertion after rule 1 of Order IX of the following rule:–**

1A No conditional appearance shall be entered in any proceeding under these Rules”.

“Entry of appearance not waiver.

**(c) by the insertion after rule 13 of Order IX of the following rules:-**

**13A** The entry of appearance by a party shall not be construed as a waiver by him of any irregularity in the originating process or service thereof or in any order giving leave to serve the process out of the jurisdiction or extending the validity of the process for the purpose of service or on any other ground.

Disputes as to jurisdiction.

13B. A party who wishes to dispute the jurisdiction of the court in the proceedings by reason of such irregularity as is mentioned in rule 13A or on any other ground shall, within the time limited for service of a defence, apply to the court for–

- (a) an order setting aside the process or service of the process on him; or
- (b) an order declaring that the process has not been duly served on him; or
- (c) the discharge of any order giving leave to serve the process on him out of the jurisdiction; or
- (d) the discharge of any order extending the validity of the process for the purpose of service; or

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

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

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

(h) such other relief as may be appropriate.”

**(d) by the revocation and replacement of rule 7 of Order XI by the following rule:–**

“Directions.

7. Where leave is given to defend, the court shall have power to give all such directions regarding the further conduct of the action as may be necessary and rules 2 to 6 of Order XXB shall, with the omission of so much of subrule (1) of rule 6 as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application under rule 1 of this Order, on which the order was made were a summons for directions”

**(e) by the insertion after Order XX of the following Orders:–**

**“ORDER XXA – DISCOVERY AND INSPECTION OF DOCUMENTS**

Mutual discovery of documents.

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

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

Discovery by parties without order.

**2.** (1) Subject to subrule (2) and rule 4, the parties to an action between whom pleadings are closed shall make discovery by exchanging lists of documents and, accordingly, each party shall, within fourteen days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action.

(2) Without prejudice to any directions given by the court under rule 50 of Order XII, subrule (1) shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(3) Unless the court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under subrule (1).

(4) Subrule (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any enactment to make discovery of any documents.

(5) Subrules (3) and (4) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution for the reference in subrule (3) to the plaintiff, of a reference to the party making the counterclaim.

(6) On the application of any party required by this rule to make discovery of documents, the court may–

- (a) order that the parties to the action or any of them shall make discovery under subrule (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order; or
- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the court shall make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(7) An application for an order under subrule (6) shall be by summons, and the summons shall be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(8) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under subrule (1) and the party on whom such a notice is served shall, within fourteen days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Order for  
discovery.

**3.** (1) Subject to this rule and to rules 4 and 8, the court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party.

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under subrule (1) or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2, and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Order for  
determination  
of issue, etc  
before dis-  
covery.

**4.** (1) Where on an application for an order under rule 2 or 3, it appears to the court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the court may order that that issue or question be determined first.

(2) Where in an action begun by writ, an order is made under this rule for the determination of an issue or question, rules 2 to 6 of Order XXB shall, with the omission of so much of subrule (1) of rule 6 as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

**5.** (1) A list of documents made in compliance with rule 2 or with an order under rule 3 shall be in Form No. 26 in Appendix A of Volume II of the English Supreme Court Practice, 1999 and shall enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified. Form of list and affidavit.

(2) If it is desired to claim that any documents are privileged from production, the claim shall be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made verifying a list of documents shall be in Form No. 27 in Appendix A of Volume II of the English Supreme Court Practice, 1999.

**6.** (1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any rule on the party making the counterclaim by any other defendant to the counterclaim. Defendant entitled to copy of co-defendant's list.

(2) A party required by virtue of subrule (1) to supply a copy of a list of documents shall supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons, the court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule "list of documents" includes an affidavit verifying a list of documents.

Order for discovery of particular documents.

7. (1) Subject to rule 8, the court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or 3.

(3) An application for an order under this rule shall be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

Discovery to be ordered only if necessary.

8. On the hearing of an application for an order under rule 3 or 7, the court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall, in any case refuse to make such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Inspection of documents referred to in list.

9. A party who has served a list of documents on any other party, whether in compliance with rule 2 or 6 or with an order under rule 3, shall allow the other party to inspect the documents referred to in the list (other than any document which he objects to produce) and to take copies thereof and, accordingly, he shall, when he serves the list on the other party also serve on him a notice stating a time within seven days after the service at which the documents may be inspected at a place specified in the notice.

10. (1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies of this document.

Inspection of documents referred to in pleadings, affidavit and witness statements.

(2) The party on whom a notice is served under subrule (1) shall, within four days after service of the notice, serve on the party giving the notice a notice, stating a time within seven days after the service at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

11. (1) If a party who is required by rule 9 to serve a notice or who is served with a notice under subrule (1) of rule 10 –

Order for production for inspection.

- (a) fails to serve a notice under rule 9 or subrule (2) of rule 10 as the case may be; or
- (b) objects to produce any document for inspection, or
- (c) offers inspection at a time or place such that, in the opinion of the court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to subrule (1) of rule 14, the court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to subrule (1) but subject to subrule (1) of rule 14 the court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under subrule (2) shall be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

Provision of copies of documents.

**12.** (1) Any party who is entitled to inspect any documents under this Order or any order made under it, may, at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served shall, within seven days after receipt of the notice supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under subrule (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

Order for production to court.

**13.** At any stage of the proceedings in any cause or matter the court may, subject to subrule (1) of rule 14, order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the court may deal with the document when produced in such manner as it thinks fit.

Production to be ordered only if necessary, etc.

**14.** (1) No order for the production of any documents for inspection or to the court, or for the supply of a copy of any document, shall be made under rules 1 to 13 unless the Court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where, on an application under this Order for production of any document for inspection or to the Court, or for the supply of a copy of any document, privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

**15.** (1) Where production of any business books for inspection is applied for under rules 1 to 14, the court may, instead of ordering production of the original books for inspection, order a copy of any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books. Production of business books.

(2) An affidavit referred to in subrule (1) shall state whether or not there are in the original books any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the court may order production of the book from which the copy was made.

**16.** Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the court, or referred to, in open court, unless the court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs. Use of documents.

**17.** Rules 1 to 15 shall be without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest. Document disclosure of which would be injurious to public interest.

Failure to  
with comply  
requirement  
for dis-  
covery, etc.

**18.** (1) If any party who is required by rules 1 to 15, or by any order made under any of those rules to make discovery of documents or to produce any document for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to subrule (2) of rule 3 and subrule (1) of rule 11, the court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to subrule (1), he shall be liable to committal.

(3) Service on a party's legal practitioner of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A legal practitioner on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

(5) A party against whom an order has been made under subrule (1) may apply not later than one month after the date of the order, by notice of motion that the order be set aside and the action or defence be restored: and the court may, for good and sufficient cause order that the action or defence be restored upon such terms as it may think fit.

Revocation  
and varia-  
tion of  
orders.

**19.** Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the court made or given at or before the trial of the cause or matter in connection with which the original order was made.

### ORDER XXB – SUMMONS FOR DIRECTIONS

**1.** (1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the court of the preparations for the trial of the action, so that–

Summons  
for  
directions.

- (a) all matters which shall or can be dealt with on interlocutory applications and have not already been dealt with may, so far as possible, be dealt with; and
- (b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,

the plaintiff shall, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than seven days.

(2) Subrule (1) applies to all actions begun by writ except–

- (a) actions in which the plaintiff or defendant has applied for summary judgment under Order XI, and directions have been given under the relevant rule;
- (b) actions in which an order has been made under rule 4 of Order XXA for the trial of an issue or question before discovery.

(3) Where, in the case of any action in which discovery of documents is required to be made by any party under rule 2 of Order XXA, the period of fourteen days referred to in subrule (1) of that rule is extended, whether by consent or by order of the court or both by consent and by order, subrule (1) shall have effect in relation to that action as if for the reference therein to one month after the

pleadings in the action are deemed to be closed there were substituted a reference to fourteen days after the expiration of the period referred to in subrule (1) of rule 2 of Order XXA.

(4) If the plaintiff does not take out a summons for directions in accordance with subrules (1) to (3), the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under subrule (4), the court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in subrule (1), any party to an action to which this rule applies may take out a summons for directions at any time after the defendant has entered an appearance or, if there are two or more defendants, at least one of them has entered an appearance.

(8) A plaintiff whose action has been dismissed under subrule (5) may apply not later than one month after the date of the order by notice on motion that the order be set aside and the action be restored; and the court may, for good and sufficient cause order that the action be restored upon such terms as it may think fit.

Duty to consider all matters.

**2.** (1) When the summons for directions first comes to be heard, the Court shall consider whether—

- (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions; or

- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If, when the summons for directions first comes to be heard the court considers that it is possible to deal then with all the matters mentioned in subrule (1), it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the court considers that it is expedient to adjourn the consideration of all or any of the matters which, by this Order, are required to be considered on the hearing of the summons, the court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters; and the court shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.

(4) Subject to subrule (5) and except where the parties agree to the making of an order as to the place or mode of trial before all the matters which, by this Order, are required to be considered on the hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, on the summons for directions, the action or any question or issue therein is ordered to be tried before another court, subrule (4) shall not apply and the court may, without giving any further directions, adjourn the summons so that it can be heard by the other court.

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



Admissions and agreements to be made.

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

Limitation of right of appeal.

**4.** Nothing in rule 3 shall be construed as requiring the court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record any such agreement.

Duty to give all information at hearing.

**5.** (1) Subject to subrule (4), no affidavit shall be used on the hearing of the summons for directions except by the leave or direction of the court, but, subject to subrule (5) it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the summons as the court may reasonably require for the purpose of enabling it properly to deal with the summons.

(2) The court may, if it appears proper so to do in the circumstances, authorise the information or documents referred to in subrule (1) to be given or produced to the court without being disclosed to the other party or parties but, in the absence of such authority, any information or document given or produced under this subrule shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the court.

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

(4) If the court on any hearing of the summons for directions requires a party to the action or his legal practitioner to give any information or produce any document and that information

or document is not given or produced, then, subject to subrule (5) the court may—

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

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

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

Duty to make all interlocutory applications on summons for directions.

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

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

#### ORDER XXC – INTERROGATORIES

Discovery by interrogatories.

**1.** (1) A party to any cause or matter may, in accordance with this Order, serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter which are necessary either–

- (a) for disposing fairly of the cause or matter; or
- (b) for saving costs.

(2) Without prejudice to subrule (1), a party may apply to the court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter.

(3) A proposed interrogatory which does not relate to such a matter as is mentioned in subrule (1) may not be administered notwithstanding that it might be admissible in oral cross-examination of a witness.

(4) In this Order–

“interrogatories without order” means interrogatories served under subrule (1); “ordered interrogatories” means interrogatories served under subrule (2) or interrogatories which are required to be answered pursuant to an order made on an application under subrule (2) of rule 3 and, where such an order is made, the interrogatories shall not, unless the court orders otherwise, be treated as interrogatories without order for the purposes of subrule (1).

(5) Unless the context otherwise requires, this Order shall apply to both interrogatories without order and ordered interrogatories.

**2.** (1) Where interrogatories are served, a note at the end of the interrogatories shall specify–

Form and nature of interrogatories.

- (a) a period of time (not being less than 28 days from the date of service) within which the interrogatories are to be answered;
- (b) where the party to be interrogated is a body corporate or unincorporate which is empowered by law to sue or be sued whether in its own name or in the name of an officer or other person, the officer or member on whom the interrogatories are to be served; and
- (c) where the interrogatories are to be served on two or more parties or are required to be answered by an agent or servant of a party, which of the interrogatories each party or, as the case may be, an agent or servant is required to answer, and which agent or servant.

(2) Subject to subrule (1) of rule 5, a party on whom interrogatories are served shall, unless the court orders otherwise on an application under subrule (2) of rule 3 be required to give within the period specified under paragraph (a) of subrule (1) of rule 2 answers, which shall (unless the court directs otherwise) be on affidavit.

**3.** (1) Interrogatories without order may be served on a party not more than twice.

Interrogatories without order.

(2) A party on whom interrogatories without order are served may, within 14 days of the service of the interrogatories, apply to the court for the interrogatories to be varied or withdrawn and, on such application, the court may make such order as it thinks fit (including an order that the party who served the interrogatories shall not serve further interrogatories without order).

(3) Interrogatories without order shall not be served on the State.

Ordered  
interrogatories.

4. (1) Where an application is made for leave to serve interrogatories, a copy of the proposed interrogatories shall be served with the summons or the notice under rule 6 of Order XXB, by which the application is made.

(2) In deciding whether to give leave to serve interrogatories, the court shall take into account any offer made by the party to be interrogated to give particulars, make admissions or produce documents relating to any matter in question and whether or not interrogatories without order have been administered.

Objections  
and insufficient  
answers.

5. (1) Without prejudice to subrule (2) of rule 3, where a person objects to answering any interrogatory on the ground of privilege he may take the objection in his answer.

(2) Where any person on whom ordered interrogatories have been served answers any of them insufficiently, the court may make an order requiring him to make a further answer, either by affidavit or on oral examination as the court may direct.

(3) Where any person on whom interrogatories without order have been served answers any of them insufficiently, the party serving the interrogatories may ask for further and better particulars of the answer given and such request shall not be treated as service of further interrogatories for the purposes of subrule (1) of rule 3.

6. (1) If a party fails to answer interrogatories or to comply with an order made under subrule (2) of rule 5 or a request made under subrule (3) of rule 5, the court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

Failure to  
comply with  
order.

(2) Without prejudice to subrule (1), where a party fails to answer ordered interrogatories or to comply with an order made under subrule (2) of rule 5, he shall be liable to committal.

(3) Service on a party's legal practitioner of an order to answer interrogatories made against the party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A legal practitioner on whom an order to answer interrogatories made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

(5) A party against whom an order has been made under subrule (1) may apply not later than one month after the date of the order, by notice of motion that the order be set aside and the action or defence be restored; and the court may, for good and sufficient cause order that the action or defence be restored, upon such terms as it thinks fit.

7. A party may put in evidence at the trial of a cause or matter, or of any issue in it, some only of the answers to interrogatories, or part only of such an answer, without putting in evidence the other answers or, as the case may be, the court may look at the whole of the answers and if it is of opinion that any other answer or other part of an answer is so connected with an answer or part thereof used in evidence that the one ought not to be so used without the other, the court may direct that that other answer or part shall be put in evidence.

Use of  
answers to  
interrogatories  
at trial.

Revocation and variation of orders.

8. Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the court made or given at or before the trial of the cause or matter in connection with which the original order was made.

#### ORDER XXD – EVIDENCE

Exchange of witness statements.

1. (1) The powers of the court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including–

- (a) the extent to which the facts are in dispute or have been admitted;
- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

(2) At the summons for directions in an action commenced by writ, the court shall direct every party to serve on the other parties, within 14 weeks (or such other period as the court may specify) of the hearing of the summons and on such terms as the court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

(3) The court may give a direction to any party under subrule (2) at any other stage of such an action and at any stage of any other cause or matter.

(4) The power of the court to extend the period within which a person is required or authorised by these rules to do any act in any proceedings shall not apply to any period specified by the court under this rule.

(5) Directions given under subrule (2) or rule 2 may make different provision with regard to different issues of fact or different witnesses.

(6) Statements served under this rule shall–

- (a) be dated and, except for good reason (which shall be specified by a letter accompanying the statement), be signed by the intended witness and shall include a statement by him that the contents are true to the best of his knowledge and belief,
- (b) sufficiently identify any documents referred to in it; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

(7) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (a) of subrule (6), the court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(8) Where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(9) Where the party serving the statement does call such a witness at the trial–

- (a) the court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence-in-chief of the witness or part of such evidence;
- (b) the party may not, without the consent of the other party or parties or the leave of the court adduce evidence from that witness the substance of which is not included in the statement served, except –
  - (i) where the Court’s directions under subrule (3) or rule 2 specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;
  - (ii) in relation to new matters which have arisen since the statement was served on the other party;
- (c) whether or not the statement or any part of it is referred to during the evidence-in-chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(10) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(11) Where a party fails to comply with a direction for the exchange of witness statements, he shall not be entitled to adduce evidence to which the direction relates without the leave of the court.

(12) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served -

- (a) unless and to the extent that the party serving it gives his consent in writing or the court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (a) of subrule (9) or otherwise).

(13) Subject to subrule (15), the judge shall, if any person so requests during the course of the trial, direct the registrar to certify as open to inspection any witness statement which was ordered to stand as evidence-in-chief under paragraph (a) of subrule (9).

(14) A request under subrule (13) may be made orally or in writing.

(15) The judge may refuse to give a direction under subrule (13) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available–

- (a) in the interests of justice or national security, or
- (b) because of the nature of any expert medical evidence in the statement, or
- (c) for any other sufficient reason.

(16) Where the registrar is directed under subrule (13) to certify a witness statement as open to inspection, he shall–

- (a) prepare a certificate which shall be attached to a copy (“the certified copy”) of that witness statement; and
- (b) make the certified copy available for inspection.

(17) Subject to any conditions which the court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(18) In this rule–

- (a) any reference in subrules (13) to (17) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence-in-chief under paragraph (a) of subrule (9), be construed as a reference to that part;
- (b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

2. The court may vary or override any of the provisions of rule 1 (except subrules (1), (10) and (13) to (18)) and may give such alternative directions as it thinks fit.

#### XXE–ADMISSION

Admission of case of other party

1. Without prejudice to rule 9 of Order XVI, a party to a case of cause or matter may give notice by his pleading or otherwise writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit.

2. (1) A party to a cause or matter may, not later than twenty-one days after the cause or matter is set down for trial serve on any other party requiring him to admit, for the purpose of that cause or matter only, such facts or such part of his case as may be specified in the notice .

(2) An admission made in compliance with the notice under this rule shall not be used against the party by whom it was made in any cause or matter other than the cause or matter for the purpose of which it was made or in favour of any person other than the person by whom the notice was given, and the court may at any time allow a party to amend or withdraw and admission so made by him.

3. (1) Where admission of fact or part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any party to the cause or matter may apply to the court for such judgment or order as upon those admission he may be entitled to, without waiting for the determination of any other question between the parties and the court may give such judgment or make such order on the application as it thinks just. Judgement on admissions

(2) An application for an order under subrule (1) may be made by motion or summons.

4. (1) Subject to subrule (2) and without prejudice to the right of a party to object to the admission in evidence of any document, a party on whom a list of document is served in pursuance of any provision of Order XXA shall, unless the court otherwise orders, be deemed to admit– Admission and production of documents specified in list of document.

- (a) that any document described in the list as an original document is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(c) that any document described therein as a copy is a true copy.

(2) Subrule (1) shall not apply to a document the authenticity of which the party has denied in his pleading.

(3) If before the expiration of twenty-one days after inspection of the documents specified in a list of documents or after the time limited for inspection of those documents expires, whichever is later, the party on whom the list is served, serves on the party whose list it is a notice stating, in relation to any document specified therein, that he does not admit, the authenticity of that document and requires it to be proved at the trial, he shall not be deemed to make any admission in relation to that document under subrule (1).

(4) A party to cause or matter by whom a list of documents is served on any other party in pursuance of Order XXA shall be deemed to have been served by that other party with a notice requiring him to produce at the trial of the cause or matter such of the document specified in the list as are in his possession, custody or power.

(5) Subrules (1) to (4) shall apply in relation to an affidavit made in compliance with rule 7 of Order XXA, as they in relation to a list of documents served in pursuance of any provision of that Order.

Notices to admit or produce documents.

5. (1) Except where subrule (1) of rule 4 applies, a party to a cause or matter may within twenty-one days after the cause or matter is set down for trial serve on any other notice requiring to admit the authenticity of the documents specified in the notice.

(2) If a party on whom a notice under subrule (1) is served desires to challenge the authenticity of any document specified in that subrule he shall, within twenty-days after service of the notice serve on the party by whom it was given a notice stating that he does not admit the authenticity of the document and requires it to be proved at the trial.

(3) A party who fails to give a notice of non-admission in accordance with subrule (2) in relation to any document shall be deemed to have admitted the authenticity of that document unless the court otherwise orders.

(4) Except where subrule (4) of rule 4 applies, a party to a cause or matter may serve on any other party a notice requiring him to produce the document specified in the notice at the trial of the cause or matter”.

**(f) by the revocation and replacement of rule 9 of Order XXV by the following:–**

“Action for trial to be entered in Cause List.

9. Subject to Order XXB, immediately an action has been entered for trial it shall be entered in a Cause List to be kept by the Master and shall come on for trial in its order upon the list unless otherwise ordered”.

**(g) by the revocation and replacement of rule 9B of Order XXV by the following rule:–**

“The court bundle.

9B (1) At least fourteen days before the date fixed for the trial, the defendant shall identify to the plaintiff those documents central to his case which he wishes included in the bundle to be provided under subrule (2).

(2) At least two clear days before the date fixed for the trial, the plaintiff shall lodge two bundles consisting of one copy of each of the following documents:–

- (a) witness statements which have been exchanged, and experts’ reports which have been disclosed, together with an indication of whether the contents of such documents are agreed;
- (b) those documents which the defendant wishes to have included in the bundle and those central to the plaintiffs case, and
- (c) where a direction has been given under subrule (2) of rule 3 of Order XXB of a note agreed by the parties, failing agreement, a note by each party giving (in the following order):–
  - (i) a summary of the issues involved,

(ii) a summary of any propositions of law to be advanced together with a list of the authorities to be cited; and

(iii) a chronology of relevant events.

(3) Nothing in this rule shall prevent the court from giving, whether before or after the documents have been lodged, such further or different directions as to the documents to be lodged as may, in the circumstances, be appropriate”.

**(h) by the revocation and replacement of rule 14 of Order XXV by the following:–**

14. (1) Unless the Judge before whom an action is tried gives directions as to the party to begin and the order of speeches at the trial, the party to begin and the order of speeches shall be that provided by this rule.

“Order of speeches.

(2) Subject to subrule (6), the plaintiff shall begin by opening his case.

(3) Where the defendant or his legal practitioner elects not to adduce evidence, then, whether or not the defendant has, in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence for the plaintiff has been given, close his case and may thereafter deliver his closing speech after which the defendant may make his closing speech in reply. .



(4) Where the defendant or his legal practitioner elects to adduce evidence, the defendant may, at the close of the plaintiff's case, open his case and after the evidence for the defence has been given, give his closing speech after which the plaintiff may make a closing speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented then where—

- (a) none of them elects to adduce evidence, subrule (3) shall apply and each defendant shall make his closing speech in the order in which that defendant's name appears on the record;
- (b) each of the defendants elects to adduce evidence, each defendant may open his case and the evidence of each defendant shall be given in the order specified in paragraph (a) and the speech of each defendant closing his case shall be made in that order after the evidence of all the defendants has been given, or
- (c) some of them elect to adduce evidence and some do not-
  - (i) in respect of those who do, paragraph (a) shall apply; and
  - (ii) in respect of those do not paragraph (b) shall apply.

(6) Where the legal burden in all the issues in the action lies on the defendant, the defendant may begin, and subrules (3), (4) and (5) shall have effect in relation to the plaintiff and the defendant, as if for references to the plaintiff there were substituted references to the defendant and for references to the defendant there were substituted references to the plaintiff.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this subrule be entitled to make the final speech, raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may, with leave of the court make a further speech in reply, but only in relation to that point of law or that authority”.

**(i) by the revocation and replacement of rule 3 of Order LII by the following rule:—**

“(3) Where no other provision is made by these rules, the relevant procedure, practice or forms in the High Court of Justice in England on the 1st day of January, 1960 and the 1st day of January, 1999 shall so far as they can conveniently be applied, be in force in the High Court.”

**(j) by the revocation of the following:—**

- (a) rule 2 of Order 1
- (b) rules 5A and 5B of Order IX;
- (c) rules 8B, 8C, 8D, 8E, 8F and 8G and rule 9A of Order XXV.

MADE this 8th day of March , 2006.