

**THE LAWS**  
**OF THE**  
**STATE OF BRUNEI**  
**1906-1930**



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ALPHABETICAL INDEX OF THE SHORT TITLES  
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UNREPEALED ON 31ST DECEMBER, 1930.

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ENACTMENT NO. I OF 1908.

AN Enactment to amend the law relating to the constitution and powers of the Civil and Criminal Courts and the law and procedure to be administered in the State.

[31st March, 1908.]

M. S. H. McARTHUR,  
*British Resident.*

It is hereby enacted by His Highness the Sultan in Council as follows:—

1.—(i) This Enactment may be cited as “The Courts Enactment 1908” and shall come into force on the first day of April, 1908. Short title.  
Commence-  
ment.

(ii) Upon the coming into force of this Enactment “The Courts Enactment 1906” shall be repealed. Repeal.

2. In this Enactment:—

“The State” means the State of Brunei;

“The Colony” means the Colony of the Straits Settlements;

“The Supreme Court” means the Supreme Court of the Colony;

“The Court of Appeal” means the Supreme Court when exercising its appellate civil jurisdiction.

Interpreta-  
tion.

3. *The following Courts are constituted in the State for the administration of Civil and Criminal justice:—* Courts  
constituted.  
E. 7 of 1920.

(i) *The Court of the Resident;*

(ii) *Courts of Magistrates of the First Class;*

(iii) *Courts of Magistrates of the Second Class;*

(iv) *Courts of Native Magistrates;*

(v) *Courts of Kathis.*

4.—(i) *The Court of the Resident shall consist of—*

(a) *the Resident; or*

(b) *the District Judge of the District Court of Labuan or any District Judge of the Colony of the Straits Settlements when he is appointed to hold such Court by the High Commissioner with the concurrence of His Highness the Sultan.*

Constitu-  
tion and  
Jurisdic-  
tion of  
the Court  
of the  
Resident.

*It shall have and exercise such original and appellate jurisdiction in civil and criminal matters as is hereinafter provided.*

(ii) *Except in the case provided by section 23 of the principal Enactment the Officer presiding in the Court of the Resident shall sit without assessors.*

(iii) *The Court of the Resident shall have a seal bearing such device or impression as the Resident shall determine with an exergue or label surrounding the same with the name of the Court thereon.*

5.—(i) The said Court shall subject to the provisions of this and of all other Enactments for the time being in force have jurisdiction in all suits, matters and questions of a civil nature, excepting only that nothing herein contained shall be deemed to authorize any Court in the State to dissolve or annul a marriage lawfully solemnised between Christians in the United Kingdom of Great Britain and Ireland or in any British Colony, Protectorate or Possession. Civil jurisdiction.

(ii) In amplification and not in derogation of the generality of the foregoing powers the said Court may try all suits by and against all persons and bodies corporate, in all cases where the persons who are defendants are present in the State, or the corporate body which is defendant has an establishment or place of business in the State: and also in the following cases although the defendant is not present, or has not its establishment as aforesaid in the State, that is to say if the defendant has property in the State or if the whole or any part of the subject matter of the suit is land or stock or other property situate within the State; or where any act, deed, will or thing affecting such land, stock or property was done, executed or made within the State; and whenever the contract which is sought to be enforced or rescinded, dissolved, annulled or otherwise affected in any such suit, or for the breach whereof damages or other relief are or is demanded in such suit, was made or entered into, or was to be performed or partly performed within the State; and whenever there has been a breach within the State of any contract wherever made; and whenever any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was or is to be done or is situate within the State, or if the cause of action arose in the State, or if the subject of the proceeding otherwise falls, on general principles of international law or comity, to be determined by the law of the State. In suits founded on contract "cause of action" as used in this section shall not necessarily mean the whole cause of action; but a cause of action shall be deemed to have arisen within the jurisdiction,

the contract was made therein, though the breach may have occurred elsewhere, and also if the breach occurred within the jurisdiction, though the contract may have been made elsewhere.

6. The said Court shall have original criminal jurisdiction for the enquiry into and trial of all offences committed in the State or on the high seas on board ships registered in the State or committed by subjects of the State on the high seas on board ships whether such ships be registered in the State or not. Criminal jurisdiction.

7. In its appellate jurisdiction the said Court shall have power to hear and determine all appeals from the decisions of the lower Courts both in civil and criminal matters; and may exercise full powers of supervision and revision in respect of all proceedings in such Courts. Appellate jurisdiction.

8A.—*Courts of Magistrates shall be of two kinds:—* Courts of Magistrates.  
*Courts of Magistrates of the First Class.*  
*Courts of Magistrates of the Second Class.*

8B.—(i) *The Court of Magistrate of the First Class shall in its criminal jurisdiction try all offences for which the maximum term of imprisonment provided by law does not exceed a term of 7 years imprisonment of either description or which are punishable with fine only and any offence in respect of which jurisdiction is given by law to the Court of a Magistrate of the First Class; and in its civil jurisdiction shall hear and determine all suits when the amount in dispute or the value of the subject matter does not exceed one thousand dollars.* Powers of Courts of Magistrates of First Class.

(ii) *Such Court shall also have power—*

(a) *to grant probates of wills and letters of administration in the estates of all persons leaving movable or immovable property in the State or at the time of death having a fixed place of abode within the State where such estate exclusive of what the deceased was possessed of or entitled to as a trustee and not beneficially, but without deducting anything on account of the debts due or owing from the deceased, does not exceed in value two thousand five hundred dollars and to alter revoke and annul the same;*

(b) *to appoint and control guardians of infants and lunatics.*

*Provided that nothing in this clause shall be taken to be in derogation of the full powers of the Court of the Resident in respect of the matter mentioned in sub-clauses (a) and (b) thereof.*

(iii) *In its appellate jurisdiction the said Court shall have power to hear and determine all appeals from the decisions of inferior Courts both in civil and criminal matters, and may exercise full powers of revision and supervision in respect of all proceedings in such Courts.* Appellate jurisdiction

(iv) *The Court of a Magistrate of the First Class shall have a seal bearing such device or impression as the Resident shall determine with an exergue or label surrounding the same with the name of the Court thereon.*

**8c.**—(i) *The Court of a Magistrate of the Second Class shall in its criminal jurisdiction try all offences for which the maximum term of imprisonment provided by law does not exceed 3 years imprisonment of either description or which are punishable with fine only of a sum not exceeding \$100 and any offence in respect of which jurisdiction is given by law to the Court of a Magistrate of the Second Class; and in its civil jurisdiction shall hear and determine all suits when the amount in dispute or the value of the subject matter does not exceed \$100.* Powers of Magistrates of the Second Class.

(ii) *The Court of a Magistrate of the Second Class shall not have power—*

(a) *to grant probate of wills or letters of administration;*

(b) *to appoint and control guardians of infants and lunatics;*

(c) *to hear appeals either in civil or criminal matters.*

(iii) *The Court of a Magistrate of the Second Class shall have a seal bearing such device or impression as the Resident shall determine with an exergue or label surrounding the same with the name of the Court thereon.*

**9.** *The Court of a Native Magistrate shall have power to hear and determine all suits brought by or against Malays or other Asiatics in which the amount in dispute or the subject matter does not exceed \$25 and in its criminal jurisdiction shall have power to try and determine cases in which the maximum amount of imprisonment prescribed by law does not exceed three months.* Native Magistrate's Courts.

*The Court of a Kathi shall have such powers in all matters concerning Mohammedan religion, marriage and divorce as may be defined in his "Kuasa."* Kathi's Courts.

**10.** *In the event of any lawful order made by the Court of a Native Magistrate or of a Kathi not being obeyed such Court may report the matter with a copy of all proceedings therein to the Court of a Magistrate of the First Class having jurisdiction in the District where such Court is* Execution of decrees of Inferior Courts.

*situated. Such Magistrate's Court after satisfying itself of the justice of the order shall enforce such order as though it were an order made by itself.*

**11.**—(i) All Magistrates shall be appointed by the Resident for the State or for such areas as may be specified. Such appointment shall be publicly notified and shall take effect from the date of publication. Appoint-  
ments.

(ii) Any Magistrate may be suspended from office by the Resident.

**12.** All Kathis shall be appointed by the Sultan in Council within and for the areas mentioned in their "Kuasa" and may be suspended or removed from office by the same authority. Every such appointment suspension or removal from office shall be under the hand and seal of the Sultan and shall be countersigned by the Resident. Kathis

**13.** *The following sentences may be imposed by the various Courts:—* Sentences.

*Court of the Resident—any sentence authorised by law.*

*Courts of Magistrates of the First Class.—*

*Imprisonment for a term not exceeding two years.*

*Fine not exceeding \$1,000.*

*Whipping not exceeding 12 strokes.*

*Courts of Magistrates of the Second Class.—*

*Imprisonment for a term not exceeding fourteen days.*

*Fine not exceeding \$50.*

*Courts of Native Magistrates and Kathis.—*

*Fine not exceeding \$10.*

**14.**—(i) The Supreme Court or any Judge thereof shall have original jurisdiction in the case of any offence charged to have been committed within the State for which the punishment of death is authorised by law. Original  
criminal  
jurisdiction  
of Supreme  
Court.

(ii) Such jurisdiction may be exercised either within the Colony or within the State.

(iii) In a trial under this section the accused may be convicted of any offence other than one punishable by death provided that it arises out of the matters constituting the offence with which he is charged.

(iv) The criminality of the act charged and the punishment to be inflicted shall be determined according to the law of the State.

**15.**—(i) An appeal shall lie to the Court of Appeal sitting within the Colony from the final decision of the Court of the Resident in any civil action or proceeding where the amount in dispute or the subject matter exceeds \$1,000 but no such appeal shall lie in any of the following cases:—

Civil appellate jurisdiction of Court of Appeal.

- (a) where the judgment or order is made by the consent of parties;
- (b) where the judgment or order relates to costs only; or
- (c) where by any Enactment for the time being in force the judgment or order of the Court of the Resident is expressly declared to be final.

(ii) The appellant shall give notice of appeal within forty-two days from the date when the judgment or order was pronounced or within such further time as the Court of Appeal may by special order direct.

Time for giving notice of appeal.

**16.**—(1) An appeal shall lie to the Supreme Court sitting within the Colony from any decision of the Court of the Resident in the exercise of its original jurisdiction whereby any person has been convicted and sentenced to not less than two years imprisonment or to a fine of not less than \$500.

Criminal appellate jurisdiction of Supreme Court.

(2) The appellant shall lodge at the Court of the Resident a petition of appeal addressed to the Supreme Court within seven days from the date when the judgment or order was pronounced or within such further time as may be allowed by the Court of the Resident.

Time for lodging appeal.

**17.** The Court of the Resident shall execute enforce and give effect to any judgment or order of the Court of Appeal or of the Supreme Court made under this Enactment.

Resident's Court to give effect to judgments of Court of Appeal, or Supreme Court.

**18.** From any judgment or order of the Court of Appeal in any civil matter under this Enactment an appeal may be made to His Britannic Majesty in Council subject to such rules and regulations as may be prescribed by order of His Majesty in Council.

Appeal to the Privy Council.

**19.** The procedure to be followed in civil actions and proceedings in the Court of the Resident and in Magistrates' Courts and the procedure to be followed in prosecuting an appeal (including the giving of security) from the Court of the Resident to the Court of Appeal shall be that prescribed by the Civil Procedure Code in force for the time being in the Colony with respect to District Courts and the mode of appeal therefrom with such alterations as may be required to suit the circumstances of the State. The appeal shall be heard by the Court of Appeal and shall be determined in accordance with the law of the State. Provided that in

Procedure in civil actions in Resident's and Magistrates' Courts and in appeals therefrom.



matters where District Courts have no jurisdiction the procedure prescribed by such Code in respect of the Supreme Court shall be followed with such alterations as may be required to suit the circumstances of the State.

**20.** The procedure to be followed in criminal proceedings in the Court of the Resident and in Magistrates' Courts shall except in cases where the punishment authorized by law for the offence is death be that prescribed by the Criminal Procedure Code in force for the time being in the Colony with regard to Police Courts and District Courts with such alterations as may be required to suit the circumstances of the State.

Procedure in criminal proceedings in Resident's and Magistrates' Courts.

**21.** The procedure to be followed in prosecuting an appeal (including the giving of security) from the Court of the Resident to the Supreme Court in criminal cases shall be that prescribed by the Criminal Procedure Code in force for the time being in the Colony with regard to appeals from Police Courts and District Courts. The appeal shall be heard by the Supreme Court in the manner prescribed by the Criminal Procedure Code in force for the time being in the Colony and shall be determined in accordance with the law of the State.

Procedure in appeals in criminal proceedings.

**22.** The procedure to be followed in the Courts of Native Magistrates and Kathis and in appeals to the Court of the Resident or to the Courts of Magistrates of the First Class shall be such as shall be prescribed by Rules made by the Resident under this Enactment.

Procedure in Courts of Native Magistrates and Kathis.

**23.**—(i) In case any person shall be charged with an offence for which the punishment of death is authorised by law a preliminary inquiry shall be held in the Court of a Magistrate of the First Class in the manner prescribed by the Criminal Procedure Code in force for the time being in the Colony for preliminary inquiries into offences triable by the Supreme Court.

Procedure where person charged with offence punishable by death.

(ii) In any case where such person shall be committed for trial the record of the proceedings shall be forwarded to the High Commissioner who may direct that the person so committed be tried:—

High Commissioner to designate Court for trial.

(a) in the Court of the Resident;

(b) by a Judge of the Supreme Court sitting in the State; or

(c) by a Judge of the Supreme Court sitting in the Colony.

(iii) When any person is tried under this section by the Resident or by a Judge of the Supreme Court sitting in the State, the Resident shall nominate and summon as assessors

Case to be tried in State with assessors.

not less than two and not more than four indifferent British subjects of good repute resident in the State or belonging to a British ship, but where the Resident is able to obtain the presence of one fit person only as assessor the Resident or Judge (as the case may be) may sit alone with him as assessor.

(iv) An assessor shall not have a vote in the decision of any case but an assessor dissenting in a criminal case from any conviction or the amount of punishment awarded may record his dissent and the grounds thereof and the same shall be annexed to and form part of the evidence.

Position of assessor.

If any person summoned to act as assessor fails without lawful excuse to attend at the trial or any adjournment thereof or to continue to serve throughout the trial he shall be liable under a summary order of the Resident or Judge to a fine not exceeding \$50 to be levied by attachment and sale of his goods and in default of recovery thereby of the fine to be sentenced to simple imprisonment for a period not exceeding six days if the fine is not sooner paid.

Punishment for failure to act as assessor.

(vi) A trial under this section shall be conducted as near as may be in the manner in which criminal trials are conducted in the Colony under the Criminal Procedure Code in force for the time being in the Colony but the provisions contained in such Code relating to a jury shall not apply.

Mode of trial in the State.

(vii) Where any person is tried under this section by a Judge of the Supreme Court sitting in the Colony the trial shall be conducted in every respect as if the offence alleged had been committed within the Settlement of Singapore.

Mode of trial by Supreme Court in Colony.

24.—(i) As soon as conveniently may be after sentence of death has been pronounced by the Court of the Resident the Resident or in the case of his absence or inability some other Magistrate shall forward to the High Commissioner a copy of the notes of evidence taken at the trial with a report signed by him setting out his opinion whether there are any and what reasons why the sentence should or should not be carried out.

Procedure after sentence of death has been pronounced by Resident's Court.

(ii) The High Commissioner shall have power thereupon or after the result of any further inquiry directed under this section shall have been forwarded to him, at his discretion to confirm the sentence of death or to commute it into one of imprisonment or to pardon the person sentenced.

Power of High Commissioner.

(iii) The High Commissioner may direct any further inquiry to be made into or additional evidence to be taken upon any point bearing upon the guilt or innocence of any person convicted and sentenced to death by the Court of the Resident and thereupon such inquiry shall be made or such evidence taken in the presence of the convicted person

High Commissioner may direct further inquiry.

and with the aid if possible of the assessors or assessor present at the trial and the result of such inquiry and the evidence taken (if any) shall be forwarded to the High Commissioner.

(iv) As soon as conveniently may be after sentence of death has been pronounced by a Judge of the Supreme Court whether sitting in the Colony or in the State such Judge shall forward to the High Commissioner a copy of the notes of evidence taken at the trial with a report signed by him setting out his opinion whether there are any and what reasons why the sentence of death should not be carried out and the High Commissioner after making any inquiries which he may think fit, at his discretion shall confirm the sentence of death or commute it into one of imprisonment or pardon the person sentenced.

Procedure after sentence of death has been pronounced by Judge of Supreme Court.

(v) The Court of the Resident shall execute and give effect to any sentence of imprisonment made by the High Commissioner.

Enforcing sentences of High Commissioner.

(vi) If the High Commissioner shall confirm any sentence of death he shall certify the same under his hand and seal and the Resident upon receipt of such confirmation shall submit the same to the Sultan in Council who shall thereupon make an order stating the time and place at which the sentence is to be carried out.

Certificate of High Commissioner as to sentence of death.

(vii) The Resident on receipt of such last mentioned order shall issue a warrant directed to the Officer in Charge of the prison where such prisoner is incarcerated and such officer shall carry the sentence into effect according to law.

Warrant to be issued.

25. The following laws with the necessary alterations to adapt them to the State shall as far as local circumstances admit and subject to the provisions contained in this Enactment be the law of the State:—

Colonial and Federated Malay States Laws adopted.

- (i) The Penal Code in force for the time being in the Colony.
- (ii) The Law of Evidence in force for the time being in the Colony.
- (iii) The Criminal Procedure Code in force for the time being in the Colony.
- (iv) The Civil Procedure Code in force for the time being in the Colony.
- (v) The Law of Specific Relief in force for the time being in the Federated Malay States.
- (vi) The Law of Contracts in force for the time being in the Federated Malay States.

26. The fees charged in the Courts of the State shall be those prescribed by "The Court Fees Enactment" of the Federated Malay States.