

PRE-TRIAL DISCLOSURE
IN JAMAICAN SUPREME COURT ACTIONS/
A PRACTICAL GUIDE

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PART I - INTRODUCTION

TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p>PREFACE</p>	<p>The objective of this guide is to serve as a practical procedural introduction to the various interlocutory applications/procedures which can be used to achieve pretrial disclosure of documents, facts, and real evidence. Properly used, these applications/procedures can significantly cut down on the time and costs at trial and in many instances, they can force early settlements. The guide will serve its purpose if it results in an increased use of these interlocutory applications/procedures.</p> <p>The emphasis throughout the guide is on Jamaican cases and provisions, because, in my view, too often we look to the English rules and cases instead of focusing on developing our own jurisprudence. However, the relationship between our Code and the English rules is important because our Code is based on the old English rules and also, by virtue of section 686 of the code, the present English rules apply to us in the absence of a specific provision in our Code.</p> <p>Too often, however, it is assumed that present English rules (and English cases in relation to these) apply by virtue of Section 686 when this is not necessarily so because of the significant differences, in some instances, between the present English rules and the provisions in our Code. For this reason, where appropriate, I have contrasted, in summary form, instances where there are significant differences between the English rules and our code. In any event such a comparative approach is useful because the tradition is to look to the present English practice for reform and so current English practice is likely to provide a framework for the reform of our Code. In summarizing the English Rules, I have been greatly assisted by and relied on three publications in particular, namely <u>Chitty and Jacobs</u>, <u>Queen's Bench Forms</u>, 21st edition, and <u>Civil Litigation</u>, 7th edition, O'hare and Hill, and <u>Discovery</u>, Matthews and Malek.</p>	
	<p>The guide is divided into the following seven parts:</p> <p>(a) Part I - This introduction deals with preliminary topics.</p> <p>(b) Part II - The Summons for Directions. Most of the interlocutory applications covered in this guide will in practice be dealt with although not necessarily so, at this critical stage and so it is treated as a separate heading in this guide.</p>	

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PART I - INTRODUCTION

TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p>THE JAMAICAN CIVIL PROCEDURE CODE</p>	<p>In Jamaica, like England, and following England's lead, the various separate superior courts then in existence (see Section 4 of the Judicature (Supreme Court) Act for a list of these) were consolidated by the 1879 Judicature (Supreme Court) Act. On Independence, the constitution established the Supreme Court and the Court of Appeal as separate courts with separate personnel. Prior to Independence, the Supreme Court consisted of the High Court of Justice and the Court of Appeal.</p> <p>Our Civil Procedure Code was enacted 1888 to govern procedure in the Jamaican Supreme Court created by the 1879 Judicature (Supreme Court) Act. Our Code was modelled on the 1883 English Supreme Court Rules. It is this 1888 Code which is in force in Jamaica today with many amendments since then.</p> <p>In some cases, the 1883 English Rules were repeated exactly in our Code save for modification for local circumstances; in some cases two rules of an order were combined into one section in our Code; in other cases, the rules were not followed at all.</p> <p>The format of our code is different from the English rules as the provisions in our Code are set out under titles which indicate the subject matter dealt with thereunder and sections (rather than orders and rules).</p> <p>The Jamaican code was extensively amended in 1960 by the McGregor rules (a reference to the then Chief Justice, who had the power then, with the concurrence of a majority of the judges, to amend the provisions therein). The amendments were based on the English rules then in force. There has been no major amendment of the Code since. For this reason, the 1959 White Book is particularly relevant to Jamaica as it contains English provisions on which our Code is based and cases relevant to these.</p> <p>The power to make rules governing the civil procedure in Jamaican Supreme Court and Court of Appeal is now, by virtue of the Judicature (Rules of Court) Act vested in a committee known as the Rules Committee of the Supreme Court. The Committee consists of the Chief Justice, the President of the Court of Appeal, a Judge of the Supreme Court designated by the Chief Justice, the Attorney General, and the Director of State Proceedings (by virtue of their offices) and five Attorneys-at-Law. The Chairman of the Committee is the Chief Justice.</p>	<p>Halse Hall Ltd. and others v Robinson others (1977) 15 J.L.R. 131. In this judgment the then Chief Justice, Smith C.J. discusses history of our Code at some length.</p>

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TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
PREFACE (cont'd)	<p>(c) Part III - Uncovering Facts. This deals with applications/procedures which result in pretrial disclosure of facts.</p> <p>(d) Part IV - Uncovering documents. This deals with applications/procedures which result in pretrial disclosure of documents.</p> <p>(e) Part V - Uncovering Real Evidence. This deals with applications/procedures which result in pretrial disclosure of real evidence.</p> <p>(f) Part VI - Pre-trial examination. This deals with applications/procedures concerning pretrial examination.</p> <p>(g) Part VII - Miscellaneous Provisions. This deals with miscellaneous provisions not covered under the other headings.</p>	
THE ENGLISH RULES OF THE SUPREME COURT	<p>Civil procedure in the High Court in England is regulated, for the most part, by the rules of the Supreme Court. These rules are published in the Supreme Court Practice, "the White Book".</p> <p>In England, the various separate superior courts were consolidated into the Supreme Court of Judicature in England by the Judicature Acts of 1873 - 1875. Rules of the Supreme Court were enacted to govern this Court's procedure and were originally contained in the First Schedule to the Judicature Act 1875. These rules were expanded into the "Rules of the Supreme Court 1883" on which our Civil Procedure Code is based (see below).</p> <p>The English rules are revised and reissued on an ongoing basis and are published in a book called the Supreme Court Practice, "the White Book" (in the past they were reissued annually and hence were published in a book called The Annual Practice).</p> <p>The Rules are divided into orders with each order covering a separate subject such as pleadings, amendments, etc. Each order is in turn divided into rules, and many rules have subrules or paragraphs.</p> <p>The "Rules of the Supreme Court 1883" no longer apply in England and the rules currently in force are the Rules of the Supreme Court 1965, as amended since then. The 1965 amended rules marked the culmination of years of work towards the complete revision of the 1883 rules. The former rules were "... revised, redrafted, rewritten, rearranged, recast, reworded and restated ..." (Preface to the first edition, Supreme Court Practice, 1967).</p>	

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TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p style="text-align: center;">THE RELATIONSHIP BETWEEN THE ENGLISH RULES AND THE CIVIL PROCEDURE CODE</p>	<p>Under Section 686 of our Civil Procedure Code, the present English Supreme Court Rules governing procedure in England also apply to Jamaica (subject to qualifications set out below), provided the Jamaican Civil Procedure Code has no specific provision on a particular question which is dealt with by the English rules. The intention of section 686 is to apply English civil procedure and practice where no procedure and practice has been established locally. It is important to note that section 686 only applies if the procedure in question relates to substantive legal rights already existing in Jamaica. In other words, section 686 cannot create a legal right in Jamaica where none existed before even if such a legal right exists in England. For example, in England there is legislation enabling the English court to award interim payments by a Defendant to a Plaintiff before a final judgement and the English rules of procedure contain rules dealing with the procedure for this. In Jamaica, there is no legislation enabling the Jamaican court to make interim payments and so the English rules of procedure cannot apply to us in relation to this.</p> <p>It is also important to note that section 686 only supplies the machinery whereby any gap in the Code may be filled by making reference to the procedure and practice in England. Therefore, if there is no gap in our code, the English rules of procedure cannot apply.</p> <p>Clearly, also, the English rules would not apply by Section 686 where our Code has a specific provision which effectively excludes the application of an English rule. Neither can an English rule apply where it cuts down or restricts a specific provision in our Code.</p> <p>A general area of difference worth noting between our Code and the present English Rules concerns the effect of non-compliance. Our Civil Procedure Code in Section 678 makes a distinction between different kinds of non-compliance with the rules in the Civil Procedure Code. Non-compliance may be such as to nullify the proceedings or to merely make them irregular. In the former case, the court has to power to set the proceedings aside. In the latter case, however (i.e., a mere irregularity), the court may either set the proceedings aside or allow the irregularity to be corrected by amendment.</p>	<p><i>Crobe v Phillip; Terrer, Third Party</i> (1951) 6 J.L.R. 58.</p> <p>Held that as section 126 of the Code relation to third party proceedings) only apply to proceedings for contribution and indemnity and made no provision for other cases (i.e. the English rules) so the then equivalent section 686 applied and made English practice applicable.</p> <p><i>Smith v Shelley</i> (1966) 9 J.L.R. 332.</p> <p>Ex parte application to set aside service subpoena held to be in breach of natural justice as notice to the other side required. Procedure in England requiring service application because there is no local provision in Code.</p> <p><i>Lopez v Geddes Refrigeration Ltd</i> (1968) J.L.R. 558.</p> <p>English rule in relation to amendment pleadings to substitute new cause of action after limitation period. Held to be of restrictive application and not applicable to particular circumstances in issue. Also English rule not apply because no gap in our Code relation to court's jurisdiction to all amendments.</p>

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TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p>THE RELATIONSHIP BETWEEN THE ENGLISH RULES AND THE CIVIL PROCEDURE CODE (cont'd)</p>	<p>The Code restricts the right to complain about an opponent's slip. By section 679 it does so by providing that an application to set aside any proceeding for irregularity shall not be allowed unless it is made within a reasonable time and it also provides that neither will such an application be allowed if the party making the application has taken a fresh step in the suit after becoming aware of the irregularity.</p> <p><u>The English Rules</u></p> <p>The English rules formerly made the distinction between an irregularity and a nullity but this distinction was abolished in England in the revision of the rules in 1965. In England a failure to comply with the rules is to be treated as an irregularity only and does not nullify any step, document, judgement or order. In England therefore there is less scope to defeat proceedings because of a party's mistaken slip in litigation or technical error.</p>	<p><u>Halse Hall and others v Robinson and others (Ibid)</u>, Judge in Chambers, Smith, C.J.</p> <p>Held that the express provisions of our Code provide for attachment to the exclusion of orders of the court. The English rules relation to committal for contempt did not apply by section 686 in these circumstances.</p> <p><u>Jamculture Ltd. v Black River Upper Mor. Development Co. Ltd. and Agriculture Development Corporation</u> SOCA 1710/88.</p> <p>Held that the English procedure in relation to interim payments did not apply by section 6 because no legislation in Jamaica confer substantive right on court to award interim payments.</p>

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TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p>PRACTICE DIRECTIONS AND THE GENERAL RULES AND ORDERS OF THE SUPREME COURT</p>	<p>Practice Directions and the General Rules and Orders of the Supreme Court also affect procedure in the Jamaican Supreme Court, and where appropriate, references will be made to provisions in either of these.</p> <p>Practice Directions are written guidelines issued by the Registrar and/or the Master of the Supreme Court on matters of practice. Although not rules of law in the strict sense, they are nevertheless to be complied with as they assist in the smooth functioning of the justice system.</p> <p>The General Rules and Orders of the Supreme Court of Judicature of Jamaica is, as its title indicates, a 1938 publication of rules and orders in relation to the practice of the Supreme Court. It was arranged by Trevor Lyons, the then Registrar of the Supreme Court.</p>	<p>There are two publications which cover Practice Directions issued for the Supreme Court namely, Practice Directions issued for the Supreme Court, Jamaica by Hugh V Chambers, 1973, Judge of the Supreme Court and former Master, and Practice Directions issued for the Court of Appeal and Supreme Court of Jamaica by Karl Harrison (Harrison, J.).</p> <p>In the former publication Mr. Chambers in Preface and Introduction discusses jurisdiction of the Master to issue practice directions and argues that this derives from English Rules by virtue of Section 686 of Code as under the English rules the Master can give directions on matters of practice.</p>
<p>PRESCRIBED FORMS</p>	<p>The Code also contains prescribed forms in twelve schedules and page references for these are set out in this guide for easy reference.</p> <p>The forms predate Independence and hence the references in the forms themselves to the High Court of Justice (because prior to Independence the Supreme Court consisted of the High Court of Justice and the Court of Appeal) and to solicitors (because the forms predate the fusion of the profession).</p>	

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TOPIC	EXPLANATION/PROCEDURE	JAMAICAN CASES/ARTICLES
<p>APPLICABLE TIME PROVISIONS</p>	<p>When considering the various time provisions in relation to the matters dealt with in this guide, a few general provisions of the Code ought to be borne in mind. These are set out below.</p> <p>In the computation of the time of less than 6 days, Good Friday, Christmas Day, Saturdays and Sundays are not to taken into account (Section 671 of the CPC). Where the time for doing an act or taking a proceeding expires on a Saturday, Sunday or other day on which the offices are closed, the time for taking such act or proceeding is extended to the day when next the offices are open (Section 672 of the CPC). In reckoning time generally the first day ought to be excluded and the last day included (Section 675 of the CPC); in reckoning time where the provision refers to "clear days" both the first and last days ought to be excluded (Section 675 of the CPC). Time for filing documents may be enlarged by consent in writing (Section 674 of the CPC) or by the court (Section 676 of the CPC).</p>	
<p>JAMAICAN CASES/ARTICLES</p>	<p>Ironically, it is easier to research English cases than Jamaican cases. Since the emphasis of this guide is on Jamaican civil procedure, reference will only be made to Jamaican cases and articles. Unless otherwise indicated, the cases cited are Jamaican Court of Appeal decisions</p>	

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
SUMMONS FOR DIRECTIONS	<p>The Summons for Directions is a pretrial hearing in actions by writ where the court reviews the parties' preparation for trial and make orders/directions in relation to those matters to make the trial proceed smoothly, shorten its length and save costs. Time and money can be saved at the trial because the court at the trial stage need not deal with matters that have already been dealt with at the hearing of the Summons for Directions. The Code provides that directions ought to be given to "secure the just, expeditious and economical disposal" of the matter (Section 272(1)(b) of the CPC). It must be taken out in every action (Section 272(1) of the CPC) save for a few exceptions (Section 272(2) of the CPC) - see below.</p> <p>The Summons is filed in court by one of the parties, normally by the Plaintiff, but if the Plaintiff does not do so, the defendant can do so (Section 272(3) of the CPC) or the defendant may apply to dismiss the action (Sections 272(3) and (4) of the CPC).</p> <p>After the Summons is filed, it is then issued with a date; thereafter, the party who filed the document serves it on his opponent and the Summons is heard on the date therein.</p> <p>The Summons for Directions is a standard form introduced by a Practice Direction dated September 14, 1975 by the then Registrar of the Supreme Court, Carey, J.A. The Summons lists paragraphs numbered 1 - 27 which contain the draft texts of orders/directions that can be applied for on the hearing of the Summons. The Practice Direction provides that where an Attorney does not require a particular order or orders he should strike out the numbers next to and relating to that paragraph but not the text of the order itself; by this means it is indicated that the order in that paragraph is not being sought on the hearing of the Summons for Directions. The paragraph(s) in the Summons for Directions which relate to the topics dealt with in this Guide will be mentioned under the topic heading for easy reference.</p>	<p>The Summons for Directions must be filed within 7 days from the date when the pleadings are deemed closed (Section 272(1) of the CPC). Pleadings are deemed closed at the expiry of 7 days from the service of the Defence or Reply (if any) unless the court or Judge orders service of any other pleadings (Section 256 of the CPC).</p>	<p>The standard form of the Summons for Directions was introduced in a Practice Direction dated September 14, 1975 by the then Registrar of the Supreme Court, Carey, J.A.</p>	<p><i>Golding and another v Charles S.C.C.A 27/91.</i> Held that hearing of Summons for Directions necessary for writ action to come up for trial save for exceptions in Code (see below). The court considered Sections 272 A - F generally and emphasized the importance of the Summons for Directions to save costs and ensure expedition.</p>

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>SUMMONS FOR DIRECTIONS (cont'd)</p>	<p>Generally, no affidavit is to be used without leave in order to apply for the orders/directions on the hearing of the Summons for Directions (Section 272E (1) (a) of the CPC), but leave is not required in order to rely on an affidavit in respect of those applications where an affidavit is normally required (Section 272E (2) of the CPC).</p> <p>Most of the orders/directions for uncovering your opponent's case can and should be applied for on the hearing of the Summons for Directions as most of the draft texts of these are contained in separate paragraphs in the Summons for Directions.</p> <p>All interlocutory applications, not already applied for, should be made as far as practicable be made on the hearing of the Summons for Directions (Sections 272 (1) (a) and 272F(1) of the CPC). At the hearing of the Summons for Directions the court or judge must consider all the matters to be heard (Section 272A of the CPC), on the first hearing (Section 272A(2) of the CPC), or if expedient, adjourn the hearing as may be necessary to ensure that all interlocutory applications that can be dealt with are dealt with (Section 272A(3) of the CPC).</p> <p>The court or judge should endeavour to secure all such admissions and agreements as to the conduct of the proceedings which may reasonably be made by the parties (Section 272 (C) of the CPC). The parties' attorneys, in turn, have a duty to give all such information and to produce all such documents reasonably required by the court or judge to enable the Summons to be dealt with properly (Sections 272E (1) (a) and (3) of the CPC), except privileged documents (Section 272E(4) of the CPC). A breach of this duty may be recorded by the court or judge in the Order on Summons for Directions with a view to a special order as to costs at trial as may be just (Section 272E (3) (a) of the CPC) or order, as a result of the breach, the whole or any part of the pleadings of the party concerned to be struck out and the action or counterclaim to be dismissed (Section 272E (3) (b) of the CPC).</p>	<p>The date for the hearing of the Summons for Directions is inserted in the Summons for Directions at the Supreme Court and the Summons is scheduled for hearing on that date. This is called the return date and the return date and the Summons is said to be returnable on that date.</p> <p>The Summons for Directions with the date inserted therein must be served at least 21 days before the date for hearing (Section 272(1) of the CPC).</p> <p>If the hearing of the Summons is adjourned sine die a party may relist it on 2 days' notice to the other parties (Section 272A (5) of the CPC).</p>		<p>Summons for Directions - The Critical Stage in the Preparation for Trial by Hugh Small (now Hugh Small, Q.C.). Presented a Seminar in 1983.</p> <p>The article deals generally with the applications that can be made at the hearing of the Summons for Directions and urges that this stage of preparation for trial be treated seriously and that counsel be briefed so that it can be properly dealt with.</p> <p><u>Thinking Through Evident Beforehand or a Stitch in Time</u> by David Muirhead, Q.C. Presented at a seminar in 1983 and Summary Procedures Determination of Civil Claims by Dr. Lloyd Barnett, October, 1983.</p> <p>In these articles, the author advocates the use of interlocutory applications such as further applications to identify issues, interrogatories to identify issues and facilitative settlements.</p>

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>NOTICES UNDER THE SUMMONS FOR DIRECTIONS</p>	<p>A party can apply to the court or judge for additional orders/directions not initially sought in the text of the Summons for Directions by filing and serving a Notice setting out therein the additional orders/directions sought. This Notice is called a Notice under the Summons for Directions and the applicable time limits for service of the Notice under the Summons for Directions depends on whether the additional orders/directions are sought before the hearing of the Summons for Directions or whether this has been adjourned or whether it has already been heard.</p>	<p>If the additional orders/directions are sought before the hearing of the Summons for Directions, the Notice ought to be served not less than 7 days before the hearing (Section 272F(1) of the CPC).</p>		
		<p>If the additional orders/directions are sought after the hearing of the Summons for Directions has been adjourned and a new date set the Notice ought to be served not less than 7 days before the resumed hearing (Section 272F(2) of the CPC).</p>		

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ARTICLES
<p align="center">NOTICES UNDER THE SUMMONS FOR DIRECTIONS (cont'd)</p>		<p>If the additional orders/directions are sought after the hearing of the Summons for Directions is complete but before judgement, the application must be made under the Summons on 2 clear days' notice stating the grounds on which the application is made (Section 272F(3) of the CPC).</p>		
<p align="center">DIRECTIONS IN OTHER APPLICATIONS</p>	<p>Directions in the nature of the directions given on the Summons for Directions can be given in other applications which include: applications for trial without further pleadings (Section 86H(5) of the CPC); applications for summary judgement where leave to defend is given (Sections 83A and 86D of the CPC); applications to dismiss a claim for failure to take out a Summons for Directions in respect of which the court or judge can treat the application as the hearing of the Summons for Directions (Section 272(4) of the CPC); applications for the postponement of discovery pending the determination of a preliminary question or issue (Section 291(2) of the CPC); trials of agreed questions of fact (Section 329 of the CPC); orders to proceed to assessment of damages in respect of which directions are required (Section 366B of the CPC); applications for the preservation or custody of subject matter of contract, for the detention, preservation or inspection of any property, the subject matter of the cause, and applications for injunctions (Section 470A of the CPC).</p>			

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>EXCEPTIONS TO REQUIREMENT TO TAKE OUT SUMMONS FOR DIRECTIONS</p>	<p>There is no requirement to take out Summons for Directions where: directions have been given on applications for trial without pleadings or for the preservation or inspection of property (see above, directions in other applications); actions in which an order for accounts is made; actions where an order for postponement of discovery pending the determination of an issue; actions dealt with by trial on agreed questions of facts; actions for infringement of patent (Section 272(2) of the CPC).</p> <p><u>The English Rules</u></p> <p>The English Rules provide for automatic directions in personal injury actions. The purpose of the automatic directions is to enable a straightforward action to proceed from the pleadings stage to setting down without the necessity of an application by Summons for Directions in court. The rules also provide that if the parties agree in writing in a Chancery action that the only directions required are as to the mode of trial and the time for setting down certain standard directions will apply.</p>			
<p>ORDERS ON INTERLOCUTORY APPLICATIONS</p>	<p>Formal orders are to be drawn up and filed in respect of orders on the Summons for Directions or orders on interlocutory applications made at a stage other than the hearing of the Summons for Directions. Leave is needed to appeal to the Court of Appeal from interlocutory orders (Section 11(1) (f) of the Judicature (Appellate Jurisdiction) Act. Notices of appeal should be filed and served within 14 days from the perfection of the interlocutory order in question (Rule 13(a), 1962 Court of Appeal Rules)</p>	<p>Formal Orders in respect of interlocutory applications should be drawn up and filed within 14 days from the date thereof (Section 579 of the CPC).</p>		

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>THE ROLE OF THE MASTER</p>	<p>Summons for Directions are heard in Jamaica by the Master.</p> <p>An amendment in 1966 to the Judicature (Supreme Court) Act created the present post of the Master to be attached to the Supreme Court to exercise such authority and jurisdiction as a Judge in Chambers as assigned to him by the rules of the court. This came about chiefly at the request of practising lawyers who saw the need for speeding up the process of the courts.</p> <p>The authority and jurisdiction of the Master is that assigned to him by rules made in 1966 and amended in 1967. The rules give the Master such authority and jurisdiction as a Judge in Chambers except in seven distinct areas (for example, he cannot deal with applications for prerogative orders or review taxation of costs).</p> <p>The Master has no jurisdiction to sit in open court. A general indication of when matters can be dealt with in Chambers is where the Code provides for applications to "the Court or a Judge" (see <u>Mason v Desnoes & Gaddes Ltd.</u>).</p> <p>Appeals from the Master in Jamaica go directly to the Court of Appeal (Section 10 of the Judicature (Supreme Court) Act.</p>			<p><u>Kenneth Mason v Desnoes & Gaddes Ltd.</u>, Privy Council Appeal 54/8. (Appeal from the Jamaican Court of Appeal).</p> <p>Held that the Master has jurisdiction to set aside the default judgement ordered by a judge. Jurisdiction of the Master considered generally. The expression in the Code "the Court or a Judge" indicates that jurisdiction is exercisable in Chambers.</p>

PART II - THE SUMMONS FOR DIRECTIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p align="center">THE ROLE OF THE MASTER (cont'd)</p>	<p><u>The English Rules</u></p> <p>In England, there are several Masters consisting of the Queen's Bench Masters for that division of the High Court and Chancery Masters for that division of the High Court. There are also district judges who are the "out of London" equivalent of High Court Masters and deal with both Queen's Bench and Chancery cases. In most cases, appeals from Masters go to a judge in Chambers.</p>			<p>A Brief History of the Post of the Master of the Supreme Court of Jamaica, Hugh V.T. Chambers. This article considers the history and jurisdiction of the Master in detail.</p> <p>Delays in the Justice System Civil Jurisdiction, April 22, 1994, David Batts.</p> <p>Refers to the recommendation of the Special Sub-committee of the Jamaican Bar Association among them being:</p> <p>(a) that the Master consider all matters on the Summons for Directions and call for and examine documents as the Code provides.</p> <p>(b) the issue of a practice direction to prevent the filing of Certificate of Readiness unless all orders on the Summons for Directions have been complied with or leave to proceed obtained despite non-compliance.</p> <p>(c) the creation of another post of Master.</p>

PART III - UNCOVERING FACTS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p style="text-align: center;">FURTHER AND BETTER PARTICULARS (cont'd)</p>	<p>The practice is to request particulars by letter before the application to the court is made (Section 171A of the CPC). The modern practice is to send a cover letter with a formal document entitled as in the action and headed up "Request for Further and Better Particulars of (the pleading in question)". Any particulars given in response should also be set out in a formal document headed "Further and Better Particulars (of the pleading in question)" pursuant to (the Request or Order of the Master) dated The document should set out the particulars and the text of the request to which it relates.</p> <p>An order for particulars will not be made before service of the Defence unless the Order is necessary desirable or to enable the Defendant to plead or ought for any other special reason to be delivered (Section 171B of the CPC).</p> <p>An order for particulars unless the order otherwise provides does not operate as a stay of proceedings or as an extension of the time for a pleading in response and the time limit for responding will be the same as at the return date of the Summons (Section 172 of the CPC).</p>			<p><u>Duncombe v York</u> Page See S.C.C.A. 61/88. Order for further and better particulars to be supplied within 14 days failing which application dismissed Order not complied with. Held: No automatic entitlement to judgment as a result of default. Proper approach apply for judgment by motion.</p> <p><u>Strachan v Biggie</u> S.C.C.A. 45</p> <p>Section 171(B) of the CPC considered. Further and better particulars sought before defence. Held: Party seeking further better particulars in the circumstances to show that are necessary or desirable to enable a defence to be pleaded or for some other special reason to order justified.</p>

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TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>INTERROGATORIES (Paragraphs 12 and 13 of the Summons for Directions) (cont'd)</p>	<p>If a person interrogated omits to answer, or answers insufficiently, the applicant may apply to the court for an order requiring him to answer, or answer further, by affidavit or exceptionally by oral examination as the judge may direct (Section 283 of the CPC).</p> <p>A party at trial may use the answers by putting them in evidence and may use any one or more of the answers or any part of an answer by his opponent, but if he does so, the judge may look at the whole of the answers and direct the other answers be put in evidence (Section 295 of the CPC).</p> <p>A party who fails to comply with an order to answer interrogatories will be liable to attachment and, if a Plaintiff, to have his claim dismissed for want of prosecution, and if a Defendant, to have his Defence struck out (Section 292 of the CPC) and service of the order on the Attorney will be sufficient for this to apply (Section 293 of the CPC). An Attorney will also be liable to attachment for failure, without reasonable cause, to notify his client of an order for interrogatories (Section 294 of the CPC).</p> <p>By a subsequent order or direction the court or judge may at or before trial, on sufficient cause being shown, revoke or vary the earlier order made relating to the interrogatories (Section 300 of the CPC).</p> <p>The English Rules</p> <p>An important difference between the English Rules and the Jamaican Code is that in England a party may serve interrogatories without leave/court order (leave is still needed in relation to the Crown) on his opponent requiring them to be answered within a specified time, not being less than 28 days from service. There is no time limit on the right to serve such interrogatories and these can be served before the Directions stage. Interrogatories without the leave of the court may not be served on a party more than twice.</p>			<p>Delays In the Justice System (Jurisdiction (Ibid)) One of recommendations refer to in this article is that the Ma institute the process interrogatories.</p>

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TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
INTERROGATORIES (Paragraphs 12 and 13 of the Summons for Directions) (cont'd)	<p><u>The English Rules (cont'd)</u></p> <p>A party served with such interrogatories must then either answer the interrogatories within the time specified or apply to the court within 14 days of service for the interrogatories to be varied or withdrawn and on such an application the court can make such order as it deems fit.</p> <p>Applications, notwithstanding these provisions, can still be made for leave to serve interrogatories.</p> <p>The introduction of these provisions in England has led to an increase in the use of interrogatories.</p>			
NOTICE TO ADMIT FACTS (Paragraph 18 of the Summons for Directions)	<p>A party may serve on his opponent a notice specifying certain facts and calling on his opponent to admit any specific fact or facts mentioned therein (Section 305 of the CPC). The opponent, on service of such a notice, may in response serve a notice of admission of facts and if the opponent fails or neglects to do so he will bear the costs of proving the facts at trial if they are subsequently proved there (Section 305 of the CPC). Any admission so made is for the purpose of the action only, and can be used only by the person serving the notice and can be amended or withdrawn if the court allows (Section 305 of the CPC).</p> <p><u>The English Rules</u></p> <p>The corresponding English rules provide that unless the party upon whom the notice to admit is served is legally aided, the trial court may assess the costs in question immediately, without taxation, and may order the payment of the sum assessed forthwith.</p>		Notice to Admit Facts: Schedule VI, Form 13, page 2508. Admission of facts pursuant to Notice Schedule VI, Form 14, page 2508.	<p><u>Thinking Through Evidence: Beforehand Or a Stitch in Time (Ibid).</u></p> <p>In this article the author recommends the use of this procedure to reduce the cost of proof in certain trials, for example in proving registration and ownership of vehicles in run-in-down cases.</p>

PART IV - UNCOVERING DOCUMENTS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
<p>DISCOVERY (Paragraphs 9 - 10 of the Summons for Directions)</p>	<p>Discovery is the disclosure by one party to the other of the relevant documents which are or have been in his possession or power. It takes place in two stages, namely the disclosure of the documents in a list and/or affidavit and the production and inspection of the documents therein which are not privileged.</p> <p>A party may apply to the court or judge for an order directing his opponent to make discovery by affidavit of documents which are or have been in his possession or power in relation to any matter in question in the cause (Section 284 of the CPC). The court or judge on the hearing of an application for discovery may order discovery by means of a list of documents in lieu of an affidavit but this will preclude a subsequent order for an affidavit of documents (Section 285A of the CPC). The application for discovery is usually made at the hearing of the Summons for Directions. A court or judge may refuse the application if satisfied that discovery is unnecessary or unnecessary at the stage or the court or judge may restrict discovery to a particular or particular class of documents (Section 284 of the CPC). The court or judge also has the power to postpone discovery until after the determination of an issue or dispute if it is satisfied that the right to discovery hinges on such a determination or if for any other reason it is desirable to determine such a preliminary issue before deciding whether to order discovery or not (Section 291 of the CPC).</p>		<p>Affidavit of Documents: Schedule IX, pages 2531 - 2532.</p>	<p>Delays in the Just System Jurisdiction (Jibk A m o n g t h recommendations refer to in this article is that t Code be amended provide that on ti hearing of the Summo for Directions there be : order, unless suffice cause is shown dispense with this, th each party file and deliv a list of affidavit documents and that the be produced fo inspection.</p>
	<p>The form of the affidavit of documents is prescribed (Section 285 of the CPC) and the list should be similar in form (Section 285A of the CPC) except that the list is not a document sworn to on oath. In both the affidavit and list, the documents ought to be itemized under schedules, Schedule 1 and Schedule 2. Schedule 1 itemizes documents which the party has in his possession or power. Schedule 1 is further divided into two parts. Part I itemizes documents which the party does not object to producing and Part II sets out documents which he objects to producing which are required to be specified (Section 285 of the CPC). Schedule 2 itemizes documents which were formerly but are no longer in the party's possession, custody or power.</p>			<p>Discovery of Document and Its Use Tactical Stephen Shelton. This article compares English and Jamaica procedure for discovery documents generally. It also considers the substantive law in relation to privilege from disclosure.</p>

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<p>DISCOVERY (Paragraphs 9 - 10 of the Summons for Directions) (cont'd)</p>	<p>A party may apply, such application supported by an affidavit, to the court or a judge for an order requiring his opponent to state in an affidavit whether any particular document or documents of particular class of document or documents is/are or has/have been in his possession, custody or power and if not, stating when he has parted with them and what has become of them (Section 290 (5) of the CPC)</p> <p>As in the case of interrogatories, a party who fails to comply with an order for discovery will be liable to attachment and, if Plaintiff, have his claim dismissed for want of prosecution and if Defendant, have his Defence struck out (Section 292 of the CPC) and service of the order on the party's attorney will be sufficient for this to apply (Section 293 of the CPC).</p> <p>Similarly, like interrogatories, an Attorney will be liable for attachment for failure, without reasonable excuse, to notify his client of an order for discovery (Section 294 of the CPC). As in the case of Interrogatories the court or judge may by a subsequent order or direction, on sufficient cause being shown, revoke or vary the earlier order in relation to the discovery (Section 300 of the CPC).</p> <p><u>The English Rules</u></p> <p>The general difference between the procedure for discovery in England and Jamaican procedure is that generally in England discovery takes place without the leave of the court/court order.</p> <p>In an action begun by writ, each party must within 14 days after the close of pleadings and without an order of the court, serve on the other a list of documents which are/have been in his possession, custody or power relating to any matter in question between them in the action and, if so required by the other party verify such list by affidavit. The parties may, however, agree to dispense with or limit the discovery of documents which they are otherwise required to make or they may apply to the court to dispense with or to limit the discovery of documents or to defer such discovery until a later stage.</p>			

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<p>DISCOVERY (Paragraphs 9 - 10 of the Summons for Directions) (cont'd)</p>	<p><u>The English Rules (cont'd)</u></p> <p>A Defendant in a "running down" action need not make discovery unless so directed by the court.</p> <p>Where the parties have not made discovery of documents without an order, the Court may make an order for discovery of documents by list and if necessary to be verified by affidavit.</p> <p>Where discovery takes place a party on whom a list of documents of affidavit of documents is served is deemed to admit the authenticity of the documents thereby discovered unless he denies their authenticity in his pleading or unless he serves a notice of non admission within 21 days after inspection.</p> <p>It is also noteworthy that the Code refers to discovery of documents in the possession or power of a party whereas the English Rules refer to discovery of documents in the possession, custody or power of a party (the word custody was introduced in the English Rules in 1964).</p>			
<p>PRODUCTION AND INSPECTION (Paragraph 11 of the Summons for Directions)</p>	<p>A party is entitled to inspect and take copies of documents referred to in the pleadings or affidavit of his opponent, including documents set out in an affidavit of documents.</p> <p>A party may at any time serve a notice on any other party (not necessarily the opposing party) requiring him to produce for the purpose of inspection and the taking of copies of the documents referred to in the other party's pleadings and/or affidavits (Section 287 of the CPC). If the party served with such a Notice fails to comply with it, without sufficient cause or excuse, he can be precluded from putting any such document into evidence (Section 287 of the CPC). The form of the Notice to Produce is prescribed (Section 288 of the CPC).</p>	<p>Notice to Produce Documents: Schedule VI, Form 10, page 2506.</p> <p>Notice to Inspect Documents: Schedule VI, Form 11, page 2506.</p>		

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PRODUCTION AND INSPECTION (Paragraph 11 of the Summons for Directions)	<p>The party receiving such a notice must serve a counter Notice of a time and place when documents or such of them that he does not object to produce may be inspected together with a statement of which documents he objects to produce and on what grounds (Section 289 of the CPC). The documents may be inspected at the Attorney's office or in the case of bankers' books or accounting records at the business place where they are kept (Section 289 of the CPC).</p> <p>A court or judge can make an order, on the application of a party, for inspection at a time and place considered fit if a party served with a Section 287 Notice to Produce omits to give a Section 289 counter Notice to allow inspection or objects to give inspection or offers inspection elsewhere than the Attorney's office (Section 290 (1) of the CPC). An application for the court to order inspection of documents, except those referred to in the pleadings, particulars or affidavits against whom the application is made, should be supported by an affidavit indicating the documents in respect of which inspection is sought and indicating the party's entitlement to inspection of these (Section 290 (2) of the CPC). On an application for inspection of business books the court or judge may take copies of the entries furnished verified by an affidavit as an alternative to inspection of the original but this does not preclude an order for inspection of the original (Section 290(3) of the CPC). Where privilege is claimed on an application for inspection the court or judge may inspect the document(s) in question to decide on the validity of the claim to privilege (Section 290(4) of the CPC).</p> <p>An Attorney will be liable to attachment for failure, without reasonable excuse, to notify his client of an order for inspection (Section 294 of the CPC).</p> <p>A court or judge can order a party during the pendency of a cause to produce any documents in his possession or power on oath and deal with such document(s) as appears just (Section 286 of the CPC).</p>	<p>A party receiving a Notice to inspect has 4 days from receipt of such a Notice to serve a counter Notice of a time and place within 3 days of the service of a such a counter Notice when the documents may be inspected (Section 289 of the CPC).</p>		<p><u>Allen v Byfield</u> (1964) J.L.R. 430. Application for leave to appeal from Full Court decision refusing the claim of the defendant/applicant to privilege in respect of documents set out in Notice to Produce. Held no requirement for leave in respect of appeals from a Full Court in respect of interlocutory orders. Mentioned here because this is an apparent instance of exercise of Full Court jurisdiction under Section 290(4) of the CPC).</p>

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PRODUCTION AND INSPECTION (Paragraph 11 of the Summons for Directions) (cont'd)	<p><u>The English Rules</u></p> <p>The English rules provide that a party serving a list of documents must also serve an accompanying notice stating a time within 7 days after the service thereof at which the said documents may be inspected and at a place specified in the notice. In practice, such a notice to inspect is contained in the same document as the List of Documents. The production for inspection of documents disclosed on discovery usually takes place in accordance with this notice. This provision was introduced in the English rules in 1964 and there is no similar provision in our Code.</p> <p>The Rules also permit a party who is entitled to inspect documents to serve a notice on the producing party "at or before the time when inspection takes place" requiring the latter to supply copies of the specified documents capable of being copied. The producing party then has 7 days to supply the copies with an account of the charges.</p>			
PRE-ACTION DISCOVERY/THE RULE IN NORWICH PHARMACAL	<p>Although as a general rule the court will not allow pre-action discovery to assist a person to obtain information or discovery against a non-party there is a common law exception to this rule laid down in the House of Lords in the case of <i>Norwich Pharmacal v Customs and Excise</i> (1974) AC 133, (1973) 2 All ER 943, by virtue of which discovery can be obtained by a party against innocent persons who facilitated the wrong in question. This special kind of discovery derives from the inherent jurisdiction of the court and hence, the rule ought to apply in Jamaica.</p> <p>The case establishes that a person who, whilst not actually being alleged to be a wrong doer, was caught up in the wrong doing of another, so that he was more than a "mere witness" could be compelled to give discovery of the identity of the actual wrong doer(s), in order that the proceedings could be taken by the victim against the appropriate defendant. The case involved a patent infringement and the import of copy drugs was forced to disclose custom forms so that the Plaintiff could pursue the manufacturer. A fortiori, the Plaintiff is entitled to the order if the defendant is not mixed up innocently with the third party. The obligation is to give full information, documentary and otherwise.</p>			

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<p>PRE-ACTION DISCOVERY/THE RULE IN NORWICH PHARMACAL (cont'd)</p>	<p><u>The English Rules</u></p> <p>There are also special provisions in England in the Supreme Court Act 1981 and the English Rules which permit pre-action discovery and discovery against non-parties in a pending action for personal injuries or wrongful death. Before such an action is begun, an application for discovery of documents may be made by a person likely to be a party to a subsequent proceedings against a person likely to be a party to such subsequent proceedings and who is likely to have in his possession, custody or power any relevant documents.</p> <p>Also in a pending action for personal injuries or wrongful death, an application for discovery documents may be made against a person who is not a party to the proceedings but who appears likely to have in his possession, custody or power any relevant documents.</p>			
<p>EXPERT REPORTS (Paragraphs 20 and 21 of the Summons for Directions)</p>	<p>Our Code is limited in scope in relation to expert reports in comparison to the English Rules. The relevant provisions in our Code are set out below.</p> <p>The court or judge may, at or before trial, limit the number of medical or expert witnesses who may be called at trial (Section 368(B) of the CPC). There is a similar English Rule. Any such limit is not binding; the trial judge may permit different or additional experts to be called at the trial and it does not fetter either party's right to call witnesses. The court may obtain the assistance of experts (Section 21 of the Judicature (Supreme Court) Act.</p> <p>Unless, at or before trial, a court or judge otherwise permits, the oral expert evidence of an engineer in relation to a motor vehicle collision case will not be admissible unless a copy of the report has been made available to the other parties before the hearing of the Summons for Directions or an order or application thereunder authorizes its admission (Section 368D(b) of the CPC). This section applies to assessment of damages hearings (Section 368F of the CPC) and directions in relation to these hearings (Section 368D (2) of the CPC).</p>	<p>Engineers reports in relation to motor vehicle collision cases should be made available to an opponent before the hearing of the Summons for Directions (Section 368D(b) of the CPC).</p>		<p>Delays in the Justice System Civil Jurisdiction</p> <p>A m o n g t h recommendations refer to in this article is that the Code be amended provide that on t hearing of the Summo for Directions there shou be an order, unte sufficient cause is show to dispense with this, t there be an exchange expert reports.</p>

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<p>EXPERT REPORTS (Paragraphs 20 and 21 of the Summons for Directions) (cont'd)</p>	<p><u>The English Rules</u></p> <p>The English Rules in relation to disclosure of expert reports are far more extensive than the provisions in our Code. The rules provide that, subject to certain exceptions, no expert evidence may be adduced at the trial unless the party seeking to adduce it has previously applied to the court to determine whether and to what extent he should be ordered to give his opponents early disclosure of the substance of his expert's evidence and has complied with any direction given. The exceptions include actions in which automatic directions are given (ie personal injury actions) or where the trial court grants leave, or where the other side consents to the admission of the evidence.</p> <p>Where an application under the expert evidence rules is necessary it will normally be made at the Summons for Directions stage. In a sense the applicant is applying for an order against himself. Nothing in the rules requires the disclosure of evidence which it is not proposed to be used at trial. If there is a real dispute between the experts, the court has the power to convene "without prejudice" meetings in an effort to identify differences.</p>			
<p>PHOTOGRAPHS AND PLANS (Paragraphs 22 and 23 of the Summons for Directions)</p>	<p>Often plans and photographs are useful in assisting a party to prove his case. The relevant provisions in our Code are Sections 368(C) and 368D(a).</p> <p>Photographs and plans will not be receivable in evidence at trial unless submitted to the opponent as an opportunity to inspect and agree to these before trial or unless the court or judge otherwise directs for special reasons (Section 368C of the CPC).</p> <p>In respect of motor vehicle collision cases, no plan other than a sketch plan of the accident scene will be receivable in evidence unless the court or a judge authorizes this at or before trial (Section 368D(a) of the CPC). These sections apply to assessment of damages hearings (Section 368F of the CPC).</p>	<p>The opponent ought to be shown plans and photographs at least 10 days before trial (Section 368(C) of the CPC).</p>		

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<p>NOTICES TO PRODUCE</p>	<p>A general principle of the law of evidence is that a party who seeks to put a document into evidence ought to produce the original, but secondary evidence, such as a copy, is admissible if the absence of the original is explained and it is unavailable.</p> <p>If the original of a document is in the possession of an opponent, a party may serve on his opponent a notice to produce the original, called a Notice to Produce. If the opponent does not produce the original in response, the party serving the Notice can then adduce secondary evidence of it. The form of a Notice to Produce is prescribed (Section 309 of the CPC).</p>		<p>Notice to Produce: Schedule VI, Form 15, page 2509.</p>	
<p>SUBPOENA DUCES TECUM</p>	<p>A subpoena duces tecum is a writ issued by the Supreme Court directed to a person to produce certain documents to the court at the trial of the action. The subpoena must identify the documents required. The form of a writ of subpoena duces tecum is prescribed (Section 393 of the CPC).</p> <p>To take out a subpoena duces tecum a party must file a praecipe, which is a form of request, for this purpose (Section 394 of the CPC). A subpoena for the purpose of the attendance of a witness for proceedings in Chambers will issue upon a note from the judge (Section 394A of the CPC). Service of the subpoena is effected by delivering a copy of the writ and at the same time producing the original (Section 398 of the CPC). Upon service of a subpoena, including subpoena duces tecum, a reasonable sum for witness expenses must be tendered, failing which there is no obligation to obey the subpoena (Rule 21, Part VII, General Provisions, General Rules and Orders of the Supreme Court).</p>	<p>The subpoena remains in force from the date of issue until the trial of the action in question (Section 401 of the CPC). Service must be effected within 12 weeks, failing which service will be invalid (Section 400 of the CPC).</p>	<p>Schedule X, Form 3, page 2535.</p>	

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<p>NOTICE TO ADMIT DOCUMENTS</p>	<p>A notice to admit documents is a notice which a party can serve on his opponent requiring him to admit, for the purpose of the action, the authenticity of the documents specified in the notice (Section 303(1) of the CPC). The opponent who receives the notice and who does not wish to admit the authenticity of the documents listed in the notice must give notice of non admission, failing which he will be deemed to admit the authenticity of the documents, unless the court or Judge otherwise orders (Section 303(2) of the CPC).</p> <p>If a party gives notice of non admission within the prescribed time (see applicable time provisions) but the authenticity of the documents is later proved at trial, the cost of proving the document shall be borne by the party who failed to admit the documents, unless there were reasonable grounds for this (Section 303(3) of the CPC). Where a party proves a document without having given notice to admit, a taxing officer may disallow the cost of proving it on taxation (Section 303(4) of the CPC).</p>	<p>A notice to admit documents ought to be served at least 9 days before the notice of trial (Section 303(1) of the CPC).</p>	<p>Notice to Admit Documents: Schedule VI, Form 12, pages 2506 - 2507.</p>	
	<p>An opponent's notice in response challenging the authenticity of the documents in a notice to admit should be served within 6 days of the service of the Notice to Admit (Section 303 (1) of the CPC).</p>			

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<p>WRITTEN STATEMENTS OF WITNESSES</p>	<p>The Jamaican Evidence Act was amended in 1995 to provide for the admission of evidence in written statements and business documents. The amendment in relation to civil proceedings is based on the 1968 English Civil Evidence Act.</p> <p>Written statements by a person can be put into evidence at trial without calling as a witness the person who made it if that person could in any event testify to the facts stated therein. Statements in business documents created in the course of a trade, business, or profession or other occupation from information supplied by a person with personal knowledge of the matters dealt with therein, whether or not he is the maker of the statement, may also be admitted in evidence at the trial without calling such a person as a witness. "Document" is defined in the Act to include, in addition to document in writing, maps, plans, graphs, drawings, photographs, data recording devices (including, discs, tapes and soundtracks) and visual recording devices (including film, negatives and microfilm).</p> <p>It should also be noted that testimony in relation to an oral statement may be given at the trial by the person who heard it (i.e. first hand hearsay; it would be second hand hearsay - which remains inadmissible under the Act - if the person heard it from someone who heard it, and so on).</p> <p>The procedure under the Act is that any person wishing to put into evidence such a written statement, oral statement or business document without calling the maker as a witness must serve on his opponent a notice to that effect before trial and a copy of the statement/document in question.</p>	<p>A party intending to put into evidence such a written statement, oral statement or business document should notify his opponent and any other party in question at least 21 days before trial. The court can dispense with this notification requirement.</p>		<p>The Evidence Amendment Act, C. Dennis Morrisson O.C., May 13, 1995.</p> <p>This article summarize the Act generally.</p>

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<p style="text-align: center;">WRITTEN STATEMENTS OF WITNESSES (cont'd)</p>	<p>Upon receipt of the notice, the opponent has a right to require the person who made the statement or the document (as the case may be) to be called as a witness. If an opponent exercises this right, and the maker of the statement or document is not called, the use of hearsay evidence is prevented, unless the person relying on the evidence proves: that the maker of the statement or business document is dead; unfit by illness to attend as a witness; out of Jamaica and it is not reasonably practical to secure his attendance; cannot be found, despite reasonable steps to find or identify him; or is kept away from the proceedings by threat or bodily harm. If any of these exceptions can be proved by the party seeking to use the hearsay evidence has the right to put in hearsay evidence at trial.</p> <p>Paragraph 15 of the Summons for Directions contains the draft text of an order for a statement to be admissible without calling the maker thereof. There is, however, no jurisdiction indicated in the Code for such an order to be made at this stage and it is debatable whether the amendment to the Evidence Act confers this jurisdiction.</p> <p>Also, as a result of the amendment to the Act, computer statements or printouts are admissible, whether they constitute hearsay or not, subject to proof of certain conditions to ensure the validity and accuracy of the information in the computer statement or printout. Among these conditions are: that the computer was operating properly without any malfunction that affect the accuracy of the statement or printout; that it was properly programmed; that there is no reasonable cause to question the accuracy or validity of the document or the data from which it is prepared; and that there was no alterations to its mechanisms and processes that might reasonably be expected to affect the validity or accuracy of the computer statements or printouts. There is, however, no requirement in the Act to notify the opponent of the computer evidence before trial.</p>			

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TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
<p align="center">WRITTEN STATEMENTS OF WITNESSES (cont'd)</p>	<p><u>The English Position</u></p> <p>As pointed out previously, the 1995 amendment to the Evidence Act is based substantially on the English Civil Evidence Act of 1968. The law on the admissibility of hearsay statements in England is governed primarily by this 1968 Act and the Civil Evidence Act of 1972. In 1991 the Law Commission recommended the abolition of the current law of hearsay in civil cases because of the difficulty of the provisions and the Civil Evidence Act 1995 has been passed (although not yet in force) to reform the law in this area.</p> <p>There are other relevant rules in relation to witness statements applicable to England but not Jamaica. The English rules provide for the early disclosure of the statements of witnesses of fact (i.e. non experts). The rules provide that the court shall direct any party to serve on other parties written statements of the oral evidence which the party intends to lead on issues of fact to be decided at trial. Such an order must be made "for the purpose of disposing fairly and expeditiously of the cause or matter... and saving costs". The order is made at the Summons for Directions stage but can be made at any stage and usually provides for mutual disclosure, i.e. an exchange of witness statements.</p> <p>A party who fails to comply with an order for disclosure of witness statements will not be entitled to adduce any evidence to which the order relates unless the court grants leave. The trial court can order that a written statement so disclosed should stand as the evidence in chief of the witness and in practice usually does.</p>			

PART IV - UNCOVERING DOCUMENTS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
<p align="center">DISCOVERY ANCLLARY TO MAREVA INJUNCTIONS AND ANTON PILLER ORDERS</p>	<p>The Mareva injunction is essentially a "freezing order". It temporarily freezes the assets of a defendant or potential defendant which may be required to satisfy a judgement or potential judgement in the plaintiff's favour. This is to prevent the defendant from frustrating the potential judgement by disposing of his assets within the jurisdiction, or moving from it.</p> <p>The Anton Piller order is a form of discovery which permits search of the defendant's premises and seizure of items or documents found there which might form evidence in the plaintiff's action or proposed action against that defendant.</p>			<p>Jamaica Citizens Bank Ltd, S.C.C.A. 82/93.</p> <p>Worldwide Mareva Injunction granted in action part upheld in breach of contract employment, dece conspiracy. <i>Cot</i></p> <p>(<i>Beverly-J.A.</i> in judgement) confirm order for disclosure co have been made on grant of the injunction.</p>
	<p>Mareva Injunctions and Anton Piller orders include a variety of discovery orders as to the nature, location and value of all assets wherever situated, details of bank and other accounts, nature and extent of share holdings in specified companies, names and addresses of other wrong doers, the present whereabouts of any documents relating to the claim, and orders to deliver up documents.</p>			<p>Anton Piller Order & discovery order for names and addresses of suppliers of copy-vide granted ex parte by Or in Media Aides Ltd. Harriott, Suit No. C 313/86 decided on 11 26, 1986.</p>

PART IV - UNCOVERING DOCUMENTS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
EVIDENCE BY AFFIDAVIT AND EVIDENCE OF PARTICULAR FACTS (Paragraphs 16 and 17 of the Summons for Directions)	<p>The court or judge may at or before trial order/direct that evidence be given by affidavit (Section 368(1) of the CPC). Such an order/direction may be given on such terms as to the filing and furnishing of copies of the affidavits or proposed affidavits as the court or judge may think fit, including that the deponent attend for cross-examination (Section 368 (2) of the CPC).</p> <p>The court or judge may at or before trial order/direct proof of particular facts by statement on oath of information or belief (Section 368A(2) of the CPC) by production of documents or entries in books or copies of these (Section 368A(2)(b) and (c) of the CPC) or by production of a newspaper in respect of a fact of common knowledge (Section 368A(2)(d) of the CPC).</p> <p>On the hearing of the Summons for Directions the court or judge is required to consider these matters in particular (Section 272B(b) of the CPC).</p>			
THE COURT FILE	<p>There is an apparent right of access by the public to the records of proceedings in the Supreme Court. Under Section 12(1) of the Judicature (Supreme Court) Act, one of the functions of the Registrar is to "... permit the public to search and take copies" of records of proceedings in the Supreme Court.</p>			

PART IV - UNCOVERING DOCUMENTS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASE ARTICLES
<p style="text-align: center;">JUDGE'S BUNDLE/ FINAL PREPARATION FOR TRIAL</p>	<p>A copy of every pleading ought to be lodged in the Supreme Court Registry before trial for use at trial (Rule 36(a) of Part VII, General Provisions, the General Rules and Orders of the Supreme Court).</p> <p>A party wishing to use affidavits or other documents including correspondence should also lodge copies of these in the Supreme Court Registry before trial; when feasible the parties should agree correspondence before trial (Rule 36(b)(i) and (ii) of Part VII General Rules and Orders of the Supreme Court.</p> <p><u>The English Rules</u></p> <p>The English rules in relation to the judge's bundles and final preparation for trial are far more extensive than our rules. A 1995 Practice Direction requires the use of a pretrial checklist to enable the court to assert greater control over the preparation for an conduct of hearing... The checklist for example, requires the parties to list the names of the experts and other witnesses they intend to call. It also refers to pretrial reviews conducted by the trial judge and attended counsel. At these reviews consideration is given to the preparation and presentation of trial bundles and core bundles (where the documents are voluminous) as well as the length of the hearing and the suitability of an order for the trial of preliminary issues.</p> <p>The rules place obligations on the plaintiff to prepare and lodge copies of all documents intended to be used or referred to at trial. The defendant must also contact the plaintiff to identify the documents he wishes to be included in the bundle.</p> <p>Skeleton opening arguments must also be lodged with the court at least 3 days before trial.</p>	<p>Copies of the pleadings and documents for use at trial ought to be lodged at least 3 days before trial (Rules 36(a) and (b) of Part VII, General Provisions, the General Rules and Orders of the Supreme Court.</p>		<p><u>Thinking Through Evidence Beforehand or Stitch in Time ... (Ibid)</u></p> <p>The author in this article emphasizes the importance of agreeing documents and filing bundle of agreed documents before trial order to save time at trial.</p>

PART VII - MISCELLANEOUS PROVISIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
BANKING RECORDS	<p>Section 37 of the Evidence Act allows the court on the application of a party in any legal proceedings, to order the party to be at liberty to take copies of any entries in the banker's books for the purposes of the proceedings. By virtue of this, a banker may be ordered to disclose such entries before trial.</p> <p>"Bankers books" is defined to include ledgers, day books, cash books, account books, and other records used in the ordinary business of the bank whether in written form or microfilm.</p> <p>Also, under Sections 33 to 35 of the Act, copies of the banking entries made in the ordinary course of the business of the bank and verified as true copies may should be received as prima facie evidence of the contents of such entries.</p>	<p>The order for disclosure of banking records should be served on the bank at least 3 clear days before it is to be obeyed (Section 37 of the Evidence Act).</p>		<p><u>Bank Confidentiality</u> Lenworth Burke, March 1995. This article considers the circumstances under which disclosure of banking records can take place and relevant Jamaican provisions.</p>
APPLICATIONS IN RELATION TO COMPANY DOCUMENTS	<p>There are corresponding English provisions to the Jamaican provisions in the 1879 Bankers Books Evidence Act.</p> <p>Applications can be made to the court for the disclosure of company documents by originating summons and these applications include the following:</p>			
	<p>(a) applications to inspect the register of members or the index of names of members of a company or to obtain copies of such register (Section 112(4) of the Companies Act).</p> <p>(b) applications to inspect the minutes of proceedings at general meetings of a company or to obtain copies thereof (Section 141 (4) of the Companies Act).</p>			

PART VII - MISCELLANEOUS PROVISIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
APPLICATIONS IN RELATION TO COMPANY DOCUMENTS (cont'd)	(c) applications to inspect the register of directors and secretaries (Section 178(5) of the Companies Act) or the register of directors' interests or dealing in shares (Section 184(10) of the Companies Act). (d) applications to inspect copies of instruments creating a charge and to inspect the register of charges (Section 103(3) of the Companies Act). (e) applications to inspect any register of holders of debentures or to obtain copies thereof of any trust deed for securing debentures (Section 86(5) of the Companies Act). (f) applications for production and inspection of the books of a company, where offence suspected (Section 369(1) of the Companies Act). (g) applications relating to default in delivery of accounts and documents to be filed and delivered to the Registrar of Companies directing to make good such default (Section 336(1) of the Companies Act).			

PART VII - MISCELLANEOUS PROVISIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
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	(a)			
	(b)			

PART VII - MISCELLANEOUS PROVISIONS

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES ARTICLES
<p>ACCOUNTS AND INQUIRIES</p>	<p>A court or judge may at any stage of the proceedings in a matter direct any necessary inquiries or accounts (Section 312 of the CPC).</p> <p>An account for these purposes is simply a detailed written report of money owed and paid. An account can be ordered appropriate where someone has been handling money for another, for example, where the interest of parties is to be decided in joint ownership cases such as a partnership actions. The court or judge may make special directions as to the mode of taking of the accounts (Section 313 of the CPC). The accounting party should verify the account by affidavit unless the court or judge otherwise directs (Section 314 of the CPC), and the court or judge may order the production of relevant vouchers (Section 315 of the CPC).</p> <p>Inquiries are appropriately ordered when certain facts subsidiary to the main question in issue can conveniently be ascertained out of court by a person appointed or directed to inquire into them. For example, inquiries are appropriate to ascertain the rights of persons interested in actions for the administration of estates. In respect of every judgement or order for a general account for the personal estate of a testator or intestate there should be a direction for an inquiry of what parts, if any, of such personal estate are outstanding or undisposed of (Section 317 of the CPC).</p> <p>By virtue of Section 43 of the Judicature (Supreme Court) Act a judge of the Supreme Court can direct the Registrar to take accounts and make enquiries. All acts and proceedings by the Registrar pursuant to this are subject to the ratification of the court and when so ratified will be binding on the parties.</p>		<p>Form of ordering Accounts and Inquiries: Schedule IX, pages 2532 - 2533.</p>	<p>Summary, Procedures, Determination of Claims, Dr. Lloyd Barne October, 1991.</p> <p>In this article Dr. Barne considers the procedure in relation to interlocutory applications for an order for account.</p>

PART VI - PRE-TRIAL EXAMINATION

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ARTICLES
<p>LETTERS OF REQUEST (cont'd)</p>	<p>By the Imperial Tribunals Evidence Act 1856, which applies to Jamaica, a court or judge in Jamaica may order the examination of a witness in Jamaica, in any civil or commercial matter not of a political character, pursuant to a Commission Rogatoire or letter of request from a foreign court or tribunal.</p> <p>The procedure for the obtaining of the evidence for the foreign tribunal pursuant to 1856 Act is set out in the General Rules and Orders of the Supreme Court of Judicature of Jamaica. The rules apply to applications under the Evidence by Commission Act, 1859 (in relation to British colonies) for the purpose of giving effect to a commission or Letter of Request from a British Tribunal out of the jurisdiction.</p> <p>The examination may be ordered to be taken before any fit or proper person appointed by the court or judge. The examination on completion is to be forwarded to the Registrar of the Supreme Court who appends his certificate, and seals it with the Supreme Court seal and the depositions so certified are forwarded to the foreign court or tribunal through diplomatic channels. In the absence of special directions given in the order for examination, the examination shall be taken in the manner set out in Sections 371 - 395 of the CPC (see above).</p> <p>There are also rules governing requests to examine witnesses out of the jurisdiction which are also set out in the General Rules and Orders of the Supreme Court. The rules apply when a court or judge in Jamaica issues a request in lieu of commission for the examination of witnesses out of the jurisdiction. The rules set out the forms to be used in respect of such an application. The applicant's Attorney is required to file a written undertaking to be responsible for all expenses or give security in respect of the expenses in the execution of the letter of request.</p> <p>In England, the Evidence (Proceedings in other Jurisdictions) Act 1975 was passed in order to give effect in the United Kingdom to the Hague Convention of 1970 on the Taking of Evidence Abroad in Commercial Matters and it replaced the Foreign Tribunals Evidence Act. It confers power on the High Court to assist non-English courts in foreign civil proceedings.</p>		<p>Form 2, Registrar's Certificate under the Foreign Tribunal Evidence Act 1865, Part VIII, General Rules and Orders of the Supreme Court, page 160.</p> <p>Order for request to examine witnesses abroad, General Rules and Orders of the Supreme Court, page 172.</p> <p>Letter of Request to examine witnesses abroad, General Rules and Orders of the Supreme Court, pages 172 - 173.</p>	

PART VI - PRE-TRIAL EXAMINATION

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>DEPOSITIONS (Paragraph 19 of the Summons for Directions) (cont'd)</p>	<p>The examination should take place in the presence of the parties, their Attorneys or agents and the witnesses are subject to cross examination and re-examination (Section 378 of the CPC). The depositions are to be taken in writing and then read over to the witness and signed by him and if he does not sign the examiner will sign the depositions (Section 379 of the CPC).</p> <p>The original deposition, authenticated by the signature of the examiner is then sent to the Registrar's Office and filed (Section 383 of the CPC). The examiner may make a special report to the Court touching the examination or the absence or the conduct of any person at the examination and the Court may give directions/make an order based upon such report (Section 384 of the CPC). The Court may also rule on the validity of any objection by a witness to any question put to him (Section 381 of the CPC).</p> <p>The deposition may not be received in evidence of the trial unless the parties consent or the Court or Judge is satisfied that the deponent has died or is beyond the jurisdiction or is unable from sickness or other infirmity to attend trial (Section 385 of the CPC); but written notice must be given before the trial of the intention to use the deposition in evidence (Section 391 of the CPC).</p>	<p>The Notice of intention to use the affidavit should be given within one month of the joinder of issue in the cause or matter or such longer time as allowed by special leave of the court or judge (Section 391 of the CPC)</p>	<p>Form 1, Order under the Foreign Tribunal Evidence Act, Part VIII, General Rules and Orders of the Supreme Court, page 159.</p>	
<p>LETTERS OF REQUEST</p>	<p>As pointed out previously, under Section 373 of the CPC, a court of judge may issue a letter of request in lieu of a commission.</p> <p>A letter of request is a letter issued by a court in one jurisdiction to a court in another, through diplomatic channels requesting the testimony of witness to be recorded, by oral examination or in response to prepared interrogatories for the purposes of the matter before the issuing court. Where a commission is issued for this purpose it is called a Commission Rogatoire.</p>		<p>Form 1, Order under the Foreign Tribunal Evidence Act, Part VIII, General Rules and Orders of the Supreme Court, page 159.</p>	

PART VI - PRE-TRIAL EXAMINATION

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>DEPOSITIONS (Paragraph 19 of the Summons for Directions)</p>	<p>A court or judge has the power to order the evidence of a witness, including a party, to be taken on oath before the trial. The written record of the oral evidence of the witness on oath before trial is called a deposition and may be used at the trial in certain circumstances. Answers may be recorded to oral questions or prepared interrogatories. This power is exercisable where it appears necessary for the purposes of justice' (Section 371 of the CPC).</p> <p>The examination may be ordered to take place before a judge (only rarely) or an officer of the court or any other person and at any place (Section 371 of the CPC) (it should be noted in this regard that by Section 12(1) of the Judicature (Supreme Court) Act that one of the duties of the Registrar of the Supreme Court is to take examination, orally or upon interrogatories). The court or judge may order any person to attend to produce documents (Section 374 of the CPC) and to attend to be examined (Section 375 of the CPC) and the failure to obey each of these orders will amount to contempt of court (Section 375 of the CPC).</p> <p>The examination may take place pursuant to an order for commission and Writ of Commission, the forms of which are prescribed (Section 372 of the CPC). The commission is a written grant of authority by the court giving the person named therein power to conduct the examination.</p> <p>Alternatively, the court or judge may order the issue of a letter of request (see below) to examine witnesses in lieu of a commission (Section 373 of the CPC).</p> <p>The witness may be subpoenaed to attend for examination (Section 387 of the CPC). If he refuses or fails to attend or refuses to be sworn to answer any lawful question, the examiner may sign a certificate of and such refusal and file it at the Registrar's Office and thereupon the witness may be ordered to attend, or to be sworn or to answer any question as the case may be (Section 380 of the CPC).</p>		<p>The prescribed forms in relation to examination by Commission are in Schedule VI, pages 2510-13, and they are: Short order for issue of commission to examine witnesses, Writ of Commission to Examine Witnesses, Witnesses Oath, Commissioner's Oath and Interpreter's Oath.</p>	

PART V - UNCOVERING REAL EVIDENCE

TOPIC	EXPLANATION/PROCEDURE	APPLICABLE TIME PROVISIONS	PRESCRIBED FORMS AND PAGE REFERENCES IN CODE	JAMAICAN CASES/ ARTICLES
<p>MEDICAL EXAMINATION</p>	<p>The court has power, under its inherent jurisdiction, to stay an action for damages for personal injuries unless and until the Plaintiff submits himself to a medical examination of a reasonable character which is reasonably required. By applying for such a stay an opponent may secure the medical examination of the Plaintiff and evidence in relation to this before trial from a doctor of the opponent's choice. Because the power to order such a stay arises from the inherent jurisdiction of the court, the Jamaican court also has jurisdiction to order such a stay and has exercised this jurisdiction (See <u>Rattigan v Kong</u>).</p>			<p><u>Melbourne Rattigan v Warren Kong</u> Suit No. C.L. 1991/R-048 (decided 8/10/93), Langhin, J.</p> <p>Personal injury action Defendant's request for Plaintiff to be examined by doctor of Defendant's choice refused because of significant amendment to particulars of Injuries pleaded by the Plaintiff. Stay of proceedings granted unless and until plaintiff submitted himself to such an examination.</p>