

GUERNSEY STATUTORY INSTRUMENT

1964—No. 15

**The Court of Appeal (Civil Division)  
(Guernsey) Rules, 1964**

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Made	..	..	..	4th June, 1964.
Came into Operation	..	..	..	4th June, 1964.

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## Order of the Court of Appeal

ENTITLED

**The Court of Appeal (Civil Division)**  
**(Guernsey) Rules, 1964**

THE COURT OF APPEAL, in exercise of the powers conferred upon it by section twenty-two of the Court of Appeal (Guernsey) Law, 1961, hereby orders:—

1. (1) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpreta-  
tion.

“affidavit” means a declaration in writing which is deposed to on oath or affirmation or solemn declaration by the declarant and which complies with the provisions of Rule 22 of these Rules;

“appeal” means an appeal under the provisions of Part II of the Law and “appellant” and “respondent” shall be construed accordingly;

“consular officer” has the meaning assigned to it by the Interpretation Act, 1889, registered on the twentieth day of March, nineteen hundred and twenty-six;

“the Court” means the Court of Appeal constituted under the provisions of Part I of the Law;

“Island of Guernsey” includes the Islands of Herm and Jethou;

“the Law” means the Court of Appeal (Guernsey) Law, 1961;

“the Registrar” means the Registrar of the Court;

“regular armed forces of the Crown” means the Royal Navy, the regular forces as defined by

section two hundred and twenty-five of the Army Act, 1955, registered on the first day of September, nineteen hundred and fifty-six, the regular air force as defined by section two hundred and twenty-three of the Air Force Act, 1955, registered on the first day of September, nineteen hundred and fifty-six, the Women's Royal Naval Service, Queen Alexandra's Royal Naval Nursing Service and Voluntary Aid Detachments serving with the Royal Navy;

"the shorthand writer" means the person for the time being appointed by the Royal Court to take shorthand notes of any proceedings.

(2) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of these Rules as it applies to the interpretation of an enactment.

(3) Except where the context otherwise requires, any reference in these Rules to any enactment shall be construed as including a reference to that enactment as amended, repealed, replaced, extended or applied by or under any other enactment.

Notice of  
appeal.

2. (1) An appeal to the Court shall be by way of rehearing, except in the case where the appellant is seeking an order for a new trial or to set aside a verdict, finding or judgment, and shall be brought by notice of appeal in the form set out in Part I of the Schedule to these Rules or in a form to the like effect with such variation as the circumstances may require.

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice shall specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court to make.

(3) Except with the leave of the Court, the appellant shall not be entitled on the hearing of an appeal to rely upon any grounds of appeal, or to apply for any relief, not specified in the notice of appeal.

(4) A notice of appeal shall be served upon all parties to the proceedings in the court below who are directly affected by the appeal; and subject to the provisions of Rule 11 of these Rules it shall not be necessary to serve the notice on parties not so affected.

3. Every notice of appeal shall be served under paragraph (4) of the last preceding Rule within one month from the date on which the judgment or order of the court below was pronounced. Time for appealing.

4. (1) The appellant shall, within seven days after service of the notice of appeal, apply in accordance with this Rule to set down the appeal. Setting down

(2) An application to set down an appeal shall be made by leaving with the Registrar—

(a) a copy of the notice of appeal; and

(b) in the case where the notice of appeal has been served upon any person by Her Majesty's Sergeant, the Clerk of the Court of Alderney or the Prévôt of Sark, the certificate of service required to be issued by Her Majesty's Sergeant, the Clerk of the Court of Alderney or the Prévôt of Sark, as the case may be, under Rule 21 of these Rules; or

(c) in the case where the notice of appeal has been served under an order for substituted service made under Rule 20 of these Rules or in any other manner, an affidavit of service.

(3) Upon application being made as aforesaid, the Registrar shall file the copy of the notice of appeal and shall cause the appeal to be set down in a list of appeals kept for the purpose; and the appeal shall come on to be heard according to its order on that list unless the Court or a judge thereof otherwise orders.

(4) The Registrar shall cause a copy of the list of appeals to be posted up in the vestibule of the Royal Court.

(5) Within two days after an appeal has been set down, the appellant shall serve a notice to that effect on every party on whom the notice of appeal was served.

Respon-  
dent's notice.

5. (1) A respondent who, not having appealed from the decision of the court below, desires to contend on the appeal that the decision of that court should be varied, either in any event or in the event of the appeal being allowed in whole or in part, shall give notice to that effect, specifying the grounds of that contention and the precise form of the order which he proposes to ask the Court to make, or to make in that event, as the case may be.

(2) A respondent who desires to contend on the appeal that the decision of the court below should be affirmed on grounds other than those relied upon by that court shall give notice to that effect specifying the grounds of that contention.

(3) Except with the leave of the Court, a respondent shall not be entitled on the hearing of the appeal to contend that the decision of the court below should be varied upon grounds not specified in a notice given under this Rule, to apply for any relief not so specified, or to support the decision of the court below upon any grounds not relied upon by that court or specified in such a notice.

(4) Any notice given by a respondent under this Rule (in these Rules referred to as a "respondent's notice") shall be served on the appellant, and upon all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, within fourteen days after the service of the notice of appeal on the respondent.

(5) A party by whom a respondent's notice is served shall, within two days after service of the notice, furnish a copy of the notice to the Registrar.

6. (1) A notice of appeal or respondent's notice may be amended—

Amendment  
of notice of  
appeal and  
respondent's  
notice.

(a) by or with the leave of the Court, at any time;

(b) without such leave, by supplementary notice served, at least seven days before the day appointed for the hearing of the appeal under Rule 10 of these Rules, upon each of the parties upon whom the notice to be amended was served.

(2) A party by whom a supplementary notice is served under this Rule shall, within two days after service of the notice, furnish a copy of the notice to the Registrar.

7. (1) The shorthand writer shall sign the shorthand note taken of any proceedings in the Royal Court in respect of which a shorthand note is required to be taken by subsection (1) of section twenty-three of the Law and shall certify the same to be a complete and correct shorthand note thereof.

Shorthand  
note and  
transcript of  
proceedings  
in court  
below.

(2) The transcript required to be made under subsection (1) of section twenty-three of the Law of the shorthand note of any such proceedings as are mentioned in paragraph (1) of this Rule or of any

part of such shorthand note (hereafter in these Rules referred to as "the official transcript") shall be typewritten by the shorthand writer who took and certified such shorthand note or by such other competent person as the Registrar shall appoint in that behalf.

(3) The official transcript shall be furnished to the Registrar by the shorthand writer or other person by whom it was made together with a declaration in the form set out in Part II of the Schedule to these Rules.

Documents  
for use of  
the Court  
and  
exchange  
of cases.

8. (1) The appellant shall, before the expiration of four months after the day on which the appeal was set down under Rule 4 of these Rules, lodge with the Registrar four copies of—

- (a) the notice of appeal;
- (b) the judgment, order, decree or award under appeal;
- (c) the pleadings, if any, in the proceedings in the court below;
- (d) the official transcript, if any;
- (e) such affidavits or depositions, if any, as are relevant to the matters in controversy on the appeal;
- (f) such exhibits or parts of exhibits (including correspondence) as are relevant to the matters in controversy on the appeal;
- (g) in cases where a shorthand note has not been taken of the proceedings in the court below, the note, if any, of the presiding judge of the court below of his decision and of such evidence as is relevant to the matters in controversy on the appeal;
- (h) a statement setting out the contentions to be urged and the authorities to be cited by

the appellant in support of his appeal (hereafter in this Rule referred to as "the appellant's case").

(2) The appellant shall, within two days after complying with the provisions of paragraph (1) of this Rule, serve on every party on whom the notice of appeal was served a copy of the appellant's case.

(3) A respondent shall, within one month after service on him of the appellant's case, lodge with the Registrar four copies of a statement setting out the contentions to be urged and the authorities to be cited by him at the hearing of the appeal (hereafter in these Rules referred to as "the respondent's case").

(4) A respondent shall, within two days after complying with the provisions of the last preceding paragraph, serve on the appellant a copy of the respondent's case.

9. If the appellant has not lodged with the Registrar all such documents and exhibits as he is required to lodge with the Registrar under paragraph (1) of the last preceding Rule—

Abandonment of appeal by non-prosecution.

- (a) within the time limited for so doing under that paragraph; or
  - (b) where the time so limited has been extended or abridged by an order made under Rule 17 of these Rules, within the time limited for so doing under that order;
- he shall be deemed to have abandoned his appeal.

10. (1) A judge of the Court shall, as soon as may be after the expiration of the time limited for the lodging of the respondent's case under Rule 8 of these Rules, appoint a day for the hearing of the appeal.

Fixing of date of hearing.

(2) Except with the consent of all the parties to an appeal, the day appointed for the hearing of the appeal shall not be earlier than the twenty-one days next following the day on which the day for the hearing of the appeal was appointed.

(3) The Registrar shall, at the earliest possible date, serve on the appellant a notice of the day appointed under paragraph (1) of this Rule for the hearing of the appeal.

(4) The appellant shall, at least ten days before the day appointed for the hearing of the appeal, serve a notice of the day so appointed on every party on whom the notice of appeal was served.

Directions  
of the  
Court as  
to service  
of notice  
of appeal.

11. (1) The Court may in any case direct that the notice of appeal be served upon any party to the proceedings in the court below on whom it has not been served, or upon any person not a party to those proceedings.

(2) In any case in which the Court directs the notice of appeal to be served on any party or person, the Court may also direct that any respondent's notice by which that party or person is directly affected shall be served upon him.

(3) The Court may in any case where it gives a direction under this Rule—

- (a) postpone or adjourn the hearing of the appeal for such period and upon such terms as may be just; and
- (b) give such judgment and make such order on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

General  
powers of  
the Court.

12. (1) The Court may at any time, either of its own motion or on the application of any party to

an appeal, order any document to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) The Court shall have full discretionary power to receive further evidence upon questions of fact, either by oral examination in court, by affidavit, or by deposition taken before a Jurat of the Royal Court of Guernsey, the Chairman of the Court of Alderney or the Seneschal of Sark or before an examiner or commissioner:

Provided that in the case of an appeal from a judgment after trial or hearing of any cause or matter upon the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court under the foregoing provisions of this Rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not so specified in such a notice; and the Court may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

Powers of  
the Court  
as to new  
trials.

13. (1) A new trial shall not be ordered—

- (a) on the ground of misdirection; or
- (b) on the ground of the improper admission or rejection of evidence; or
- (c) in the case of an appeal from the Royal Court sitting as an Ordinary Court or from the Matrimonial Causes Division of the Royal Court composed of the Bailiff, the Lieutenant Bailiff or the Judge Delegate and any four of the Jurats, because the verdict of the Jurats was not taken upon a question which the presiding judge at the trial was not asked to leave to them;

unless, in the opinion of the Court, some substantial wrong or miscarriage has been thereby occasioned.

(2) A new trial may be ordered on any question without interfering with the finding or decision upon any other question; and if it appears to the Court that any such wrong or miscarriage as is mentioned in paragraph (1) of this Rule affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(3) In the case of an appeal from the Royal Court sitting as an Ordinary Court, where the Court has power to order a new trial on the ground that damages awarded by the Jurats are excessive or inadequate, the Court may, in lieu of ordering a new trial—

- (a) with the consent of all parties concerned, substitute for the sum awarded by the Jurats such sum as appears to the Court to be proper;
- (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the Jurats by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court shall not have power to reduce or increase the damages awarded by the Jurats.

(4) A new trial shall not be ordered by reason of the ruling of any court that a document is sufficiently stamped or does not require to be stamped.

14. (1) Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court, be brought before the Court as follows, that is to say—

Evidence on appeal.

- (a) in the case of evidence taken by affidavit or by deposition, by the production of copies of the affidavit or deposition;
- (b) in the case of evidence given orally, by a copy of the official transcript or by such other means as the Court may direct.

(2) In the case of an appeal relating to a decision of the Court of Alderney or the Court of the Seneschal of Sark, the Court may hear and determine the appeal upon any evidence or statement of what occurred in the Court of Alderney or the Court of

the Seneschal of Sark, as the case may be, which appears to the Court to be sufficient.

Stay of execution.

15. Except so far as the court below or the Court may otherwise direct—

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal.

Applications to the Court, to a single judge of the Court and to the presiding judge of any court below.

16. (1) Every application to the Court, to a judge thereof or to the presiding judge of the court below shall be made in writing and shall state in general terms the grounds of the application.

(2) Subject to the provisions of the next succeeding paragraph and of paragraph (5) of this Rule, any person intending to make an application to the Court, to a judge thereof or to the presiding judge of any court below shall serve a notice thereof upon the party or parties affected not less than three days before the day on which he intends to make the application; and such notice shall state the day, time and place on and at which the application is to be made and shall be accompanied by a copy of the application.

(3) The Court, a judge thereof or the presiding judge of any court below, as the case may be, if satisfied that the delay caused by complying with the provisions of the last preceding paragraph would or might entail irreparable or serious mischief, may, upon application made in that behalf, make any order ex parte upon such terms as to costs or otherwise and subject to such undertaking, if any, as the Court or judge may think just; and any party affected by such order may apply to the Court or the judge, as the case may be, to set it aside.

(4) If on the hearing of an application the Court, a judge thereof or the presiding judge of any court below, as the case may be, shall be of opinion that any person on whom notice of the application has not been served in accordance with the provisions of paragraph (2) of this Rule ought to have or to have had such notice, the Court or judge may either dismiss the application or adjourn the hearing thereof, in order that such notice may be served on that person, upon such terms, if any, as the Court or judge may think fit to impose.

(5) Any application to the Court for leave to appeal (other than an application made after the expiration of the time for appealing) shall be made *ex parte* in the first instance; but unless the application is then dismissed or it appears to the Court that undue hardship would be caused by an adjournment, the Court shall adjourn the application and give directions for the service of notice thereof upon the party or parties affected.

(6) Where an application has been refused by the presiding judge of any court below, an application for a similar purpose may be made to the Court or to a judge thereof.

(7) Wherever under Part II of the Law an application may either be made to the presiding judge of any court below or to the Court or a judge of the Court, it shall be made in the first instance to the presiding judge of the court below.

17. (1) The Court or a judge thereof may, on such terms as the Court or judge thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any order or direction, to do any act and may extend any such period although the application for exten- Extension of time.

sion is not made until after the expiration of that period.

(2) The period within which a person is required by these Rules, or by any order or direction, to do any act may be extended by consent in writing without an order of the Court or of a judge thereof being made for that purpose.

(3) Without prejudice to the power conferred on the Court or a judge thereof by paragraph (1) of this Rule, the period for serving notice of appeal under Rule 3 of these Rules may be extended by the presiding judge of the court below upon application being made before the expiration of that period.

Addresses  
for service.

18. (1) The appellant shall, as soon as may be after service of the notice of appeal, furnish to the Registrar and to every person on whom the notice of appeal has been served, an address within the Island of Guernsey which he elects as his address for the service on him of any notice or other document and in the event of the appellant failing to comply with the provisions of this paragraph within the time limited for the setting down of the appeal under Rule 4 of these Rules then, until such time as he complies with the provisions of this paragraph, his address for service on him of any notice or other document shall be the office of Her Majesty's Sergeant in Guernsey.

(2) A respondent shall, as soon as may be after service of the notice of appeal on him, furnish to the Registrar and to the appellant an address for service within the Island of Guernsey which he elects as his address for the service on him of any notice or other document and in the event of a respondent failing to comply with the provisions of this paragraph within the fourteen days next following the

service on him of the notice of appeal, then, until such time as he complies with the provisions of this paragraph, his address for service on him of any notice or other document shall be the office of Her Majesty's Sergeant in Guernsey.

19. (1) Subject to the provisions of the next succeeding Rule and unless the Court or a judge thereof otherwise directs, every notice or other document which is required to be served on any person by or under these Rules shall be served—

Service of notices, etc.

(a) in the Island of Guernsey, by Her Majesty's Sergeant;

(b) in the Island of Alderney, by the Clerk of the Court of Alderney;

(c) in the Island of Sark, by the Prévôt of Sark; and shall be served personally on that person, except in the case where that person has an address for service in the Island of Guernsey in pursuance of the provisions of the last preceding Rule, in which case the notice or other document may be served on that person by leaving it at his address for service.

20. (1) If, in the case where any person on whom any notice or other document is required to be served by or under these Rules has not an address for service in the Island of Guernsey in pursuance of the provisions of Rule 18 of these Rules, it appears—

Substituted service.

(a) where the notice or other document relates to any application intended to be made to the presiding judge of any court below, to the presiding judge of that court,

(b) in any other case, to the Court or a judge thereof,

that it is impracticable for any reason to serve the notice or other document personally on that per-

son, the Court, the judge of the Court or the presiding judge of the court below, as the case may be, may, upon application being made ex parte in that behalf, make an order for substituted service of the notice or other document.

(2) An application under paragraph (1) of this Rule shall specify the kind of substituted service desired and shall be accompanied by an affidavit stating the facts on which the application is founded.

(3) Substituted service of any notice or other document in relation to which an order has been made under this Rule shall be effected by taking such steps as the Court or a judge thereof, or the presiding judge of the court below, as the case may be, may direct to bring the notice or other document to the notice of the person to be served.

Proof of  
service.

21. Where a notice or other document has been served on any person—

- (a) by Her Majesty's Sergeant, the Clerk of the Court of Alderney or the Prévôt of Sark, a certificate of service shall be issued by Her Majesty's Sergeant, the Clerk of the Court of Alderney or the Prévôt of Sark, as the case may be, stating the date on which the notice or other document was served on that person, where it was served and how, and such certificate shall be conclusive proof of such service and of the place and mode of such service;
- (b) by substituted service under an order made under the last preceding Rule or in any other manner, service of the notice or other document shall be proved by affidavit.

Affidavits.

22. An affidavit, for the purposes of these Rules shall—

- (a) if made in the Island of Guernsey, be made before the Bailiff, or Lieutenant-Bailiff, and any two Jurats of the Royal Court or before a notary public;
- (b) if made in the Island of Alderney, be made before any two Jurats of the Court of Alderney;
- (c) if made in the Island of Sark, be made before the Seneschal;
- (d) if made elsewhere, be made before a British consular officer or any person for the time being authorised by law in the place where the affidavit is made to administer an oath for any judicial or other legal purpose;
- (e) if the deponent is serving in any of the regular armed forces of the Crown, be made before an officer holding a commission in any of those forces.

23. Part I of the Ordinance known as "Ordonnance réglant la procédure à suivre pour l'examen des témoins dans les causes où il y aura appel à la Cour des Jugements (Titre I.) et aussi réglant la procédure à suivre dans les cas où il y a lieu à examiner des témoins à futur (Titre II.)" made permanent on the fifth day of October, nineteen hundred and thirty-one, is hereby repealed. Repeal.

24. (1) These Rules may be cited as the Court of Appeal (Civil Division) (Guernsey) Rules, 1964. Citation and commencement.

(2) These Rules shall come into force on the fourth day of June nineteen hundred and sixty-four.

PART I

*Form of notice of appeal*

In the Court of Appeal (Civil Division), Guernsey.

On appeal from.....(1)

Between A.....B.....  
Plaintiff

and

C.....D.....  
Defendant

TO: .....(2)

TAKE NOTICE that the above-named Plaintiff (Defendant) intends to appeal from the whole of the judgment given (order made) by the .....(1) at the trial (hearing) of this action on the ..... day of ..... 19 , where it was adjudged (ordered) that ..... ((3) intends to appeal from so much of the judgment given (order made) by the .....(1)

- 
- (1) State the court from which the appeal is to be made, that is to say, the Royal Court sitting as an Ordinary Court, or the Matrimonial Causes Division of the Royal Court.
  - (2) State the name of the Plaintiff or Defendant as the case may be.
  - (3) To be used if only part of the judgement or order is appealed from.

at the trial (hearing) of this action on the .....  
day of ....., 19 ....., as adjudged  
(ordered) that ..... and proposes to  
ask the Court of Appeal for an order (4) .....  
.....

AND FURTHER TAKE NOTICE that the grounds  
of this appeal are as follows:—

(5) .....  
.....  
.....  
.....  
.....  
.....

Dated the ..... day of ..... 19.....

(Signed) (6).....  
Plaintiff/Defendant

- 
- (4) State the precise form of the order applied for.
  - (5) Specify the grounds of the appeal shortly and simply and without detailed reasons.
  - (6) The notice of appeal may be signed by the Advocate acting for the Plaintiff or Defendant on behalf of his client.

PART II

*Declaration verifying transcript of shorthand notes*

In the Royal Court of Guernsey

In the matter of the action between A.....

B..... Plaintiff, and C.....

D....., Defendant.

I, ..... of .....

.....  
hereby declare that the transcript attached hereto is a transcript of the shorthand note relating to the whole (to part of) the trial (hearing) of the above-named action and purporting to have been signed and certified by ..... (signed and certified by me), and I further hereby declare that the said transcript is a correct and complete transcript of the said shorthand note to the best of my skill and ability.

Dated the ..... day of ..... 19.....

(Signed) .....

R. H. VIDELO,  
Registrar of the Court of Appeal