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■ CRAWLEY BOROUGH COUNCIL v. B, February 22, 2000, CA, unrep.
CPR r. 2.4, Practice Direction (Allocation of Cases to Levels of Judiciary,) paras 2, 3 & 9, Housing Act 1996, ss. 202 & 204 [CCR O. 21, r. 5(1)] — Vice-Chancellor noting that district judges have power to deal with s. 204 appeals under CPR, as the jurisdiction is not excluded by paras 2, 3 or 9, but explaining that this was unintended and will be changed (see *Civil Procedure* (2nd ed.), para. 2BPD-001)

■ DEARMAN v. SIMPLETEST LTD, *The Times*, February 14, 2000, CA
CPR r. 19.1 [RSC O. 15, r. 1] — held, the rule that, in actions for the recovery of land, those in whom title to possession is alleged should be joined as plaintiffs is a general rule of practice and not a rule of law (see SCP 1999, Vol. 2, para. 17B-83)

■ STOCZNIA GDANSKA S.A. v. LATREEFERS INC., February 9, 2000, CA, unrep.
CPR rr. 44.3 & 48.2, Supreme Court Act 1981, s. 51 — held, (1) question whether the court's process is affected or threatened by a champertous agreement for the division of spoils is to be considered in the light of the facts of each case, and (2) parent company funding litigation involving subsidiary company as party may be made liable for costs as non-party (see *Civil Procedure* (2nd ed.), paras 44.3.5 and 48.2.1)

■ ABBAHALL LTD v. SMEE, January 24, 2000, CA, unrep.
CPR r. 3.4 — owner of ground floor premises (C) bringing claim against owner of first floor premises (D) for injunction permitting them to repair D's premises and other relief — after injunction granted and repairs effected, C applying to re-re-amend claim to add claims for damages in negligence and nuisance — application disallowed on grounds (1) that C were guilty of inordinate and inexcusable delay, and (2) that the new claims were substantially different to those originally pleaded — D applying to have claim struck out and C commencing second claim reasserting negligence and nuisance claims — county court judge (1) granting D's application, and (2) striking out second claim as abuse of process —held, (1) the court's refusal to allow amendment was unassailable and therefore the first claim was rightly struck out, but (2) the second claim should be re-instated because (a) the first claim had not been struck out for contumelious conduct or abuse of process, and (b) the cause of action alleged was properly arguable, (3) the re-instatement was on the condition that C would not be entitled to interest upon any monies awarded in respect of the period prior to the issue of the second claim — *Biguzzi v. Rank Leisure* [1999] 1 W.L.R. 1926, CA, and SCP 1999, Vol. 1, paras 18/19/19 and 25/L/9 ref'd to (see *Civil Procedure* (2nd ed.), para. 3.4.1)

■ ATLANTIC BAR & GRILL LTD v. POSTHOUSE HOTELS LTD, November 2, 1999, unrep. (Rattee J.)
CPR rr. 38.3, 38.6 & 44.12 — tenant of commercial property (C) bringing claim against several defendants for breach of covenant — by the commencement of trial, number of defendants limited to two landlords and D — C reaching accommodation with landlords and, without permission (there being no interim injunction), C serving notice of discontinuance on D in accordance with r. 38.3 — held (1) by r. 38.6(1), C was liable for D's costs, (2) by operation of r. 44.12(1)(d), a costs order in D's favour was deemed to have been made on the standard basis, however (3) the court's power to order otherwise granted by r. 38.6(1) includes a discretion to determine the basis upon which D's costs should be borne, and (4) as the circumstances were exceptional (C having behaved unreasonably), D's costs for which C was liable should be paid on an indemnity basis (see *Civil Procedure* (2nd ed.), paras 38.6.1, 44.4.2 & 44.12.1)

■ BURGESS v. BRITISH STEEL, *The Times*, February 29, 2000, CA
CPR r. 36.20 — in personal injury claim where sole issue quantum, D disclosing to P expert medical report suggesting that P was malingering — D paying £220,000 into court — P rejecting offer but at trial awarded only £161,592 including interest — judge awarding P his costs against D up to date of payment in, but making no order for costs thereafter — held, allowing D's appeal, (1) in the circumstances, the normal costs consequences stated in r. 36.20 were not unjust, (2) P should pay D's costs from 21 days after payment in, except for any costs relating to the malingering issue (see *Civil Procedure* (2nd ed.), para. 36.20.1)

■ DEAN v. DEAN, November 17, 1999, unrep. (Jacob J.)
CPR rr. 1.1(2)(d), 3.4(2)(c) & 24.2 — as a result of fraud, property belonging to C sold without his knowledge and proceeds appropriated — C bringing action against fraudsters and against Chief Land Registrar (D) for an indemnity under the Land Registration Act 1925, s. 83 — C failing to serve witness statement in accordance with order made by Master — accordingly, on D's application, Master striking out C's claim against D under r. 3.4(2)(c) —subsequently, witness statement served — on C's appeal to judge, held, re-instating claim but granting D summary judgment, (1) no prejudice or increase in costs was caused by the 22 month delay in serving the witness statement, (2) the sanction of striking out for late compliance is one which the court must always exercise with care, once it is satisfied that the non-compliance is not contumacious, (3) the court has less severe sanctions

which it can impose in a manner proportionate to the consequences of the delay, (4) in particular it can refuse to grant interest on any sum awarded for the period of the delay, but (5) D should have summary judgment under r. 24.2 because C had no real prospect of succeeding on the claim (see *Civil Procedure* (2nd ed.), paras 3.4.1 & 24.2.2)

■ HALEWOOD INTERNATIONAL v. ADDLESHAW BOOTH & CO., November 5, 1999, unrep. (Neuberger J.)
solicitors, W Co., acting for D in trade mark litigation against F — conduct of litigation in hands of R, an employee of W Co. — subsequently, R becoming employee of A Co. in regional office — C proposing to bring passing off proceedings against D — D applying for injunction to restrain A Co. from acting for C in these projected proceedings — held (1) although R was not part of the A Co. team advising C, there was a risk of disclosure to C of commercial information confidential to D and obtained by R when acting for D against F, (2) the injunction should be granted unless A Co. arranged for R to work for the duration in a different building from the team — principles to be applied and factors to be taken into account as derived from authorities explained

■ JOLLY v. HULL, *The Times*, March 10, 2000, CA
CPR Sched. 1, RSC O. 45, rr. 5 & 7 and Sched. 2, CCR O. 29, r. 1 — in ancillary proceedings, county court judge ordering sale forthwith of H and W's matrimonial home — H refusing to vacate home or to permit agents access — series of court orders made, with penal notices attached, designed to secure H's compliance — eventually, county court judge making order requiring H to give possession within 7 days — upon H's failure to comply with this order, to which no penal notice was attached, on W's application judge committing H to prison for contempt for 14 days — held, dismissing H's appeal, (1) in many if not most cases the omission of a penal notice as required by CCR O. 29, r. 1(3) is a fatal flaw, however (2) it follows from the court's power (given by r. 1(7)) to dispense with the service of an order on which a penal notice should be attached, that the court has power to dispense with a penal notice on an order which is served personally, (3) this dispensing power (which should not be exercised too readily) may be exercised retrospectively (*i.e.* after, as well as before, the alleged contemnor's breach of order), (4) in this respect, CCR O. 29, r. 1 and RSC O. 45, rr. 5 and 7 bear the same construction (see *Davy International Ltd. v. Tazzyman* [1997] 1 W.L.R. 1256, CA), (5) in the circumstances, the inference that H fully appreciated the potential consequences of his disobedience to the order was unavoidable (see *Civil Procedure* (2nd ed.), paras R45.7.6 & C29.1.1)

■ KINSTREET LTD. v. BALMARGO CORPORATION LTD, August 3, 1999, unrep. (Arden J.)
CPR rr. 1.1, 1.4(2)(e), 3.1, 3.4, 32.1(3) [RSC O. 33, rr. 3 & 4], Chancery Guide, Chap. 17, Commercial Court Guide, Section G — in 1994, actions of P against D and of K against P and others commenced — in October 1995, judge ordering consolidation of the actions and dismissing P's application (made under RSC O. 33, rr. 3 & 4) for trial of certain questions as preliminary issues — in July 1999, parts of D's defence and whole of his counterclaim struck out under r. 3.4 — P then applying under r. 3.1 for order for trial of certain questions arising in the first action as preliminary issues — K applying for ADR directions under r. 1.4(2)(e) — held, (1) granting P's application, (a) there had been a material changes in the case since the judge's ruling of October 1995 and the provisions of CPR r. 3.1(2) introduced new considerations, (b) further, there was a realistic possibility that the issues as they now stood between the parties would be reduced if the questions were tried first; (2) granting K's application, (a) because of the costs likely to be incurred by the parties there was an acute need to consider any viable means for settling the litigation, (b) in the circumstances, despite the opposition of P, an order for ADR should be made (see *Civil Procedure* (2nd ed.), paras 1.4.11 and 3.1.1, see also paras D1-237, p. 1662 and D2-330, p. 1727)

■ MORRIS v. BANK OF AMERICA NATIONAL TRUST, *The Times*, January 25, 2000, CA
CPR rr. 1.1(2)(c) & 16.4(1)(e), Practice Direction (Statements of Case), para. 9.2(1) and (5), Chancery Guide, para. 4.5 — liquidators (P) of a bank instituting proceedings against another bank (D) for fraud — D making alternative applications under RSC O. 18, r. 19 and RSC O. 18, r. 7 — after at least two days of reading and three days of hearing, on the basis of a preliminary review only judge dismissing applications, finding (1) that P's claim was not obviously unsustainable and should not be struck out under r. 19, and (2) that the breaches of r. 7, fell into a category of exceptions that could be tolerated — held, dismissing D's appeal, (1) in *Williams & Humbert v. W. & H. Trade Marks (Jersey) Ltd* [1986] A.C. 368, HL, it was said that, (a) if an application to strike out involves a prolonged and serious argument, then (b) the judge should (as a general rule) decline to proceed with the argument unless (i) he harbours doubt about the soundness of the pleading, and (ii) is satisfied that striking out will either obviate the necessity for a trial, or will substantially reduce the burden of the trial itself, (2) although the judge had not in terms referred to the *Williams & Humbert* case, it was clear from his reference to other authorities to similar effect that in dealing with D's application on the basis of a preliminary review only he had applied the right test — extensive observations of Court on application of innovative provisions of the CPR to future handling of this case, in particular (1) r. 16.4(1)(e) and para. 9.2(1) and (5) (avoiding prolixity where pleading fraud or dishonesty) and (2) r. 1.1(2)(c) (appropriate allocation of court's resources to complex case involving wealthy parties) (see *Civil Procedure* (2nd ed.), paras 1.3.7, 16.4.4, 16PD-004 & D1-020)

■ MUMAN v. NAGASENA [2000] 1 W.L.R. 299, CA (Nourse, Swinton Thomas & Mummery L.JJ.)
CPR r. 1.4(2)(e) & Sched. 1, RSC O. 15, r. 14, Charities Act 1933, ss. 22 & 33 — governing council and trustees of charity (C) claiming possession of charity's premises occupied by D — county court judge dismissing claim on preliminary point, holding that the claim was imperfectly constituted because the official custodian was not a co-claimant — held, allowing Cs' appeal, by the vesting of the legal estate in him the official custodian was not entitled to exercise powers of management over the property (s. 22), (2) the trustees were entitled to possession, subject only to any claim that D may have, (3) the proceedings were "charity proceedings" within s. 33 and should be stayed pending authorisation by the Commissioners or a Chancery judge, (4) the stay should not be lifted until the parties had made an attempt to resolve their dispute by mediation (see *Civil Procedure* (2nd ed.), paras 1.4.11 & R15.14, and SCP 1999, Vol. 1, para. 15/14/3)

■ NORMAN v. ALI, *The Times*, February 25, 2000, CA
Limitation Act 1980, s. 11 — whilst driving D's car, X involved in accident in which C injured — X apparently uninsured to drive the car — C bringing claim against AIB and joining D on ground that he, having permitted uninsured driving, was in breach of statutory duty — on preliminary issue, judge ruling that limitation period for C's claim against D was six years — held, allowing D's appeal, the claim fell within the special three year time limit for actions "in respect of personal injuries" as fixed by s. 11 as that provision is not restricted to circumstances where the breach of duty is the physical cause of the injuries (see SCP 1999, Vol. 2, para. 14-17/2)

■ NORRIS, RE, *The Times*, February 25, 2000, CA
CPR Sched. 1, RSC O. 115, Pt I, Drug Trafficking Act 1994, s. 6 — Commissioners obtaining restraint order from High Court over N's property, including a house — subsequently, N convicted of drug offences — in making confiscation order, Crown Court judge finding (1) that N's wife (X) had no interest in the house, and (2) that it fell within N's realisable property (s. 6) — N failing to discharge confiscation order — in granting Commissioners' application in High Court to enforce the restraint order, judge rejecting X's application to vary the order, made on the ground that she had an interest in the house — held, dismissing X's appeal, (1) though not separately represented, X had had a fair opportunity to put her case in the Crown Court, (2) in the circumstances it would be an abuse of process to permit her to re-litigate the question whether she had an interest in the house (see *Civil Procedure* (2nd ed.), para. R115.5.1)

■ OCHWAT v. WATSON BURTON, December 10, 1999, CA, unrep.
CPR r. 44.3 — hearing loss claims of group of over 100 claimants, for whom several solicitors including D acted, settled under compensation scheme between claimants' unions and insurers — many of these claimants subsequently bringing claims against their solicitors for professional negligence — claims of five claimants, including A and B (who were legally aided and for whom D acted), selected as lead actions — in event, only claims of A and B against D going to trial — at trial, these claims dismissed but judge finding in favour of A and B on a number of issues, some of which were generic — each party's costs substantially in excess of £300,000 — judge ordering (1) that D should have their costs, except for the issues on which A and B succeeded (resulting in a reduction of 25 per cent of D's costs), and (2) the other claimants should contribute 25 per cent of D's costs — held, allowing D's cross-appeal, (1) in the light of information available to the Court, it was impossible to say that the claimants and their advisers did not intend that the costs of the lead actions should be borne proportionately by all claimants, therefore (2) there was no proper basis for making a distinction between the lead claimants and the other common claimants, (3) all claimant's should contribute to 75 per cent of D's costs (see *Civil Procedure* (2nd ed.), para. 44.3.5, see also SCP 1999, Vol. 2, paras 62/3/3 & 62B/83)

■ RIVERPATH PROPERTIES LTD v. BRAMMALL, *The Times*, February 16, 2000 (Neuberger J.)
CPR r. 23.11 — on an application, court proceeding in defendant's absence and making order for specific performance in favour of claimant — after order perfected, defendant applying under r. 23.11 for application to be re-listed — held, the court had power to set aside the order, to re-hear the application in full and to make such order as it thought appropriate (see *Civil Procedure* (2nd ed.), para. 23.11.3)

■ SONY MUSIC ENTERTAINMENT INC. v. PRESTIGE RECORDS LTD, *The Times*, March 2, 2000 (Lloyd J.)
CPR Sched. 1, RSC O. 58, r. 1 — at case management conference, on the basis of admissions made by D, Master giving judgment for C in their claim against D for infringement of copyright — Master ordering that D should pay C's costs — on D's appeal to judge against costs order, held, (1) the appeal was a re-hearing rather than a true appeal in which a judge could exercise his own discretion *de novo*, but (2) the question whether the costs claimed were proportionate to the matters in dispute was best reserved to the costs judge — *Singh v. Bhasin, The Times*, August 21, 1998, appl'd, *Hoddle v. C.C.F. Construction Ltd* [1992] 2 All E.R. 550, dist'd) (see *Civil Procedure* (2nd ed.), para. R58.1.3, and SCP 1999, Vol. 1, paras 14/7/21, 58/1/3 & 62/3/3)

IN DETAIL

Champertous agreements and non-party costs

In modern times, the questions (1) whether agreements between litigants and persons funding their litigation (a) were champertous and, (b) if they were, what the consequences of that should be, and (2) whether non-parties (whether funders of the litigation or not) may be made liable in costs, have been considered by the courts on many occasions. These questions emerged yet again in the first instance decisions of Lloyd J. and Toulson J. in the related proceedings in the cases of *Stocznia Gdanska S.A. v. Latreefers Inc.*, May 27, 1999, unrep., and *Stocznia Gdanska S.A. v. Latvian Shipping Co.* (No. 2) [1999] 3 All E.R. 822, both referred to on the "In Brief" page of the December 1999 issue of *Civil Procedure News.*

The decisions gave rise to appeals which have now been dealt with by the Court of Appeal in *Stocznia Gdanska S.A. v. Latreefers Inc*., February 9, 2000, C.A., unrep. (Morritt & May L.JJ. and Wall J.)

The facts were that L (a company in liquidation) entered into an agreement with S (a Polish company) under which L agreed to pay for purchases by instalments. Under a separate contract, S's brokers were entitled to commissions on the instalments paid. S brought action in the Commercial Court against L for their failure to pay instalments due and against F (L's Latvian parent company) for wrongfully inducing this breach of contract. X, acting as agents for the brokers, entered into an agreement with S to fund the litigation in return for a share of the proceeds of the litigation. Whilst this litigation was continuing, S issued a winding-up petition against L. L opposed the petition and the company's L's opposition was funded by F (their parent company).

So, the position was that, in the litigation, X was funding S, and in the winding-up, F was funding L.

In the winding-up proceedings, Lloyd J. (1) made an order winding-up L and ordering (a) that S's costs should be paid by L and (b) that F (L's funder) should pay those costs in so far as they were increased by L's opposition to the petition, and (2) held that the facts that (a) L's opposition was funded by F, and (b) the litigation funding agreement between S and X was champertous, did not, respectively, justify or prevent the court from making a non-party costs order against F.

Subsequently, in the litigation proceedings, Toulson J. refused F's application for a stay of the proceedings against them, an application made on the ground that the proceedings were an abuse of process because the agreement between S and X was champertous.

L, the company wound up by Lloyd J., and F, L's parent company and co-defendant with L in the litigation, appealed. The Court of Appeal dismissed the appeal by L, holding that (1) the question whether the court's process is affected or threatened by a champertous agreement for the division of spoils is to be considered in the light of the facts of each case, and (2) in the circumstances, there was no abuse, even if, technically speaking, the agreement between S and X was champertous. In coming to these conclusions the Court indicated that the leading authority on the consequences of arguably champertous agreements is now the case of *Faryab v. Smyth*, August 28, 1998, CA, unrep.

The Court also dismissed the appeal by F, holding that (1) the non-party costs order against them was not plainly wrong, and (2) was justified in part on the ground that the opposition to the petition was not in the interest of L's creditors. In coming to these conclusions the Court indicated that the leading authority on non-party costs is now *Globe Equities Ltd v. Globe Legal Services Ltd*, March 5, 1999, CA, unrep. (note also *Stephenson (S.B.J.) Ltd v. Mandy*, December 1, 1999, unrep. (Bell J.), and *Locabail (U.K.) v. Bayfield Properties Ltd* (No. 3), *The Times*, February 29, 2000 (Mr Lawrence Collins, QC.)). An interesting feature of this aspect of the appeal was that the Court stressed that where a subsidiary involved in litigation is funded by its parent company, the nature of the parent company's interest in the proceedings is the key to the question whether the company may be made liable in costs as a non-party; *The Kommunar (No. 3)* [1997] 1 Lloyd's Rep. 22 (Colman J.) lays down no general rule.

Jurisdiction under Housing Act 1996, ss. 202 and 204

Part VII of the Housing Act 1996 imposes certain duties on local authorities in relation to persons found to be homeless or threatened with homelessness. Under section 202, an applicant has a right to apply to a local authority for a review of a decision affecting him. And section 204 states that, if an applicant who has requested a review under section 202 is dissatisfied with the decision on review he may appeal to a county court "on any point of law" arising from the decision (see SCP 1999, Vol. 2, para. 8Q-245). Before this procedure was put in place, a dissatisfied applicant wishing to challenge a local authority's homelessness decision did so by applying for leave to apply for judicial review, and the matter was dealt with in the High Court by judges sitting in the Crown Office list.

In this context, an appeal on "any point of law" includes, not only matters of legal interpretation, but also the full range of issues which would otherwise be the subject of an application to the High Court for judicial review (*e.g.* procedural error and questions of power, irrationality, and adequacy or inadequacy of reasons) (*Begum (Nipa) v. Tower Hamlets London Borough Council, The Times*, November 9, 1999, CA). Under section 204, a county court has jurisdiction to hear an appeal

against a local housing authority's decision that it had discharged its duty to a homeless person under section 193 of the Act (*Warsame v. Hounslow LBC, The Times*, July 21, 1999, CA). An appeal must be brought within 21 days of the applicant's being notified of the decision on his request made under section 202(1) (s. 204(2)). An applicant has no right to request a further review of a decision made on such request. Where, in the exercise of discretion, the decision-making body reconsiders its decision, any appeal to a county court must be made within 21 days as aforesaid, that is to say, within 21 days of the applicant's being notified of the decision made on his original request *(Demetri v. Westminster City Council, The Times*, November 11, 1999, CA). A county court has no jurisdiction under the County Courts Act 1984, s. 38 to grant an interlocutory injunction requiring a local authority to provide accommodation for a person proceeding with an appeal under section 204 (*Ali v. Westminster City Council* [1999] 1 W.L.R. 384, CA).

In *Crawley Borough Council v. B*, February 22, 2000, CA, unrep., the facts were that, before the CPR came into effect and whilst CCR O. 21, r. 5(1) was still in force, B's appeal under section 204 against the decision of a local authority (C) under section 202 was heard by a district judge and allowed. On C's appeal, a circuit judge held that the district judge lacked jurisdiction to entertain the appeal, but in the event found in favour of B. The Court of Appeal allowed C's appeal on the merits. On the appeal the Vice-Chancellor noted that, since the CPR have come into effect, district judges have had power to deal with section 204 appeals, as the jurisdiction is not excluded by paragraphs 2, 3 or 9 of Practice Direction (Allocation of Cases to Levels of Judiciary). However, His Lordship explained that this was unintended and indicated, by an amendment to the Practice Direction to be made forthwith, the appeal jurisdiction under section 204 will be reserved to circuit judges.

Joinder of claimants

Section 168 of the Common Law Procedure Act 1852 introduced an alternative form of proceedings for ejectment. It stated that a writ could be issued, directed to persons in possession and to all persons entitled to defend in possession of the property claimed. (A form of writ was annexed to the Act.) Section 169 said that the writ should state "the names of all the persons in whom title is alleged to be". Section 180 said that, if possession proceedings went to trial, the question should be "whether the statement in the writ of title of the claimants is true or false, and, if true, then which of the claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question".

These sections were repealed by the Statute Law Revision and Civil Procedure Act 1883, but, as was asserted in the *White Book*, their effects were continued by provisions inserted in the Rules of the Supreme Court when these rules were enlarged and re-issued in 1883. In nineteenth century editions of the *White Book*, in an apparent effort to state the effect of section 179, it was noted that "all the claimants in whom the title to possession is alleged to be should join as plaintiffs" and this was followed by a verbatim statement of section 180. This note was embroided with the comment (for which no authority was given) that, except in the case of actions against lessees, "the proper plaintiff is the person in whom the legal estate is vested, not the person entitled in equity". These *White Book* passages have remained in the narrative section entitled "Parties Generally" and are found in SCP 1999, Vol. 2, para. 17B-83. These passages were considered by the Court of Appeal in the recent case of *Dearman v. Simpletest Ltd, The Times*, February 14, 2000, CA (Henry & Potter L.JJ.).

In this case the facts were that, in February 1999, a county court judge granted C's application against D for an order for possession of property owned by H and his wife (W), both of whom had been adjudged bankrupt. At the time of the proceedings, while the legal estate was vested in H and W, the property was held in trust (1) for H's trustee to the extent of his beneficial interest, and (2) for C as to the extent of W's beneficial interest (W's trustee having transferred his interest in the property to C). On appeal, D accepted that they were trespassers but contended that C had no right to bring the proceedings as he did not have freehold title to the property. The Court of Appeal held, dismissing the appeal, that the rule that, in actions for the recovery of land, those in whom title to possession is alleged should be joined as plaintiffs is a general rule of practice and not a rule of law. Henry L.J. said it is clear that the proposition relied on by the appellant, to the effect that "the proper plaintiff is the person in whom the legal estate is vested, not the person entitled in equity" is good practice and guidance, but is certainly not a compulsory requirement in every case. It is a procedural rather than substantive rule, in accordance with the modern trend, illustrated by authorities on roughly analogous provisions, such as *Three Rivers District Council v. Bank of England* [1996] Q.B. 292, CA, at 307–309, *per* Peter Gibson L.J., *Manchester Airport Plc. v. Dutton* [1999] 3 W.L.R. 675, CA, at 538–539, *per* Laws L.J. and at 540, *per* Kennedy L.J., and *Murman v. Nagasena* [1999] 4 All E.R. 178, CA, at 182–183, *per* Mummery L.J.

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CPR Focus

Group Litigation Practice Direction

Section III was added to Pt 19 of the CPR by the Civil Procedure (Amendment) Rules 2000. Section III consists of rr. 19.10 to 19.15 and is titled "Group Litigation". These rules come into force on May 2, 2000 and are supplemented by Practice Direction (Group Litigation). The rules and the practice direction build on modern experience in handling multi-party claims and contain much that is familiar, but they also contain some innovative features.

The rules establish a framework for the case management of "claims which give rise to common or related issues of fact or law" (r. 19.10). They are intended to provide flexibility for the court to deal with the particular problems created by these cases. They do not attempt to provide a self-contained procedural code and the CPR rules apply, except where modified by the rules. The rules attempt to create a structure in which the often inherently conflicting interests of parties in a group of parties with similar interests may be balanced.

The rules in Section III apply to the situation (1) where the multiple parties are defendants, or (2) (the more likely situation) where the multiple parties are claimants. The provisions of the supplementing Practice Direction apply to the latter circumstance. Where the multiple parties are defendants, the court will give directions as are appropriate.

In brief outline the rules provide that where claims which give rise to common or related issues of fact or law emerge (r. 19.10) the court has power to make a Group Litigation Order (GLO) enabling the court to manage the claims covered by the order in a co-ordinated way (r. 19.11). The GLO will contain directions about the establishment of a "Group Register" on which the claims to be managed under the GLO will be entered and will specify the court ("the management court") which will manage the claims on the register (r. 19.11(2)). Judgments, orders and directions of the court will be binding on all claims within the GLO (r. 19.12(1)). The court's case management powers enable it to deal with generic issues, for example, by selecting particular claims as test claims (rr. 19.13(b) & 19.15).

The Practice Direction provides that, before applying for a GLO, the solicitor acting for the applicant should consult the Law Society's Multi Party Action Information Service in order to obtain information about other cases giving rise to the proposed GLO issues. An application for a GLO must be made in accordance with CPR Pt 23 to an appropriate Master or judge. The information that should be included in the application notice or in the written evidence filed in support of the application consists of (1) a summary of the nature of the litigation, (2) the number and nature of claims already issued, (3) the number of parties likely to be involved, (4) the common issues of fact or law that are likely to arise in the litigation, and (5) whether there are any matters that distinguish smaller groups of claims within the wider group (para. 3.2). Once a GLO has been made, a Group Register will be established on which will be entered such details as the court may direct of each case which is to be subject to the GLO and provision is made for the extent to which access may be had to the details of each case so recorded (para. 6.1). A managing judge will be appointed for the purpose of the GLO as soon as possible (para. 8). The management court may specify a date after which no claim may be added to the Group Register unless the court gives permission.

The Practice Direction contains detailed provisions concerning the powers of the court as to statements of case (pleadings) where a GLO has been made. The court may direct that the claimants should serve "Group Particulars of Claim" setting out the various claims of all the registered claimants at the time the particulars are filed and may direct whether these particulars should be verified by a statement or statements of truth and, if so, by whom (paras 14.1 & 14.2). The Group Particulars will usually contain (1) general allegations relating to all claims (sometimes called "generic issues"), and (2) a schedule containing "entries relating to each individual claim" specifying which of the general allegations are relied on and any "specific facts" relevant to the claimant (para. 14.1). Such "specific facts" may be obtained by the use of a questionnaire approved by the court and where this is done the court may direct that the questionnaires completed by individual claimants should take the place of the schedule.

In group litigation difficult questions as to the apportionment of costs inevitably arise, in particular where the litigation is unsuccessful and an order for costs is made in favour of the defendant (see *e.g. Ochwat v. Watson Burton*, December 10, 1999, CA, unrep.). Rules about costs where a GLO has been made are now found in CPR Pt 48 (and not in Pt 19, Section III). A distinction is drawn between "common costs" and "individual costs". The court may direct the proportion of costs that should fall in one or other category. Paragraph 12.4 of the Practice Direction states that, where the court directs that one or more claims are to proceed as test claims, it may give directions about how the costs of resolving common issues or the costs of those claims are to be borne or shared between the claimants on the Group Register. Paragraph 16.2 deals with the situation where an order for costs is made in relation to any application or hearing but the court has not previously given a direction as to proportions.

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