

**LAWS OF GUYANA**

**HIGH COURT ACT**

**CHAPTER 3:02**

**Act**

**10 of 1915**

**Amended by**

20 of 1919	23 of 1955	20 of 1984
2 of 1921	42 of 1956	14 of 1988
20 of 1921	20 of 1921	8 of 1991
23 of 1923	19 of 1958	2 of 1993
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16 of 1931	2 of 1965	30 / 1972
2 of 1935	12 of 1967	80 / 1980
32 of 1936	4 of 1972	
16 of 1949	15 of 1978	
3 of 1950	21 of 1978	

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**Note  
on  
Repeal**

This Act repealed the Supreme Court Ordinance (7 of 1983) and the Supreme Court (Civil Procedure) Ordinance (17 of 1901).

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**HIGH COURT ACT**  
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**CHAPTER 3:02  
HIGH COURT ACT**

10 of 1915

**An Act to confer jurisdiction and powers on the High Court, to regulate its sittings, practice and procedure and to provide for the appointment of officers of the Court and for other matters relating to the Court.**

[12TH MARCH, 1915]

**PRELIMINARY**

Short title.

1. This Act may be cited as the High Court Act.

Interpretation.

2. In this Act and in rules of court—

“action” means a civil proceeding commencing by filing a claim or in any other manner prescribed by rules of court, and includes a suit, but does not include any criminal proceeding at the suit of the State;

“cause” includes any action or other original proceeding between a plaintiff and a defendant, and any criminal proceeding at the suit of the State;

“the Court” means the High Court constituted by this Act, and includes a judge when exercising any of the jurisdictions conferred on him by this Act, by any other Act, or by the rules;

“defendant” includes every person served with any writ of summons or other process, or served with notice of or

entitled to appear in any proceeding;

“existing” means existing immediately before 26th May, 1966;

“judge” means a judge of the Court and includes the Chief Justice;

“the marshal” means the Registrar and includes any marshal of Guyana;

**PART I**  
**THE HIGH COURT**  
**A- CONSTITUTION AND JUDGES**

*Constitution*

The High Court  
of Guyana.  
[21 of 1978]

3. (1) The Court shall consist of the Chief Justice, who shall be the President thereof, and any number of Puisne Judges not exceeding such maximum as may be prescribed from time to time by order of the President.

(2) The puisne judges rank between themselves according to the date of their respective appointments.

(3) The Court shall be deemed to be duly constituted during and notwithstanding any vacancy in the office, or absence from Guyana, of any judge.

(4) Notwithstanding anything to the contrary in subsection (1), any judge of the Court of Appeal may, on request of the Chancellor, and with the consent of the judge, sit as an additional judge of the High Court.

(5) Every judge of the Court of Appeal who sits as an additional judge of the High Court under this section shall, during the time he so sits, have all the jurisdiction and powers of a judge of the High Court, but shall not otherwise be

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deemed to be a judge of the High Court or to have ceased to be a judge of the Court of Appeal.

(6) Any such additional judge of the High Court shall, although the period has expired during which his attendance was requested, attend the sittings of the High Court for the purpose of giving judgment or doing any other thing in relation to any case which may have been heard by the High Court during his attendance on the High Court.

Description,  
use and  
custody of  
seals.

4. (1) The Court shall use the seal and duplicate seals of the Supreme Court as occasion may require for the stamping of documents in or issuing from the court.

(2) The seal of the Supreme Court shall have a device or impression approved by the Chancellor with the inscription "the Supreme Court of Judicature of Guyana".

(3) Every document which may be required by law or by the practice of the Court to be sealed shall be sealed with the seal of the Supreme Court or one of its duplicate seals, of which there shall be such number as the Chancellor considers necessary.

(4) The Registrar shall have the custody of the seal of the Supreme Court to be used in the county of Demerara.

(5) The officers of the Court nominated for that purpose by the Registrar shall have the custody of duplicate seals of the Supreme Court to be used in the counties of Essequibo and Berbice, respectively.

Qualification  
for  
appointment as  
Puisne Judge.  
[O. 80/1980]

5. The period for which a person is required to have been qualified for admission as an advocate under article 129(1)(b) of the Constitution for the purpose of qualification for appointment to hold or act in the office of a Puisne Judge, shall be seven years.

Prohibition  
against holding

6. A judge shall not accept or perform any other office

other office.  
[O. 80/1980]

or place of profit or emolument not authorised by law without the consent of the President:

Provided that this subsection shall not apply to a judge temporarily appointed under article 128(2) of the Constitution.

Concurrent sittings.

7. Two or more of the judges may sit apart at the same time for any purpose in respect of which a single judge may exercise jurisdiction.

## B—OFFICERS

### *Registrar and Clerks*

Registrar and Deputy Registrar.

8. There shall be a Registrar and Deputy Registrar of the Supreme Court.

Duties of Deputy Registrar and sworn clerks.  
[2 of 1993]

9. (1) The Deputy Registrar shall, subject to the general or special directions of the Registrar, assist the Registrar in carrying out his functions and the Deputy Registrar shall, in the exercise of his office, have all and singular the like authorities, powers, duties, immunities and liabilities as the Registrar, except where otherwise provided by rules of court; and every sworn clerk and assistant sworn clerk of the registry shall perform those duties in connection with the Court and with judicial business which the Registrar, subject to the approval of the Court, assigns to him:

Provided that no person shall be appointed a sworn clerk until he has been examined by and obtained a certificate of competency from an examining board consisting of the Chief Justice, the Registrar and the State Solicitor or of any two of them, who are hereby empowered and required to hold an examination whenever necessary.

(2) The Registrar and the Deputy Registrar shall be deemed to be *ex-officio* sworn clerks.

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(3) Notwithstanding anything in subsection (1) a person who—

- (a) is an attorney-at-law and who within a period of five years prior to his qualifying as such had at least one year's experience as an assistant sworn clerk in the registry; or
- (b) is an attorney-at-law of not less than one year's standing,

may be appointed a sworn clerk for such time as he may hold a public office in the registry.

(4) For the purposes of subsection (3) "attorney-at-law" has the same meaning as in the Legal Practitioners Act.

c. 4:01

Administrati-  
on of oaths by  
Registrar.

10. The Registrar and the sworn clerks and assistant sworn clerks thereto authorised by the Court shall have power to administer oaths and take affidavits, and to take solemn affirmations or declarations in lieu of oaths.

Executive  
officers of the  
Court.

11. The Registrar shall be the chief executive officer, and every marshal shall be an executive officer of the Court.

Duties of  
marshals.

12. (1) Every marshal shall be under the control and be responsible to the Registrar and shall, in addition to the duties and liabilities imposed on him by any written law, perform the duties required of him by the Registrar subject to the direction and approval of the Chief Justice.

(2) The Registrar shall cause at least one marshal to be resident in the county of Essequibo.

*Liability of Officers*

Liability of  
marshals.

13. Every marshal shall be liable for all losses, damages, costs, charges, and expenses, had and suffered by

any person from or by reason of any irregularity, informality, omission, or neglect of duty by him, and may be sued in any manner and form applicable to the circumstances of the case, for the recovery of those losses, damages, costs, charges, or expenses:

c. 5:07                      Provided that, in that suit, the marshal shall be entitled to the protection given to justices by the Justices Protection Act.

*Commissioners*

Appointment and powers of commissioners of the Court.

14. (1) The Court may appoint, by an instrument or instruments under the seal of the Court, the requisite number of fit and proper persons to be commissioners of the Court for taking affidavits and declarations in any cause or matter and, when authorised thereto by a special order of the Court or a judge, for taking the examination of witnesses or receiving production of documents.

(2) Any appointment made under this section may at any time be cancelled by the Court by an instrument under the seal of the Court.

Enforcement of order to be executed before a commissioner.

(3) Any order of the Court for the attendance and examination of witnesses or production of documents before a commissioner within the jurisdiction of the Court may be enforced in the same manner as an order to attend and be examined or produce documents before the Court.

Incidental powers of commissioner.

(4) Subject to any special directions of the Court, a commissioner, when and so far as necessary for performing any duty which he is authorised to perform, shall be deemed to have and may exercise the incidental powers of a judge.

Control of Commissioners and their proceedings.

(5) Every commissioner shall be subject to the order and direction of the Court as fully as any other officer of the Court, and every proceeding before a commissioner shall be subject to the direction and control of the Court.

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Protection of  
commissioner.

(6) No action shall be brought against a commissioner in respect of any act or order *bona fide* done or made by him in the execution or supposed execution of the jurisdiction and powers vested in him, but every act or order, if in excess of that jurisdiction and those powers, shall be liable to be altered, amended, reversed, or set aside on summary application to the Court.

Employment of  
experts and  
referees.

15. (1) The Court may, when it thinks fit, obtain the assistance of accountants, actuaries, or other qualified persons, to assist it to determine any question at issue in any cause or matter before the Court, and may refer any question depending upon matters of account to the accountant of court or some other accountant for determination or investigation and report.

(2) The Court may allow reasonable fees and expenses to any of those persons, to be taxed as costs in the cause or matter.

Duties of  
officers of the  
Court  
generally.

16. Subject to the provisions of this Act and of any other written law, all officers of the Court shall perform in connection with the Court duties similar or analogous to those performed by them immediately before 26th May, 1966.

### C—JURISDICTION AND LAW

Jurisdiction and  
functions.

17. Subject to the provisions of the Guyana Independence Order and of any other written law for the time being in force, the Court shall have and may exercise all such jurisdiction, authorities and powers, and shall discharge the like functions, as belonged or were incident to the Supreme Court of British Guiana immediately before the 26th May, 1966.

Original  
jurisdiction.

18. (1) Subject to any written law, every action and proceeding and all business arising therefrom shall, so far as is practicable and convenient, be heard, determined, and

disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial and down to and including the final judgment or order, except any proceedings on appeal, shall, so far as it is practicable and convenient, be had and taken before the judge before whom the trial or hearing took place.

(2) For the purpose of those proceedings a single judge shall be vested with and may exercise the whole of the original jurisdiction of the Court.

Powers of single judge in court or chambers.

(3) A single judge may, subject to rules of court, exercise in court or in chambers all or any part of the jurisdiction vested in the Court.

Criminal jurisdiction.

**19.** The criminal jurisdiction by this Act vested in the Court, not being the jurisdiction in respect of the Full Court, shall, together with all the powers incident thereto, be exercised by a single judge sitting with a jury, or by a single judge sitting apart or in chambers, as the nature of the case may require:

Provided that nothing in this section shall affect any right of the Director of Public Prosecutions to demand a trial at bar in any criminal cause.

Jurisdiction on appeals from magistrates.

**20.** The Court shall have and exercise an appellate jurisdiction in all cases in which by law an appeal lies to the Court from any decision of a magistrate in the exercise of his jurisdiction.

*Admiralty Jurisdiction*

Admiralty and prize jurisdiction.

**21.** The High Court shall be a Court of Admiralty and its admiralty jurisdiction shall be over the like places, persons, matters and things as the Admiralty jurisdiction of the Supreme Court of British Guiana immediately before the 26th May, 1966, and shall be a permanent court of unlimited jurisdiction in matters of prize and subject to rules of court,

shall exercise its jurisdiction under this section in accordance with the same rules and principles and shall have the same regard to international law and to the comity of nations as the Supreme Court of British Guiana in the exercise of its corresponding jurisdiction before the said date.

*Miscellaneous Jurisdictions*

Power to  
reduce interest.

22. Where an agreement for the payment of interest is sought to be enforced, and the Court is of opinion that the rate agreed to be paid is excessive and ought not to be enforced by legal process, the Court may give judgment for the payment of interest at the rate that it thinks just.

Injunction and  
appointment of  
receivers.

23. (1) Subject to rules of court, a mandamus or injunction may be granted, or a receiver appointed, by an order of the Court in all cases in which it appears to the Court to be just or convenient that that order should be made.

(2) The order may be made either unconditionally or upon the terms and conditions which the Court thinks just.

(3) If the order is asked for either before, or at, or after, the trial or hearing of any cause or matter to prevent any threatened or apprehended waste, injury, or trespass, it may be made, if the Court thinks fit, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or (if not in possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whatever may be the nature of the interest claimed by all or by any of the parties.

Powers to make  
orders in cases  
not provided  
for.

24. Subject to the provisions of any written law, the Court may in any cause or matter make any order as to the procedure to be followed or otherwise which the Court considers necessary for doing justice in the cause or matter, whether that order has been expressly asked for by the party

entitled to the benefit thereof or not.

Extent of remedies.

25. The Court shall, in every cause or matter pending before it, have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as the Court may think just, all the remedies or relief whatsoever to which any of the parties appear to be entitled in respect of any and every claim properly brought forward by him or them respectively in the cause or matter; so that, as far as possible, all matters so in controversy between those parties respectively may be completely and finally determined, and all multiplicity of proceedings concerning any of those matters avoided.

#### D—SITTINGS AND VACATIONS

##### *Times of Sitting*

Sittings of the Court.

26. (1) Subject to the provisions hereinafter contained, the Court and the judges respectively shall have power to sit and act at any time for the transaction of any part of the business of the Court or judges, or for the discharge of any duty which by law is required to be discharged by it or them, but for greater convenience periodical sittings shall be appointed by rules of court.

(2) If any of the days appointed for any sitting is *dies non*, the sitting shall commence on the next following lawful day.

(3) Judgments and orders may be given and made at any place and time at which the Court is sitting, whether at the place where and during the sittings at which the cause or matter was heard or otherwise.

Ordinary sittings of the Court in its

27. The Court shall hold sittings in the exercise of its criminal jurisdiction in every year in each of the counties of Demerara, Essequibo, and Berbice as follows, that is to

criminal jurisdiction.

say—

- (a) in the county of Demerara, on the second Tuesday in January, the first Tuesday in April, the first Tuesday in June, and the first Tuesday in October;
- (b) in the county of Essequibo, on the third Tuesday in February, the third Tuesday in May, and the fourth Tuesday in October; and
- (c) in the county of Berbice, on the first Tuesday in February, the third Tuesday in June, and the third Tuesday in October;

but the Chancellor may by notice published in the *Gazette* suspend or postpone any of those sittings.

Special sitting of the Court in its criminal jurisdiction.

28. The Chancellor may by notice published in the *Gazette* direct a special sitting of the Court in the exercise of its criminal jurisdiction to be held at the place and time and for the purposes specified in the notice.

Continuance of sittings and adjournments

29. (1) Every sitting of the Court shall be continuous until the business before it has been disposed of or it is adjourned to some future day.

(2) The Court, or, in the absence of the judges or a judge, the Registrar or a sworn clerk or assistant sworn clerk, subject to any direction of the judges or a judge, may adjourn any sitting of the Court for any convenient time.

(3) If, on the opening or any other day of any sitting of the Court, the judges or a judge are or is unable or fail or fails to attend, the Court shall stand adjourned *de die in diem* until the judges or a judge shall attend or until it is adjourned or closed by their or his order.

(4) The Registrar may, subject to the direction of the judges or a judge, by notice published in the *Gazette* not less than five days before the day appointed for any sitting of the Court for the trial or hearing of civil causes or matters, postpone that sitting to any day mentioned in the notice.

*Places of Sitting*

Places of sitting of the Court in Demerara, Essequibo and Berbice.

**30.** The Court shall sit at the following places, that is to say —

- (a) in the county of Demerara, at the Law Courts in the City of Georgetown;
- (b) in the county of Essequibo, at the Court House at Suddie; and
- (c) in the county of Berbice, at the Court House in the town of New Amsterdam:

Provided that the Court may sit at such other place as may be specified by the Chancellor by notice published in the *Gazette* as being a place at which a sitting or sittings of the Court may be held.

Holding of sittings in other places.

**31.** (1) Where it is from any cause impracticable or inconvenient to hold a sitting of the Court at any place mentioned in the preceding section, the Chancellor may direct the sitting to be held at some other place in the same county.

(2) Nothing in the preceding section shall be construed to prevent the Chancellor from directing any special sitting of the Court in the exercise of its criminal jurisdiction to be held at a place other than a place mentioned in that section.

General business of the

**32.** The registry of the Court shall be open throughout the year for the transaction, subject to rules of court, of the

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Court.                    general legal business pending in the Court, excepting on any public holiday.

Attendance of                    **33.** The Commissioner of Police shall cause a sufficient  
police at                            number of police constables to attend for the purpose of  
sittings.                            assisting in the preservation of order and for the keeping of  
                                                 prisoners in custody at every sitting of the Court in the  
                                                 exercise of its criminal jurisdiction and, if so required in  
                                                 writing by any judge, at any other sitting of the Court.

Vacation and                    **34.** (1) In every year the period from the 1st July to  
holidays.                            the 31st August, inclusive, or any other period appointed by  
[14 of 1988]                            rules of court, shall be observed as a vacation by the Court,  
                                                 but this enactment shall not extend to prevent or preclude any  
                                                 sitting of the Court in the exercise of its criminal, appellate,  
                                                 insolvency, or admiralty jurisdictions or, in any case the  
                                                 Chancellor so directs, in the exercise of its civil jurisdiction:

                                                 Provided that nothing in the foregoing provisions of this  
                                                 subsection shall be deemed to affect a judge's conditions of  
                                                 service in relation to vacation leave or leave of absence.

                                                 (2) The holidays to be observed or kept by the  
                                                 Court shall, in addition to the vacation, be all public holidays  
                                                 and Saturdays.

Delivery of                    **35.** (1) Any judge may during the vacation deliver  
judgment in                            judgment or make an order in any cause or matter then  
vacation.                            awaiting the decision of the Court, and where any judge who  
                                                 took part in the trial or hearing of the cause or matter is  
                                                 absent from Guyana, or is otherwise unable to be present at  
                                                 the time when judgment is so delivered or the order made,  
                                                 the reasons of the judge so absent may at that time be read by  
                                                 any judge and entered in the minute book of the Court.

                                                 (2) Every judgment delivered or order made under  
                                                 this section shall have the same force and effect as if it had  
                                                 been delivered or made during the ordinary sitting of the

Court.

## E—PRACTICE AND PROCEDURE

### *Regulation*

Regulation of  
practice and  
procedure.

36. (1) The practice and procedure of the Court shall, subject to any other written law, be regulated by this Act and by rules of court, and in the absence of any provision shall correspond to the practice and procedure of the Supreme Court of British Guiana (including the Court when exercising its admiralty jurisdiction) immediately before 26th May, 1966.

(2) Subject to subsection (1), the Court may in any cause or matter make any order as to the practice and procedure to be followed which the Court considers necessary for doing justice in the cause or matter, whether that order has been expressly asked for by the party entitled to the benefit thereof or not.

### *Administration of Estates*

Application  
for direction of  
the Court.

37. (1) Any guardian of the person or estate, any executor or administrator, and any person appointed or required to administer the property of another for the benefit of the other, may apply to the Court for its opinion, advice, or direction on any question respecting the management or administration of that property or respecting his conduct as guardian, executor, administrator, or person aforesaid.

Protection  
where the  
direction is  
followed.

(2) Every guardian, executor, administrator, or person aforesaid, acting upon the opinion, advice, or direction given by the Court, shall be deemed, so far as regards his own responsibility, to have discharged his obligations and his duty as that guardian, executor, administrator, or person in the subject matter of the application:

Provided that this section shall not extend to indemnify

any guardian, executor, administrator, or person aforesaid in respect of any act done in accordance with the opinion, advice, or direction of the Court, if he has been guilty of any fraud or wilful concealment or misrepresentation in obtaining that opinion, advice or direction.

Jurisdiction and powers of the Court.

(3) The Court shall have full jurisdiction to entertain and shall dispose of all or any of the following questions or matters, that is to say—

- (a) any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, heir, or person beneficially interested;
- (b) the ascertainment of any class of creditors, legatees, devisees, heirs, or others;
- (c) the furnishing of any particular accounts by the guardian, executor, administrator, or person administering as aforesaid, and the vouching, when necessary, of those accounts;
- (d) the payment into the registry of any money in the hands of the guardian, executor, administrator, or person aforesaid; (e) directing the guardian, executor, administrator, or person aforesaid to do or abstain from doing any particular act in that character;
- (f) the approval of any sale, purchase, compromise, or other transaction; and
- (g) the determination of any question

arising in the administration of the property or in the performance of any duty by the guardian, executor, administrator, or person aforesaid.

Mode of application.

(4) An application under this section may be made in the manner provided by rules of court, and, in the absence of any special provision thereby may be made by petition.

Notice of application.

(5) Notice in the first instance shall be served on the following persons, that is to say —

- (a) where the application is made by a guardian, executor, administrator, or person aforesaid —
  - (i) for the determination of any question under subsection (3)(a), (e), (f) or (g), the persons or one of the persons whose rights or interests are sought to be affected;
  - (ii) for the determination of any question under subsection (3)(b), any member or alleged member of the class;
  - (iii) for the determination of any question under subsection (3)(c), any person interested in taking the accounts;
  - (iv) for the determination of any question under subsection (3)(d), any person interested in the money;

(v) if there are more guardians, executors, administrators, or persons aforesaid than one, and they do not all concur in the application, those who do not concur; and

(b) where the application is made by any person other than the guardian, executor, administrator, or person aforesaid, that guardian, executor, administrator, or person.

(6) The Court may direct any other persons it thinks fit to be served with notice of the application.

**[Sections 38-45 (inclusive) repealed by Act No. 20 of 1984]**

*Execution of Process*

Persons by whom process may be executed.

46. (1) All process in civil cases, except arrests of the person and proceedings in execution after summation, and all process in criminal cases, except execution in cases of forfeited recognisances, may be served by anyone authorised by the Registrar to do so.

(2) The term "process," as herein used, includes all proceedings whatever involving service of any document on any party, witness, or other person concerned in any of those proceedings.

Onus of proof of want of authority to lie on person served.

(3) The authority from the Registrar of anyone appearing to have served any process aforesaid need not be proved; but anyone objecting to the authority of that person shall be at liberty to prove the want of that authority.

Keeping of list of persons authorised to serve process.

(4) There shall be kept in the registry a correct list of the persons, not being marshals, who have that authority; and anyone objecting to the authority of any of those persons to serve any process, may produce the original of that list, or a copy thereof, signed as a true copy by the Registrar or any marshal, or by any sworn clerk or assistant sworn clerk; and if the name of the person does not appear on the list or copy, he shall be deemed not to have the authority.

Authentic return of service.

47.(1) Every return of service appearing to be signed by the Registrar, or by any marshal, shall, as heretofore, be received by all courts as authentic, without any proof.

(2) Every return of service appearing to be signed by any other person purporting to be authorised by the Registrar shall, if verified by the affidavit of that person, sworn before any justice of the peace, be received by all courts as authentic.

(3) The affidavit purporting to be so sworn shall be taken to have been properly sworn before a justice of the peace, without proof of the fact of its having been so sworn, or of the fact of the person before whom it appears to have been sworn being a justice of the peace, or of the signature either of the deponent or of the justice:

Provided that any person seeking to disprove either of those facts, or the genuineness of either of those signatures, shall be at liberty to do so.

Service of process.

48. (1) Nothing contained in any written law shall be construed to prohibit the service of process, or the mode of making return of service authorised by this Act.

(2) The Registrar may give special permission in writing to any person, who is authorised to serve process in civil cases under section 46, notwithstanding the provisions of

that section, to execute fiats, issuing out of the registry, and generally to carry out any process of execution thereon, in any part of Guyana other than the City of Georgetown or the town of New Amsterdam in the same way as a marshal is by law authorised to do.

Execution of warrants.

49. Warrants of arrest issued under this Act, shall be addressed to and be executed by a marshal.

Service of process by bailiffs.

50. (1) Every bailiff of a magistrate's court shall be, and have all the powers of, a marshal for the purposes of serving any process, or executing any judgment of the court in its civil jurisdiction, or any other process which the law requires to be served or executed by a marshal, and all matters connected therewith.

(2) The term "process" used in this and the three next succeeding sections means any step either before or after judgment in any civil action or other proceeding which involves or includes service of any document on any party, witness, or other person interested or concerned therein.

Procedure by Registrar.

51.(1) When any process is to be served or any judgment executed by any of those bailiffs, the Registrar shall send the writ and other necessary papers to the clerk of the court to which the bailiff is attached, who shall hand or send them to the bailiff for the proper action:

Provided that in the district where there is no clerk of the court the duties imposed by this section shall be performed by the magistrate.

(2) The Registrar shall, together with the writ and other papers, send—

- (i) a list of the writs and other papers sent, which, if it is correct, shall be initialled by the clerk and returned to

the Registrar;

- (ii) envelopes addressed and, if necessary, stamped, for the return of the writs and other papers;
- (iii) a form of the proper induration to be made on the writ or other document in question.

(3) All writs and other papers sent by the Registrar to the clerk of a magistrate's court, or by that clerk to a bailiff, or returned by the bailiff to the clerk, or by the clerk to the Registrar, may be sent or returned by registered post.

Endorsation on writ.

**52.** The bailiff after taking action shall make the proper endorsement on the writ and hand it back with any other papers to the clerk of the court, who shall forthwith return them to the Registrar.

Clerks and bailiffs officers of Court.

**53.** All the magistrate's clerks and all bailiffs shall be officers of the Court in respect of the several duties imposed upon them by the foregoing provisions.

#### *Fees and Costs*

Fees and costs generally.

**54.** (1) The fees and costs payable and allowable in the Court shall be regulated by rules of court and, where provision is not made by those rules, the existing tariffs and regulations as to fees and costs shall remain in force.

(2) Subject to the next succeeding section and to rules of court, the costs of and incident to any proceeding in the Court shall be in the discretion of the Court.

Disallowance of costs in certain cases.

**55.** No costs shall be allowed to a successful plaintiff in any action brought by him in the Court which might have been heard in a magistrate's court in its civil jurisdiction,

LAWS OF GUYANA

unless the Court is of opinion that the action was one which it was expedient to bring in that manner and certifies accordingly.

Fees for arrests and apprehensions.

56. The fees payable for arrests and apprehensions of the person shall belong to the marshals making the arrests and apprehensions.

Fees in State cases.

57. (1) No fees shall be payable for any services performed in criminal cases.

(2)With respect to civil cases to which the State may be a party, the ordinary fees shall be charged, and may be recovered from the opposite party, but shall not be payable by the State, unless recoverable from the opposite party.

Place of payment of fees.

58. All fees for services performed in the counties of Demerara and Essequibo shall be paid at the registry in Georgetown, and all fees for services performed in Berbice shall be paid at the registry in New Amsterdam.

Fees for recovery of State or Municipal taxes. [6 of 1997]

59. (1) In all cases where it becomes necessary to proceed to execution for the recovery of State or Municipal taxes not exceeding in amount the sum of one hundred dollars, the following and no other fees shall be chargeable:

- For drawing and serving process of summary execution, including copies of documents served therewith ..... 65.00
- For levying on property, including inventory.....130.00
- For conditions of sale .....65.00
- For publishing advertisement of sale.....65.00
- For commission, one-half per cent on amount of sale
- For order for execution..... 65.00
- For taxing costs, when necessary ..... 65.00
- For attendance at sale .....65.00

Saving.

(2) Nothing in this section shall extend, or be construed to extend, to bar any claim for distance money, not exceeding one hundred and thirty dollars, payable for service of process of execution made beyond the boundaries of the City of Georgetown and the town of New Amsterdam.

Keeping of cash fee books.

**60.** (1) There shall be kept in the registry in Georgetown and New Amsterdam a cash fee book, in which shall be entered every fee received in the registry; and the cash fee book shall be in the form established by the Registrar with the approval of the Minister responsible for finance.

(2) On or before the third day of each month, the Registrar in Georgetown and the marshal in New Amsterdam shall respectively produce those books containing the entries of all fees received during the last preceding month, to the Minister responsible for finance together with abstracts thereof, signed by the Registrar and that marshal respectively, and shall then pay over the amounts of the fees to the Accountant General, and shall at the same time submit a list of all the expenses of the registry in Georgetown and New Amsterdam respectively during the preceding month.

Regulations relating to fees.

**61.** The Minister responsible for finance may, from time to time, if he deems it expedient, make regulations for checking the amounts received in the registry in Georgetown and New Amsterdam, and the entries in the cash fee books kept there; and the Registrar and the marshals shall be bound to conform with those regulations.

#### *Unclaimed Moneys*

Furnishing of half-yearly lists of unclaimed moneys.

**62.**(1) On the 30th June and 31st December respectively in every year, or within one week thereafter, the Registrar shall deposit with the Accountant General a list of all moneys, the proceeds of sales of property under execution,

of which all the instalments have been paid up, and what moneys have remained unclaimed for three months and upwards prior to each of those dates.

Paying over moneys.

(2) At the time of depositing the list, the Registrar shall pay over all moneys mentioned therein to the Accountant General, and shall cause the list to be published in the *Gazette* and to be re-published in like manner at the expiration of one month thereafter.

Discharge for moneys paid over.

(3) The receipt of the Accountant General, in a book to be kept by the Registrar for that purpose, shall be a sufficient acquittance, discharge, and release to him for all moneys paid over by him to the Accountant General under this Act.

Effect of money: remaining unclaimed for five years,

63. All moneys advertised under the last preceding section which remain unclaimed for a period of five years from the time when they came to the hands of the Registrar shall vest in the State for the public use, and all right, title, and interest of every person in and to them shall be statute-barred.

Claim to moneys paid over.

64. Any person claiming any sum of money so paid over may apply to the Registrar for payment thereof, and the Registrar if satisfied that the claimant is entitled to any sum shall so certify to the Minister responsible for finance and the Minister responsible for finance may thereupon authorise the payment of the sum so certified:

Provided that nothing herein contained shall be construed to hinder or prevent the making of provision on the annual estimates for the payment of any sum of money paid over by the Registrar under this Act to any person whom he considers to have an equitable claim thereto, notwithstanding that the claim may be statute-barred.

Default of  
Registrar.  
Penalty.  
[6 of 1997]

**65.** (1) Any failure on the part of the Registrar to comply with any of the requirements of this Act relating to unclaimed moneys shall render him liable to a penalty of thirty-two thousand five hundred dollars, to be sued for and recovered by the Attorney-General in the High Court in its civil jurisdiction.

(2) The penalty, when recovered, shall be paid into the Consolidated Fund.

*Distribution of Business*

Distribution of  
business  
among the  
judges.  
[21 of 2007]

**66.** Subject to any general or special directions of the Chancellor, the Chief Justice may determine the distribution of the business before the Court among the judges thereof, and may assign any judicial duty to any judge or judges.

*Rules of Court*

Rules of  
Court.

**67.** (1) Rules of court may be made by the Chancellor together with any four of the following persons who shall form the Rules Committee, namely—

- (a) the Chief Justice;
- (b) a Justice of Appeal;
- (c) a Puisne Judge;
- (d) the Attorney-General or such other Law Officer within the meaning of the Legal Practitioners Act as may be appointed by the Attorney-General from amongst the staff of his Chambers;
- (e) the Registrar;

c. 4:01

- (f) a practising attorney-at-law appointed after consultation with such body as appears to the Chancellor to represent attorneys-at-law in Guyana;

(2) Every appointment to the Rules Committee pursuant to subsection (1)(b), (c), (f) or (g) shall be made by the Chancellor.

(3) Rules of court may be made as aforesaid for all or any of the following purposes—

- (a) regulating the sittings of the Court and of the judges in chambers, and the period to be observed as a vacation in the Court;
- (b) regulating the pleading, practice, and procedure, the execution of the process, the duties of the officers of the Court, and the transaction of business during any vacation or non-session thereof;
- (c) regulating matters relating to the costs, and the taxation thereof, of proceedings in the Court, including the costs of counsel and solicitors, the expenses of witnesses, and the fees of the Registrar, and all matters relating thereto;
- (d) prescribing any forms to be used in proceedings in the Court;
- (e) fixing the fees and costs to be taken and received in respect of all matters

and proceedings of any kind whatsoever in any department of the registry of the Court and the deeds registry, and for regulating the practice and procedure therein;

- (f) prescribing and regulating the remuneration of legal practitioners in respect of business connected with sales, purchases, transports, leases, mortgages, settlements and other matters of conveyancing, and in respect of any other business not being business in any action, or transacted in any court, or in the chambers of any judge, and not being otherwise contentious business; and
- (g) regulating, prescribing, and doing any other thing which may be regulated, prescribed, or done by rules of court.

(4) Every rule made by the rule-making authority under this or any other Act shall be subject to negative resolution of the National Assembly

Power to make rules as to proof.

**68.** The power to make rules of court includes power to make rules for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceedings, or on any application in connection with or at any stage of any proceedings.

#### F—MISCELLANEOUS

Restriction on officers' purchase of property sold at execution.

**69.** No officer or person employed in any way whatsoever in the registry may or shall, directly or indirectly or by the intervention of a trustee or otherwise, purchase any property sold at execution; and if that officer or person

purchases or is interested in the purchase of any property at an execution sale, he shall be liable to be dismissed from his office or employment:

Provided that nothing in this section contained shall prevent the officer or person from purchasing at execution sale any property which it is necessary for him to purchase in order to protect the interest of himself, his wife, or his child.

Jurisdiction  
over  
foreigners.

70. Subject to any special disability to sue or be sued, any person, whether a foreigner or not, and whether domiciled in Guyana or not, may take proceedings or be proceeded against by action or other proceeding in the Court in its civil jurisdiction, and the Court shall have full jurisdiction, power, and authority to try, hear, and determine the action or other proceeding and to proceed to a final judgment or order and execution therein.

Restriction on  
institution of  
vexatious  
actions.

71. (1) If, on an application made by the Attorney-General under this section, the Court is satisfied that any person had habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the Court be instituted by him in the Court or in any inferior court, and such leave shall not be given unless the Court is satisfied that the proceedings are not an abuse of the process of the Court or any inferior court and that there is *prima facie* ground for the proceedings.

(2) If the person against whom an order is sought under subsection (1) satisfies the Court that for good and sufficient cause he is unable to retain counsel, the Court shall assign counsel to him.

(3) A copy of any order made under subsection (1)

shall be published in the *Gazette*.

Arrest in  
certain  
circumstances  
of defendant  
about to quit  
Guyana.  
[15 of 1978]

72. (1) Where the plaintiff in any action in the Court proves at any time before final judgment by evidence on oath to the satisfaction of the Court or a judge that he has good cause of action against the defendant to an amount exceeding five hundred dollars, and that there is probable cause for believing that the defendant is about to quit Guyana unless apprehended, and that the absence of the defendant from Guyana will materially prejudice the plaintiff in the prosecution of his action, or, where the action is for a liquidated sum due and payable under a contract evidenced in writing, that the defendant does not or will not have assets in Guyana of sufficient value to satisfy any judgment for the sum claimed or that the absence of the defendant will otherwise prejudice the recovery of the sum, the Court or judge may, in the manner prescribed by rules of court, order the defendant not to leave or attempt to leave Guyana pending the determination of the action unless and until he has sooner given security not exceeding the amount claimed in the action as prescribed by rules of court that he will not go out of Guyana without the leave of the Court.

(2) Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from Guyana will materially prejudice the plaintiff in the prosecution of the action, and the security given (instead of being that the defendant will not go out of Guyana) shall be to the effect that any sum recovered against him in the action shall be paid or that he shall be rendered to prison.

(3) In the absence of any rules of Court made for the purposes of subsection (1) the Court or Judge may on any application by a plaintiff under that subsection give such directions as it or he thinks fit for the purpose of carrying out and giving effect to the provisions of that subsection and

such directions may include the adaptation or modification of any writ, order or other instrument which could otherwise be issued by the Court in exercise of its civil or criminal jurisdiction.

(4) Where judgment is given for the plaintiff in the action the Court may—

- (a) order that the whole or any part of any sum deposited as security by the defendant under subsections (1) and (2) shall be applied in payment to the plaintiff of the amount due under the judgment; or
- (b) if the aforesaid security is in the nature of a bond, order that the bond be delivered to the plaintiff who, on suing on it, may, notwithstanding anything to the contrary therein, recover any sum due under the judgment together with the costs of the action brought to enforce the bond.

Procedure in  
case of  
imprisonment.

73. (1) The return of the marshal or of the chief officer of any prison, to any writ of *habeas corpus* of an arrest or detainer under any order of arrest or imprisonment by the Court, or under any judgment or order of detention for or during non-payment of any fine or penalty imposed by the Court, shall be deemed sufficient in law, if there appears in or is attached to the return a certificate by the Registrar setting forth the judgment or order by virtue of which the arrest or detainer was made.

(2) The Court shall have power to reduce or remit any fine or penalty imposed by it provided the fine or penalty has not been already paid or satisfied.

Saving of jurisdiction.

74. Nothing in this Act shall be construed to take away or abridge any jurisdiction, power, or authority vested in the Court.

**PART II**  
**THE FULL COURT OF THE SUPREME COURT**

CONSTITUTION

Constitution of Full Court.

75. (1) There shall be a division of the High Court styled "The Full Court of the High Court" in this Act referred to as the Full Court.

(2) The Full Court may be composed of all, but shall consist of not less than two, of the judges of the Court:

Provided that when the Full Court is composed of two judges and they differ as to the judgment that should be given on an appeal from a single judge the judgment of the single judge shall stand except as to any matters in which the Full Court agrees that it shall be reversed, and on an appeal from a decision of a magistrate's court the appeal shall be re-heard as soon as conveniently may be by a full court of three judges.

Sitting of Full Court in more than one division.

76. The Full Court may, if the Chief Justice so directs, sit in more than one division at the same time, and in such case anything which may be done to, by or before the Full Court may be done to, by or before any such division of the Full Court.

Appointment of a third judge. [O. 37/1966A]

77. When the Full Court is composed of two judges, if any party to an appeal in any cause or matter makes application to the Chief Justice, and the Chief Justice is of opinion that for any special grounds the Full Court should be composed of three judges on the hearing of the appeal, he may assign a third judge to sit on the hearing by the Full Court of such appeal.

Judge must not sit on appeal from himself.

78. No judge of the Court shall sit in the Full Court on the hearing of an appeal from any judgment given or order made by himself.

### JURISDICTION

#### (i) *Appeals from the Court*

Appeal from decision of single judge. [19 of 1958]

79. An appeal shall lie to the Full Court from any judgment given or order made by a single judge of the Court in exercise of its civil jurisdiction in respect of which there is no appeal to the Court of Appeal:

Provided that—

- (a) no appeal shall lie to the Full Court from any judgment given or order made by a single judge of the Court with the consent of the parties or as to costs except with leave of the judge giving the judgment or making the order or of the Full Court;
- (b) no appeal shall lie to the Full Court from any judgment or order of a single judge referred to in section 6(5) or (6) of the Court of Appeal Act.

#### (ii) *Appeals from Magistrates*

Appeals from decisions of magistrates.

80. (1) Every appeal from the decision of a magistrate shall be heard and determined by the Full Court.

c. 3:04

(2) In matters not provided for in this section or in the Summary Jurisdiction (Appeals) Act the practice and procedure of the Full Court in cases of appeal under this section shall be regulated by rules of court.

(iii) *Power of Judge to State a Case*

Reservation of questions of law.

**81.** A judge of the Court, sitting apart in the exercise of the civil jurisdiction of the Court, may in his discretion reserve any question of law arising in any cause or matter for the consideration of the Court of Appeal or the Full Court:

Provided that the question shall be reserved for the consideration of the court to which an appeal might have been taken; and the Court of Appeal or the Full Court, as the case may be, shall have full power to hear or determine any question so reserved.

(iv) *Procedure*

Procedure.

**82.** The procedure on appeals under this Part shall be prescribed by rules of court.

(v) *Cases Where Decision Final*

Decision final in cases in Schedule.

**83.** Every decision of the Full Court given in pursuance of a provision for the time being specified in the Schedule shall be final and conclusive.

Amendment of Schedule.

**84.** (1) Subject to negative resolution of the National Assembly, the Minister may from time to time by order published in the *Gazette* amend the Schedule to this Act.

(2) Where any provision is added to the Schedule by an order made under this section and, on the date on which that order is made, any appeal is pending from any decision of the Full Court given in pursuance of that provision, nothing in this Act shall be deemed to apply to such decision of the Full Court and the appeal from such decision may be heard and determined as if the order has not been made.

LAWS OF GUYANA

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Cap. 3:02

High Court

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SCHEDULE

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	Act	Section
1.	Immigration Act, (Cap. 14:02)	s. 27
2.	District Lands Partition and Reallotment Act, (Cap. 60:03)	s. 16(13)
3.	Mining Act, (Cap. 65:01)	s. 70
4.	Motor Vehicles and Road Traffic Act, (Cap. 51:02)	s. 84(2)
5.	Customs Act, (Cap. 82:01)	s. 20(1)
6.	Intoxicating Liquor Licensing Act,( Cap. 82:21)	ss. 26 & 27

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**SUBSIDIARY LEGISLATION**

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**RULES**

R.18/12/1885

*for the Assignment for the Defence of Pauper Prisoners charged  
with Murder*

On the 18th December, 1885, the Judges resolved that the Rules be modified to the following extent—

1. That the list of counsel kept by the Registrar shall not include the names of such counsel as are of less than two years standing at the Bar from the dates of their call; that as soon as such counsel shall have attained a standing of two years from the date of their call the Registrar shall insert their names at the top of the list.

2. That the Registrar shall, subject to the directions of the Chief Justice, either communicate with the accused personally, or through the medium of the Marshal, or other competent officer, explaining to the accused his situation as regards the employment of counsel in his defence, and taking his answers thereupon, according to the tenor and substance of what is contained in the several paragraphs of the annexed letter, and such other paragraphs as in any particular case the Chief Justice may consider necessary.

3. That the assignment of counsel in each case shall not necessarily be made according to the order of counsel in the list, but may be made in any order or to the effect of assigning a larger proportion of defences to one or more counsel than to others, according as the Chief Justice may think fit.

[Subsidiary]

*Rules of the High Court (Declaration of Title)*Rules of Court  
4/6/1923**RULES OF THE HIGH COURT  
(DECLARATION OF TITLE)***made by the Judges and approved by the Governor and Court of  
Policy on the 14th June, 1923*

Citation

1. These Rules may be cited as Rules of the High Court (Declaration citation, of Title).

Definition of  
property.2. In these Rules "property" means and includes land, or any easement, *profit a prendre*, or other right, connected with land.Petition for  
declaration of  
title.  
c. 60:02

3. (1) Application to the Court for a declaration of title under section 4(1) of the Title to Land (Prescription and Limitation) Act shall be made by petition, intituled in the matter of the property to which it relates and in the matter of the Act.

(2) The petition shall contain a statement of all the material facts upon which it is based, and describe with particularity the property to which it relates, and state the boundaries, or the nature and extent, thereof as the case may be.

Plan.

(3) A plan of the property shall be annexed to the petition, unless the Court, upon the application of the petitioner in a summary manner before the petition is filed, dispenses therewith.

(4) The petition shall be filed in the registry of Court together with an affidavit or affidavits verifying the facts stated in support thereof.

Notice of  
petition.  
Schedule

4. A notice in the form given in the Schedule, or as nearly so as the circumstances of the case will allow, signed by the petitioner or his attorney-at-law, shall be published

[Subsidiary]

*Rules of the High Court (Declaration of Title)*

Form 1 simultaneously in the *Gazette* and a daily newspaper circulating in the county where the subject matter of the petition is situate on three consecutive Saturdays.

Service of  
petition, etc.

5. (1) Within seven days after the date of the first publication of the notice prescribed in rule 3, the petitioner shall serve each owner and occupier of land adjacent to that mentioned in the petition, or of the land itself so mentioned (as the case may be), with a copy of the petition and of any affidavit in support thereof and of the notice aforesaid, and shall file in the registry of Court an affidavit of that service within four days after effecting the same upon the last person to be served.

(2) The Court may, on the application of the petitioner in a summary manner, dispense either wholly or in part, with the service by this rule prescribed.

Entry of  
opposition.  
Schedule  
Form 2

6. Within the time limited by the notice prescribed by rule 3, any person intending to oppose the petition (hereafter in these rules called "respondent") shall file in the registry of Court a notice of opposition in the form given in the Schedule, together with an affidavit or affidavits in support of the opposition, and serve a copy of the notice and of any affidavit upon the petitioner.

Entry for  
hearing.

7. (1) Within one month after the expiration of the time limited in the notice prescribed by rule 3, the petitioner shall enter the petition for hearing and give notice to any respondent that he has done so.

Notice of  
hearing.

(2) The Registrar of the Court shall give to the petitioner and any respondent not less than ten clear days notice of the day fixed for hearing.

(3) The petition shall be heard in Court, and the petitioner and any respondent may appear thereon in person or by counsel.

[Subsidiary]

*Rules of the High Court (Declaration of Title)*

Attendance for cross examination. (4) The Court may, of its own motion, or upon the application of the petitioner or any respondent, order the attendance at the hearing for cross-examination of any deponent upon whose affidavit that respondent or the petitioner relies.

Judgment or order in Registry of Deeds. 8. The Registrar of Deeds, upon production to him of an office copy of any declaratory judgment or order made by the Court, either before or after these Rules have come into force, under the aforesaid provisions of the Act, shall, without further proceeding, convey to, or register in favour of, the person or persons whose title has been so declared and at his or their expense the property mentioned in that judgment or order.

Service of documents. 9. Service under these rules may be effected by delivery of the Service of document to be served —

- (a) to the party to be served or his attorney;
- (b) to any adult inmate or employee at his, or his attorney's, last known or usual place of abode or business; or
- (c) to his attorney-at-law.

Withdrawing petition. 10. A petition under these Rules if it is not opposed, may be withdrawn by the petitioner at any time after the expiration of the time limited for entry of opposition thereto and, if it is opposed, with the leave of the Court, or upon the petitioner producing to the Registrar of the Court a consent to withdrawal signed by each respondent.

Costs. 11. Costs of and incidental to applications under these Rules shall be taxed and allowed as of applications for interlocutory orders.

Saving suit for declaration of title. 12. Nothing in these Rules shall affect the right of any person to institute a suit for a declaration of title to property by prescription.

[Subsidiary]

Rules of the High Court (Declaration of Title)

r. 4

SCHEDULE

FORM 1

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

DECLARATION OF TITLE

Petition No of 19.

NOTICE

Or SECOND or THIRD as the case may be.

(FIRST PUBLICATION)

A.B., of, etc. (address and description) has presented a petition for a declaration of title by prescription to the property described in the Schedule hereto.

Any person intending to oppose the said petition must, within one month after the date of the first publication of this notice, file in the registry of Court in the City of Georgetown notice of his opposition and an affidavit or affidavits in support thereof, and serve a copy of the notice and any affidavit upon the said A.B.

(Unless the Court has dispensed with a plan add:)

The said petition is accompanied by a plan of the property which may be inspected at the said registry during office hours.

(a) This must be the date of the issue of the Gazette and daily newspaper.

(a) Dated the.....day of.....20.....

(Signed) A.B.
Petitioner

(or Signed) E.F.

Attorney-at-Law for the Petitioner

SCHEDULE

(Here describe with particularity the land, easement, *profit a prendre*, or other right enjoyed therewith, and state the boundaries, or the nature and extent thereof)

Memorandum. The address for service of the petitioner is his residence aforesaid. Or: The address for service of the petitioner is at the office of his said attorney-at-law, Mr. E.F.,  
No.....Street, in the City of Georgetown.

FORM 2

r. 6

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

In the matter of a petition No.....of 20....., by A.B. for a declaration of title.

To the said A.B.

And to the Registrar of the High Court of the Supreme Court of Judicature.

Take notice that C.D. intends to oppose the said petition on the grounds stated in the affidavit or affidavits of (name or names of deponent or deponents) filed with this notice.

Dated the.....day of.....20.....

(Signed) C.D.

Respondent

(or Signed) E.F.

Attorney-at-Law for the said C.D.

This notice was filed by the said C.D. who resides and whose address for service is at (mention city, town, or village of residence).

Or: This notice was filed by E.F. of (address) attorney-at-law for the said C.D. who resides at (residence of petitioner as above) and whose address for service is at (address of attorney-at-law) aforesaid.

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## JUDGES' RULES

R. 3/1964

*made by the Chief Justice and Judges of the High Court*

The following Rules have been approved by the Honourable the Chief Justice and Judges of the High Court of Guyana and will come into operation in Guyana as from 1st June, 1964:

These Rules do not affect the principles

(a) that citizens have a duty to help a police officer to discover and apprehend offenders;

(b) that police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police station;

(c) that every person at any stage of an investigation should be able to communicate and to consult privately with an attorney-at-law. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;

(d) that when a police officer who is making enquiries

of any person about an offence has enough evidence to prefer a charge against that person for the offence, he should without delay cause that person to be charged or informed that he may be prosecuted for the offence;

(e) that it is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these Rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

## RULES

I. When a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

II. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offence.

The caution shall be in the following terms—

"You are not obliged to say anything unless you

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[Subsidiary]

*Judges' Rules*

wish to do so but what you say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and at which any such questioning or statement began and ended and of the persons present.

III. (a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms—

"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

(b) It is only in exceptional cases that questions relating to an offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms—

"I wish to put some questions to you about the offence with which you have been charged (or about the offence for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence."

Any questions put and answers given relating to the offence must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any questioning or statement began and ended and of the persons present.

IV. All written statements made after caution shall be taken in the following manner—

(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark to, the following—

"I,.....wish to make a statement. I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following—

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other

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*Judges' Rules*

than such as may be needed to make the statement coherent, intelligible and relevant to the material matters. He shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement—

"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will."

(f) If the person who has made a statement refuses to read it or to write the above mentioned Certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

V. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule III(a).

VI. Persons other than police officers charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

## APPENDIX B

### ADMINISTRATIVE DIRECTIONS ON INTERROGATION AND THE TAKING OF STATEMENTS

#### 1. Procedure generally

(a) When possible statements of persons under caution should be written on the forms provided for the purpose. Police officers' notebooks should be used for taking statements only when no forms are available.

(b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.

(c) In writing down a statement, the words used should not be translated into "official" vocabulary; this may give a misleading impression of the genuineness of the statement.

(d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

#### 2. Record of interrogation

Rule II and Rule III(c) demand that a record should be kept of the following matters—

(a) when, after being cautioned in accordance with Rule II, the person is being questioned or elects to make a

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*Judges' Rules*

statement—of the time and place at which any such questioning began and ended and of the persons present;

(b) when, after being cautioned in accordance with Rule III (a) or (b) a person is being questioned or elects to make a statement—of the time and place at which any questioning and statement began and ended and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept—

- (a) of the time or times at which cautions were taken, and
- (b) of the time when a charge was made and/or the person was arrested, and
- (c) of the matters referred to in paragraph 1(b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

### 3. Comfort and refreshment

Reasonable arrangements should be made for the comfort and refreshment of persons being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions or taking the statement should be seated.

### 4. Interrogation of children and young persons

As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child

or young person should not be arrested, nor even interviewed, at school if such action can possibly be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

#### 5. Interrogation of foreigners

In the case of a foreigner making a statement in his native language—

- (a) the interpreter should take down the statement in the language which it is made;
- (b) an official English translation should be made in due course and be proved as an exhibit with the original statement;
- (c) the foreigner should sign the statement at (a).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in a foreign language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

6. Supply to accused persons a written statement of charges

(a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offence—

As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving particulars of the offence with which he is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused

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person may understand it, but they should also show clearly the precise offence in law with which he is charged. Where the offence charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offence.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words—

"You are charged with the offence(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence".

(b) Once the accused person has appeared before the court it is not necessary to serve him with a written notice of any further charges which may be preferred. If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offence and given a written etc. . . . copy of the charge as soon as it is possible to do so having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours or in other cases of difficulty it will be sufficient for him to be formally charged with the further offence and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

#### 7. Facilities for defence

(a) A person in custody should be allowed to speak on the telephone to his attorney-at-law or to his friends provided that no hindrance is reasonably likely to be caused to the pro-

cesses of investigation, or the administration of justice by his doing so.

He should be supplied on request with writing materials and his letters should be sent by post or otherwise with the least possible delay. Additionally, telegrams should be sent at once, at his own expense.

(b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

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