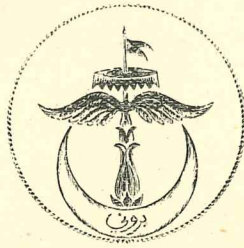


Brunei, laws, statutes, etc. Revised statutes



**THE LAWS
OF
BRUNEI**

REVISED EDITION

PREPARED UNDER THE AUTHORITY OF
THE REVISED EDITION OF THE
LAWS ENACTMENT, 1951

BY

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*Puisne Judge, Nigeria; formerly Judge of Appeal,
Brunei*

VOLUME I

CONTAINING CHAPTERS 1 TO 31 OF THE ENACTMENTS

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CHAPTER 6.

COURTS.

No. 8 of 1951.

TO AMEND THE LAW RELATING TO THE CONSTITUTION AND
POWERS OF THE CIVIL AND CRIMINAL COURTS.

[1st May, 1952.]

Short title. 1. This Enactment may be cited as the Courts Enactment.

PART I.

PRELIMINARY.

Interpre-
tation. 2. In this Enactment, unless the context otherwise requires—

“ Chief Justice ” means the Chief Justice of Sarawak, North Borneo and Brunei;

“ Court of Appeal ” means the Court of Appeal of Sarawak, North Borneo and Brunei established by the Order in Council;

“ High Court ” means the High Court of Sarawak, North Borneo and Brunei established by the Order in Council;

“ Judge ” means a Judge of the Supreme Court and includes the Chief Justice;

“ judgment ” includes decree, order, sentence or decision;

“ Order in Council ” means the Sarawak, North Borneo and Brunei (Courts) Order in Council, 1951;

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CHAPTER 6.

COURTS.

RELATING TO THE CONSTITUTION AND
CIVIL AND CRIMINAL COURTS.

[May, 1952.]

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PART I.

PRELIMINARY.

unless the context otherwise

means the Chief Justice of Sarawak,
Brunei;

"Supreme Court" means the Court of Appeal
Sarawak, North Borneo and Brunei established by

means the High Court of Sarawak,
Brunei established by the Order in

a Judge of the Supreme Court
of Justice;

includes decree, order, sentence or

"local limits of jurisdiction" means the Sarawak, North
Courts) Order in Council, 1951;

"rules of Court" means rules made by the Chief
Justice under section 25 of this Enactment;

"Supreme Court" means the Supreme Court of
Sarawak, North Borneo and Brunei established by the
Order in Council.

PART II.

COURTS OF MAGISTRATES.

3. (1) In addition to the Supreme Court there shall
be established the following Courts for the administration
of civil and criminal law in the State— Courts of
Magistrates.

- (a) Courts of Magistrates of the First Class;
- (b) Courts of Magistrates of the Second Class;
- (c) Courts of Magistrates of the Third Class.

(2) Each Court shall have and use as occasion may
require a seal or stamp bearing thereon the name of the
Court and of the place at which the Court house is situate.

4. (1) The Courts of Magistrates shall be constituted
as follows— Constitution
of Courts of
Magistrates.

(a) the Court of a Magistrate of the First Class
shall consist of an officer appointed by the Resident,
with the approval of the Sultan in Council, to be a
Magistrate of the First Class;

(b) the Court of a Magistrate of the Second Class
shall consist of an officer appointed by the Resident,
with the approval of the Sultan in Council, to be a
Magistrate of the Second Class;

(c) the Court of a Magistrate of the Third Class
shall consist of an officer appointed by the Resident,
with the approval of the Sultan in Council, to be a
Magistrate of the Third Class.

(2) Any Magistrate may sit in and constitute any
Court lower than the Court which he has power to con-
stitute as if he were a Magistrate of such lower Court.

5. The local limits of the jurisdiction of a Court of a
Magistrate shall be the local limits of the administrative
district in which the Court house is situate. Local limits
of jurisdic-
tion.

B.—I.

Criminal
jurisdiction.

6. In the exercise of their criminal jurisdiction the powers of the Courts of Magistrates shall be as provided in this Enactment and in the Criminal Procedure Code (*Chapter 7*).

Civil
jurisdiction.

7. (1) Subject to the provisions of this or any other written law, in the exercise of their civil jurisdiction Courts of Magistrates shall have jurisdiction in every civil matter whereof the value in dispute does not exceed the following—

In the Courts of Magistrates of the—

First Class—Five hundred dollars or where the Chief Justice by notification in the *Government Gazette* confers upon any Magistrate special jurisdiction then in a Court presided over by such Magistrate one thousand dollars;

Second Class—Two hundred and fifty dollars;

Third Class—Fifty dollars:

Provided that in each case—

(a) the cause of action arose either wholly or in part within the local limits of the jurisdiction of the Court; or

(b) the defendant or any one of the defendants at the time of institution of the proceeding actually and voluntarily resides or carries on business or personally works for gain within such local limits.

(2) Notwithstanding that the value in dispute exceeds the amount specified in subsection (1) of this section, Courts of Magistrates of the First Class shall have jurisdiction in any proceeding for the recovery of immovable property, other than proceedings in which there is a *bona fide* dispute as to a title registered under the Land Code (*Chapter 40*), where the rent payable in respect of such property does not exceed one hundred dollars per month or such other sum as may be prescribed by rules of Court in respect of any area specified in such rules.

(3) Courts of Magistrates shall have no jurisdiction in proceedings—

(a) concerning any acts done by the order of the Sultan, or of the Sultan in Council, or of the head of

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provisions of this or any other of their civil jurisdiction Courts jurisdiction in every civil matter does not exceed the following—
Magistrates of the—

one hundred dollars or where the notification in the *Government* on any Magistrate special jurisdiction Court presided over by such thousand dollars;

Two hundred and fifty dollars;

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for any one of the defendants institution of the proceeding actually is or carries on business or performs within such local limits.

that the value in dispute exceeds subsection (1) of this section, the First Class shall have jurisdiction for the recovery of immovable proceedings in which there is a *bona fide* registered under the Land Code amount payable in respect of such one hundred dollars per month be prescribed by rules of Court defined in such rules.

Magistrates shall have no jurisdiction

acts done by the order of the Council, or of the head of

any Government Department, or of a Judge or Judicial Officer;

(b) for the recovery of immovable property where there is a *bona fide* dispute as to a title registered under the Land Code (*Chapter 40*);

(c) for partition of immovable property;

(d) for the specific performance or rescission of contracts;

(e) for the cancellation or rectification of instruments;

(f) for the enforcement of trusts;

(g) for declaratory decrees.

8. Every civil proceeding shall be instituted in the lowest Court which is competent to try it.

Institution of proceedings.

9. (1) Subject to the provisions of subsection (2) of this section and the provisions of any other written law, an appeal in civil matters shall lie—

Civil appeals.

(a) as of right, from all judgments of Courts of Magistrates whether sitting in original or appellate jurisdiction;

(b) by leave of the appellate Court or of a Judge, from any interlocutory order or decision of a Magistrate made in the course of any proceeding in the Court of a Magistrate:

Provided that no appeal shall lie except by leave of the appellate Court or of a Judge—

(i) from any judgment when the amount or value of the subject matter of the trial is less than five dollars, if the appeal is from the judgment of a Court of a Magistrate of the Third Class, or fifty dollars if the appeal is from the judgment of a Court of a Magistrate of the First or Second Class; or

(ii) from any order as to costs only; or

(iii) from an order made by consent of the parties.

(2) The appellate Court shall not entertain any appeal unless the appellant has fulfilled all the conditions of appeal imposed in accordance with rules of Court or any other written law.

Courts to
which
appeals lie.

10. The Court to which the appeal lies shall be as follows—

(a) from a Court of a Magistrate of the Third Class to a Court of a Magistrate of the First Class;

(b) from a Court of a Magistrate of the First Class or a Court of a Magistrate of the Second Class to the High Court.

Revision.

11. (1) A Judge may call for and examine the record of any civil proceeding before any lower Court and a Magistrate of the First Class may call for and examine the record of any civil proceeding in the Court of a Magistrate of the Third Class for the purpose of satisfying himself as to the correctness, legality or propriety of any judgment and as to the regularity of any proceedings of such lower Court.

(2) A Judge or Magistrate of the First Class may, in any civil proceeding the record of which has been called for by himself or which otherwise comes to his knowledge, set aside or vary the judgment of the lower Court, or may give such judgment as he may deem just.

Reference.

12. (1) Where before or on the hearing of any civil proceeding any question of law arises on which the Court hearing the proceeding desires to have the opinion of the High Court, the Court may, either of its own motion, or on the application of any of the parties, draw up a statement of the facts of the case and the point on which an opinion is desired, and refer such statement with its own opinion on the point to the High Court:

Provided that in the case of the Court of a Magistrate of the Third Class, such statement and opinion shall be referred to the High Court through the Court of a Magistrate of the First Class.

(2) The High Court may make such declaration or order thereon as it thinks fit.

PART III.

COURTS OF KATHIS.

Courts of
Kathis.

13. In addition to the Courts hereinbefore mentioned, there shall be established Courts of Kathis with jurisdiction

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divorce.

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PART III.

COURTS OF KATHIS.

Courts hereinbefore mentioned,
 Courts of Kathis with jurisdiction

in matters concerning Mohammedan religion, marriage and
 divorce.

14. All Kathis shall be appointed by the Sultan in
 Council within and for the areas mentioned in their
 "Kuwasas" and may be suspended or removed from office
 by the same authority. Every such appointment, sus-
 pension or removal from office shall be under the hand and
 seal of the Sultan and shall be countersigned by the
 Resident.

Appoint-
 ment of
 Kathis.

15. The Court of a Kathi shall have such powers and
 jurisdiction in all matters concerning Mohammedan
 religion, marriage and divorce as may be set forth in the
 "Kuasa" of the Kathi constituting the Court or as may
 be conferred by any written law:

Jurisdiction
 of the Court
 of a Kathi.

Provided that the sentence which may be imposed by
 the Court of a Kathi shall be by fine not exceeding fifty
 dollars.

16. In the event of any lawful order made by the Court
 of a Kathi not being obeyed, such Court may refer the
 matter, with a certified copy of all the proceedings therein,
 to a Court of a Magistrate of the First Class having juris-
 diction in the area where such Court is situated, and if such
 Magistrate's Court is satisfied as to the justice of the order,
 such order shall be enforced as if it were an order made by
 such Magistrate's Court.

Execution of
 orders of
 Courts of
 Kathis.

17. (1) Subject to any rules made under section 18
 of this Enactment, an appeal shall lie from all judgments
 of Courts of Kathis to the Sultan in Religious Council.

Appeals from
 Courts of
 Kathis.

(2) The Religious Council shall consist of such per-
 sons, learned in the Mohammedan law and religion, as the
 Sultan may appoint; and in this Part the expression
 "Sultan in Religious Council" shall mean the Sultan
 acting after consultation with the Religious Council but
 not necessary in accordance with the advice of such Council
 nor necessarily in such Council assembled.

18. The Sultan in Council may make rules for regulating
 the practice and procedure of Courts of Kathis, and relating
 to appeals therefrom to the Sultan in Religious Council.

Procedure in
 Courts of
 Kathis.

PART IV.

REFERENCES TO THE COURT OF APPEAL.

Reference of point of law to Court of Appeal in case of acquittal by High Court.

19. (1) When any person has been acquitted in a trial before the High Court in the exercise of its original criminal jurisdiction and the Public Prosecutor has, within one month from the date of such acquittal or such further time as the Court of Appeal may permit, signed and filed with the Chief Registrar of the Supreme Court a certificate that the determination of such trial involved a question of law which it is desirable to have determined by the Court of Appeal, the Court of Appeal shall review the case or such part of it as may be necessary and shall deliver a declaratory judgment thereon.

(2) A declaratory judgment of the Court of Appeal under subsection (1) of this section shall not operate to reverse an order of acquittal, but such judgment shall thereafter be binding upon all Courts subordinate to the Court of Appeal in the same manner as an ordinary judgment of the Court of Appeal.

(3) The powers conferred upon the Public Prosecutor by this section shall be exercisable by the Public Prosecutor only.

Reference to Court of Appeal of appeal from Magistrate's Court on ground of public interest.

20. (1) When an appeal from the decision of a Court of a Magistrate in a criminal matter has been heard and determined by the High Court and the Judge who heard the appeal or the Public Prosecutor, on his own behalf or on the application of any party to the proceedings, has, within one month of such determination or within such further time as the Court of Appeal may permit, signed and filed with the Chief Registrar of the Supreme Court a certificate that the determination of such appeal involves a point which it is desirable in the public interest to have determined by the Court of Appeal, such appeal shall be re-heard by the Court of Appeal.

(2) For the purposes of this section the reservation of a question of law by a Court of a Magistrate for the consideration of the High Court under the provisions of the Criminal Procedure Code shall be deemed to be an appeal to the High Court in a criminal matter.

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PART IV.

THE COURT OF APPEAL.

When a person has been acquitted in a trial on the exercise of its original criminal jurisdiction the Public Prosecutor has, within one month after the trial or such further time as the Court may permit, signed and filed with the Court of Appeal a certificate that the trial involved a question of law which has been determined by the Court of Appeal. The Court of Appeal shall review the case or such part of it as the Court of Appeal may think fit and shall deliver a declaratory judgment of the Court of Appeal.

The provisions of this section shall not operate to deprive the Court of Appeal of its appellate jurisdiction, but such judgment shall in all Courts subordinate to the Court of Appeal be given in the same manner as an ordinary judgment of a Court of Appeal.

The powers conferred upon the Public Prosecutor by this section shall be exercisable by the Public Prosecutor only.

When a person has been acquitted in a trial on the exercise of its original criminal jurisdiction the Public Prosecutor has, within one month after the trial or such further time as the Court may permit, signed and filed with the Court of Appeal a certificate that the trial involved a question of law which has been determined by the Court of Appeal. The Court of Appeal shall review the case or such part of it as the Court of Appeal may think fit and shall deliver a declaratory judgment of the Court of Appeal.

The provisions of this section shall not operate to deprive the Court of Appeal of its appellate jurisdiction, but such judgment shall in all Courts subordinate to the Court of Appeal be given in the same manner as an ordinary judgment of a Court of Appeal.

(3) Upon the filing of the certificate referred to in subsection (1) of this section the Court of Appeal or any Judge may make such orders as it or he may see fit to make in respect of the arrest, custody or release on bail of any person convicted, acquitted or discharged as the result of an order of the High Court on the appeal or of the trial Court.

(4) For the purposes of the hearing before the Court of Appeal the Judge who heard the appeal shall cause to be furnished to the Court of Appeal and to the parties to the appeal copies of the grounds of his judgment in such appeal.

(5) The provisions of the Order in Council relating to the criminal appeals shall apply to all appeals heard under the provisions of this section.

(6) The powers conferred upon the Public Prosecutor by this section shall be exercisable by the Public Prosecutor only.

PART V.

GENERAL.

21. (1) In any civil or criminal proceeding in the Court of a Magistrate, the Magistrate may, on his own motion or at the request of any of the parties thereto, if he thinks fit call in the assistance of one or more suitable persons as assessors and shall in such case record the opinion of such assessor or assessors on all matters on which their opinion is asked, but the decision on such matters shall be vested exclusively in the presiding Magistrate.

Assessors
and advisers.

(2) In any civil or criminal proceeding in the Court of a Magistrate, and whether or not the Court is being assisted by assessors as provided in subsection (1) of this section, the Magistrate may if he thinks fit sit with one or more persons qualified to preside in any Court established for the purpose of hearing cases concerning native law or custom, or a person who the Magistrate is satisfied otherwise has knowledge of native law or custom, to advise him on the significance of words or expressions in a native language and on questions of native law or custom.

Officers of
Magistrate's
Court.

22. There shall be such clerks, interpreters and other officers of Courts of Magistrates as appear to the Resident on the recommendation of the Chief Justice to be necessary for the administration of justice and the due execution of all powers and authorities vested in any Court of a Magistrate.

Protection
of Judicial
Officers.

23. (1) No Magistrate or other person acting judicially shall be liable to be sued in any civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any Court or other person bound to execute the lawful warrants or orders of any Magistrate or other person acting judicially shall be liable to be sued in any civil Court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same.

Judges to
have powers
of Magis-
trates.

24. A Judge shall, in addition to such other powers as may be conferred on him, have all the powers conferred on a Magistrate by any written law.

Rules of
Court.

25. (1) The Chief Justice may, with the approval of the Sultan in Council, make rules of Court for regulating the practice and procedure of Courts of Magistrates.

(2) Without prejudice to the generality of the foregoing subsection such rules may be made for any of the following purposes—

(a) regulating the refund of fees;

(b) providing for the submission to the High Court of returns and records of proceedings in Courts of Magistrates;

(c) any purpose (so far as applicable) for which rules of Court may be made under section 22 of the Order in Council;

(d) making provision for any matter which, under this Enactment, is to be or may be provided for by rules of Court.

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clerks, interpreters and other persons who may be necessary for the due execution of the powers vested in any Court of a

or other person acting judicially in any civil Court for any act done by him in the discharge of his duties not within the limits of his jurisdiction. No order for costs be made against any person at the time in good faith believed to do or order the act com-

any Court or other person bound to execute any writs or orders of any Magistrate or other judicially shall be liable to be sued for the execution of any warrant or other process bound to execute if within the jurisdiction of the Court issuing the same.

In addition to such other powers conferred on them, they shall have all the powers conferred on Magistrates by written law.

Such Courts may, with the approval of the Government, make rules of Court for regulating the procedure of Courts of Magistrates.

Notwithstanding the generality of the foregoing provisions, no order may be made for any of the

refund of fees;

the submission to the High Court of appeals from the orders of proceedings in Courts of

(so far as applicable) for which no appeal is made under section 22 of the

provisions for any matter which, under the provisions of the Act, may be or may be provided for by

(3) Rules made under this section may provide that the provisions of any written law in force immediately prior to the commencement of this Enactment shall cease to have effect, or shall be repealed, in so far as such provisions relate to matters in respect of which such rules are lawfully made; and in the event of inconsistency or conflict between any written law in force immediately prior to the commencement of this Enactment and a rule lawfully made under this section the provisions of the rule shall prevail.

PART VI.

TRANSITIONAL PROVISIONS.

26. On the coming into operation of this Enactment, the Courts of Magistrates and Kathis established by the Courts Enactment, 1908, shall cease to exist and all appointments of Magistrates made thereunder shall terminate.

Present Magistrate's and Kathis' Courts to cease to exist.

27. All appointments of Kathis in force immediately prior to the commencement of this Enactment shall continue in force, until revoked or suspended, and shall be deemed to have been made under section 14 of this Enactment.

Present Kathis to continue.

28. (1) Nothing in this Enactment shall affect the validity of proceedings instituted before the commencement of this Enactment in any Court of a Magistrate or Kathi, but the same shall be carried on in the corresponding Court established by this Enactment and enforced in like manner, as nearly as may be, as if the corresponding Court were the Court in which such proceedings were commenced, and any such proceedings may be amended by order of a Magistrate or Kathi or under rules of Court, as the case may be, in such manner as may appear necessary or proper in consequence of the provisions of this Enactment.

Pending proceedings.

(2) Notwithstanding anything contained in this Enactment to the contrary an appeal shall lie to the Court of a Magistrate of the First Class from any judgment of a Court of a Magistrate of the Third Class, or to the Sultan in Religious Council from any judgment of a Court of a Kathi, given prior to the commencement of this

