

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 SPECIAL PROVISIONS AS TO PARTICULAR PROCEEDINGS

ORDER 81

PARTNERS

Actions by and against firms within jurisdiction

1. Subject to the provisions of any statutory provision, 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 the jurisdiction may sue, or be sued, in the name of the firm (if any) of which they were partners at the time when the cause of action accrued.

[E.r. 1]

Disclosure of partners' names

2.—(1) Any defendant to an action brought by partners in the name of a firm may serve on the plaintiffs or their solicitor a notice requiring them or him forthwith to furnish the defendant with a written statement of the names and places of residence of all the persons who were partners in the firm at the time when the cause of action accrued; and if the notice is not complied with the Court may order the plaintiffs or their solicitor to furnish the defendant with such a statement and to verify it on oath or otherwise as may be specified in the order, or may order that further proceedings in the action be stayed on such terms as the Court may direct.

(2) When the names of the partners have been declared in compliance with a notice or order given or made under paragraph (1), the proceedings shall continue in the name of the firm but with the same consequences as would have ensued if the persons whose names have been so declared had been named as plaintiffs in the writ.

(3) Paragraph (1) shall have effect in relation to an action brought against partners in the name of a firm as it has effect in relation to an action brought by partners in the name of a firm but with the substitution, for references to the defendant and the plaintiffs, of references to the plaintiff and the defendants respectively, and with the omission of the words “or may order” to the end.

[E.r. 2]

Service of writ

3.—(1) Where by virtue of rule 1 partners are sued in the name of a firm, the writ may, except in the case mentioned in paragraph (2), be served—

- (a) on any one or more of the partners, or
- (b) at the principal place of business of the partnership within the jurisdiction, on any person having at the time of service the control or management of the partnership business there; or
- (c) by sending a copy of the writ by ordinary first class post (as, defined in Order 10, rule 1(2)) to the firm at the principal place of business of the partnership within the jurisdiction;

and, subject to paragraph (2), where service of the writ is effected in accordance with this paragraph, the writ shall be deemed to have been duly served on the firm, whether or not any member of the firm is out of the jurisdiction.

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- (2) Where a writ is served on a firm in accordance with sub-paragraph (1)(c)—
- (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to the firm; and
 - (b) any affidavit proving due service of the writ must contain a statement to the effect that—
 - (i) in the opinion of the deponent the copy of the writ, if sent to the firm at the address in question, will have come to the knowledge of one of the persons mentioned in paragraph (1)(a) or (b) within 7 days thereafter, and
 - (ii) the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.

(3) Where a partnership has, to the knowledge of the plaintiff, been dissolved before an action against the firm is begun, the writ by which the action is begun must be served on every person within the jurisdiction sought to be made liable in the action.

(4) Every person on whom a writ is served under paragraph (1)(a) or (b) must at the time of service be given a written notice stating whether he is served as a partner or as a person having the control or management of the partnership business or both as a partner and as such a person; and any person on whom a writ is so served but to whom no such notice is given shall be deemed to be served as a partner.

[E.r. 3]

Entry of appearance in an action against firm

4.—(1) Where persons are sued as partners in the name of their firm appearance may not be entered in the name of the firm but only by the partners thereof in their own names, but the action shall nevertheless continue in the name of the firm.

(2) Where in an action against a firm the writ by which the action is begun is served on a person as a partner, that person, if he denies that he was a partner or liable as such at any material time, may enter an appearance in the action and state in his memorandum of appearance that he does so as a person served as a partner in the defendant firm but who denies that he was a partner at any material time.

An appearance entered in accordance with this paragraph shall, unless and until it is set aside, be treated as an appearance for the defendant firm.

(3) Where an appearance has been entered for a defendant in accordance with paragraph (2), then—

- (a) the plaintiff may either apply to the Court to set it aside on the ground that the defendant was a partner or liable as such at a material time or may leave that question to be determined at a later stage of the proceedings;
- (b) the defendant may either apply to the Court to set aside the service of the writ on him on the ground that he was not a partner or liable as such at a material time or may at the proper time serve a defence on the plaintiff denying in respect of the plaintiff's "Claim either his liability as a partner or the liability of the defendant firm or both.

(4) The Court may at any stage of the proceedings in an action in which a defendant has entered an appearance in accordance with paragraph (2), on the application of the plaintiff or of that defendant, order that any question as to the liability of that defendant or as to the liability of the defendant firm be tried in such manner; and at such time as the Court directs.

(5) Where in an action against a firm the writ by which the action is begun is served on a person as a person having the control or management of the partnership business, that person may not enter an appearance in the action unless he is a member of the firm sued.

[E.r. 4]

Leave to enforce judgment against firm

5.—(1) Where a judgment is given against a firm, leave to enforce the judgment against the property of a partner in the firm may be granted upon the ex parte application of the party who has obtained that judgment against a person who—

- (a) entered an appearance in the action as a partner, or
- (b) having been served as a partner with the writ of summons, failed to enter an appearance in the action, or
- (c) admitted in his pleading that he is a partner, or
- (d) was adjudged to be a partner.

(2) Leave under paragraph (1) shall not be granted against a member of the firm who was out of the jurisdiction when the writ of summons was issued unless he—

- (a) entered an appearance to the action as a partner, or
- (b) was served within the jurisdiction with the writ as a partner, or
- (c) was, with the leave of the Court given under Order 11, served out of the jurisdiction with the writ, or notice of the writ, as a partner;

and, except as against any property of the firm within the jurisdiction or as provided by the foregoing provisions of this paragraph, a judgment given or made against a firm shall not render liable, release or otherwise affect a member of the firm who was out of the jurisdiction when the writ was issued.

(3) Where a party who has obtained a judgment against a firm claims that a person is liable to satisfy the judgment as being a member of the firm, and the foregoing provisions of this rule do not apply in relation to that person, that party may apply to the Court for leave to enforce the judgment against that person, the application to be made by summons which must be served personally on that person.

(4) Where the person against whom an application under paragraph (3) is made does not dispute his liability, the Court hearing the application may, subject to paragraph (2) give leave to enforce against that person, and, where that person disputes his liability, the Court may order that the liability of that person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

[E.r. 5]

Leave to enforce judgment in actions between partners, etc

6.—(1) Upon an application for leave to enforce a judgment given in—

- (a) an action by or against a firm in the name of the firm against or by a member of the firm, or
- (b) an action by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common

the Court may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just.

[E.r. 6]

Actions begun by originating summons

7. Rules 2 to 6 shall, with the necessary modifications, apply in relation to an action by or against partners in the name of their firm begun by originating summons as they apply in relation to such an action begun by writ.

[E.r. 8]

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Application to person carrying on business in another name

8. An individual carrying on business within the jurisdiction in a name or style other than his own name, may be sued in that name or style as if it were the name of a firm, and rules 2 to 7 shall, so far as applicable, apply as if he were a partner and the name in which he carries on business were the name of his firm.

[E.r. 9]