

SCHEDULE 2

CCR ORDER 5

CAUSES OF ACTION AND PARTIES

Representative proceedings

Rule 5.—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 6, the proceedings may be begun and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or all except one or more of them.

(2) At any stage of proceedings under this rule the court may—

- (a) on the application of a claimant who is suing in a representative capacity, appoint him to represent all, or all except one or more, of the persons on whose behalf he sues;
- (b) on the application of the claimant or of a defendant who is sued in a representative capacity, appoint any one or more of the defendants or other persons on whose behalf the defendants are sued to represent all, or all except one or more, of those persons.

Where in the exercise of the power conferred by sub-paragraph (b) the court appoints a person not named as a defendant, it shall make an order under CPR rule 19.1 adding that person as a defendant.

(3) An application under paragraph (2)—

- (a) if made under sub-paragraph (a), may be made without notice being served on any other party;
- (b) if made under sub-paragraph (b), shall be made on notice—
 - (i) where the applicant is the claimant, to the person sought to be appointed, or
 - (ii) where the applicant is a defendant, to the claimant and to any person, other than the applicant, sought to be appointed;

and in each case the notice shall state the facts on which the applicant relies and the names and addresses or, where appropriate a collective description, of the persons to be represented.

(4) Where an order is made granting an application under paragraph (2)(b), the court shall send a notice of the order to the person to whom notice of the application was given and shall notify other persons affected by the order in such manner as the court may direct.

(5) A judgment or order given or made in proceedings under this rule shall be binding on all persons on whose behalf the claimant sues or, as the case may be, the defendant is sued but shall not be enforced against any person not a party to the proceedings except with the permission of the court.

(6) An application for permission under paragraph (5) shall be made on notice to the person against whom it is sought to enforce the judgment or order and, notwithstanding that the judgment or order is binding on him, he may dispute liability to have it enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

Representation of person or class

Rule 6.—(1) In any proceedings concerning—

- (a) the estate of a deceased person,
- (b) property subject to a trust, or
- (c) the construction of a written statement, including a statute,

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the court may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested in or affected by the proceedings, if the person, the class or some member of the class cannot readily be ascertained or cannot be found or if it otherwise appears to the court expedient to exercise this power for the purpose of saving expense.

(2) A judgment or order given or made when a person or persons appointed under paragraph (1) is or are before the court shall be binding on the person or class so represented.

(3) Where, in proceedings to which paragraph (1) applies, a compromise is proposed and some of the persons who are interested in or who may be affected by the compromise (including unborn or unascertained persons) are not parties to the proceedings but—

- (a) there is some person in the same interest before the court who assents to the compromise or on whose behalf the court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

Representation of estate where no personal representative

Rule 7.—(1) Where in any proceedings it appears to the court that a deceased person who was interested in the matter in question in the proceedings has no personal representative, the court may, on the application of any party to the proceedings—

- (a) proceed in the absence of a person representing the estate of the deceased person or
- (b) by order appoint a person to represent the estate for the purpose of the proceedings.

(2) Any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as if a personal representative of that person had been a party to the proceedings.

(3) Before making an order under this rule, the court may require notice of the application for the order to be given to such of the persons having an interest in the estate as it thinks fit.

Proceedings against estates

Rule 8.—(1) Where any person against whom a claim would have laid has died but the cause of action survives, the claim may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), a claim brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) A claim purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such claim as is referred to in paragraph (1) or (3)—

- (a) the claimant shall, where the court fixed a date for the hearing when it issued the claim, on or before that date, or, in any other case within the time allowed for service of the claim form, apply to the court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against

the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;

- (b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in subparagraph (a) and allow such amendments (if any) to be made and make such other order as the court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(6) Where an order is made under paragraph (4), the person against whom the proceedings are to be carried on shall be served with a copy of the order, together with a copy of the application notice if any.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

Partners may sue and be sued in firm name

Rule 9.—(1) Subject to the provisions of any enactment, any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action and carrying on business within England or Wales may sue or be sued in the name of the firm of which they were partners when the cause of action arose.

(2) Where partners sue or are sued in the name of the firm, the partners shall, on demand made in writing by any other party, forthwith deliver to the party making the demand and file a statement of the names and places of residence of all the persons who were partners in the firm when the cause of action arose.

(3) If the partners fail to comply with such a demand, the court, on application by any other party, may order the partners to furnish him with such a statement and to verify it on oath and may direct that in default—

- (a) if the partners are claimants, the proceedings be stayed on such terms as the court thinks fit, or
- (b) if the partners are defendants, they be debarred from defending the claim.

(4) When the names and places of residence of the partners have been stated in compliance with a demand or order under this rule, the proceedings shall continue in the name of the firm.

Defendant carrying on business in another name

Rule 10.—(1) A person carrying on business in England or Wales in a name other than his own name may, whether or not he is within the jurisdiction, be sued—

- (a) in his own name, followed by the words “trading as A.B.”, or
- (b) in his business name, followed by the words “(a trading name)”.

(2) Where a person is sued in his business name in accordance with paragraph (1)(b), the provisions of these rules relating to claims against firms shall, subject to the provisions of any enactment, apply as if he were a partner and the name in which he carried on business were the name of his firm.

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Failure to proceed after death of party

Rule 12.—(1) If, after the death of a claimant or defendant in any claim or matter, the cause of action survives but no order is made substituting any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant who has died; but where it is the claimant who has died, the court shall not make an order unless satisfied that notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested person who the court considers should be notified.

(2) Where a counterclaim is made by a defendant to any claim this rule shall apply in relation to the counterclaim as if the counterclaim were a separate claim and as if the defendant making a counterclaim were a claimant and the person against whom it is made a defendant.

Claim to money in court where change in parties after judgment

Rule 13.—(1) Where any change had taken place after judgment, by death, assignment or otherwise, in the parties to any claim and there is money standing in court to the credit of the claim, any person claiming to be entitled to the money may give to the court notice of his claim, accompanied by a witness statement or affidavit verifying the facts stated in the notice.

(2) The district judge may, if satisfied as to the entitlement of the person giving notice, cause the money to be paid to him or may refer the claim to the judge and may require the claimant to give notice of the claim to any other person.

(3) It shall not be necessary for notice to be given under this rule where the person claiming to be entitled to the money in court has obtained permission under Order 26, rule 5, to issue a warrant of execution.

Bankruptcy of claimant

Rule 14 Rules 11 and 13 shall not apply to any case for which provision is made by section 49 of the Act.