

## NOTES ON SETTLEMENTS

### What is a Settlement

This is an agreement which the parties arrive at after the negotiation has been successful.

The parties should endeavour to reduce the terms of their agreement to writing, in clear concise and precise terms, and the language should be simple so that the individual can understand the same without the assistance of counsel or any other representative and the document should bear the signature of the parties themselves. The actual signatures of the parties should preclude a later claim by any of the parties of misunderstanding, mistake, misrepresentation and/or fraud.

It is important that the terms of the settlement are read over to the parties, before the signatures are affixed thereto.

This should be done in an orderly fashion, without haste, which also helps to eliminate clients being disgruntled.

An example of documents used in settlement are set out below:

#### 1. Release and Discharge

This is a document, in which the potential defendant is discharged from any further obligations without any admission of liability.

It is signed by the potential plaintiff, in order that the funds in settlement can be paid, which is effected by an exchange of undertakings, and the document usually reflects that the sums have been paid.

## 2. Instrument of Consent

In many litigious matters, a simple document, an Instrument of Consent is prepared, it sets out the terms of the agreement and is signed by the parties. This usually reflects "heads of agreement" and is used in matrimonial matters in respect of custody of the children, maintenance, division of matrimonial property. It is recommended that the parties themselves should also sign this document.

This document could later be endorsed by the Court in a formal Consent Order which is perhaps preferable but as it is very difficult to set aside a Consent Order particularly in matrimonial matters, counsel should be extremely careful to set out all matters in issue between the parties, including what should happen if any party does not satisfy his/her obligation within a particular time frame. There should always be a Liberty to Apply clause which preserves the right to return to the Court to implement the terms of the order.

## 3. Pending Court Proceedings

At any stage of pending proceedings, the parties are entitled to settle or compromise all matters in dispute between them, on any terms on which they can agree and dispose of the proceedings without a trial or adjudication of the Court.

There are several forms and methods which the parties can utilize to dispose of their dispute and it is for them to choose the method most suitable to them and for their purpose,

bearing in mind the type of matter, and the terms of agreement.

The main forms of settlement include the following:-

- (i) An agreement to enter judgment by consent;
- (ii) An agreement for the defendant to submit to judgment;
- (iii) An order by consent to stay proceedings; or
- (iv) Discontinuance by the plaintiff before defence without leave, or otherwise with leave, by the defendant without leave, or by consent in writing signed by the parties.

A consent judgment or order by consent should make provision for the discharge of the defendant from all further liability and the satisfaction of all claims between the parties.

It is important to include the agreement as to costs and as stated aforesaid the statement 'Liberty to Apply', should be included which refers to and permits the working out of the order, but does not give the Court jurisdiction to vary or alter the terms agreed.