

LAWS OF BRUNEI

CHAPTER 5 SUPREME COURT

No. 2 of 1963

Amended by

E 3 of 1977

E 5 of 1978

E 3 of 1982

E 11 of 1983

1984 Edition, Chapter 5

Amended by

S 19/1991

S 23/1991

S 11/1992

S 11/1993

S 1/1995

S 85/2000

2001 Edition, Chapter 5

Amended by

S 55/2004

S 61/2004

S 72/2004

S 2/2011

2013 Edition, Chapter 5

Amended by

S 9/2020

S 13/2021

REVISED EDITION 2022

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CHAPTER 5

SUPREME COURT

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SUPREME COURT ACT

An Act to provide for the establishment of a Supreme Court in and for Brunei Darussalam and to provide for the hearing of appeals from such Court

Commencement: 16th September 1963
[S 154/1963]

PART 1

PRELIMINARY

Citation

1. This Act may be cited as the Supreme Court Act.

Interpretation

2. In this Act —

“Court” means a Court established by this Act;

“Judge” means a Judge of the Supreme Court and includes the President of the Court of Appeal, the Chief Justice and a Judicial Commissioner of the Supreme Court;

“Registrar” means the Chief Registrar, Deputy Chief Registrar, Senior Registrar and Registrar of the Supreme Court;

“Rules of Court” means Rules of Court made under this Act and includes forms.

Supreme Court

3. There shall be a Supreme Court in Brunei Darussalam with such jurisdiction as is conferred by this Act.

Constitution of Supreme Court

4. The Supreme Court shall consist of the President, the Chief Justice, the Judges and the Judicial Commissioners of the Supreme Court.

Seal

5. The Supreme Court shall have and use as occasion may require a seal of such nature and patent as the Chief Justice may, by notification published in the *Gazette*, prescribe.

Language of Supreme Court

5A. All proceedings in the Supreme Court shall be in the English language:

Provided that the Court may in the interests of justice allow the giving of evidence by a witness in any other language.

Divisions of Supreme Court

6. (1) The Supreme Court shall be a Court of Record and shall consist of —

(a) the High Court which shall exercise original and appellate criminal and civil jurisdiction; and

(b) the Court of Appeal which shall exercise appellate criminal and civil jurisdiction.

(2) The Judges of the High Court shall be the Chief Justice and such number of Judges as may be prescribed from time to time by His Majesty the Sultan and Yang Di-Pertuan in Council.

(3) The Judges of the Court of Appeal shall be the President and two Judges.

(4) Whenever during any period, owing to illness or absence from Brunei Darussalam or any other cause, the President is unable to exercise the powers or perform the duties of his office, such powers shall be had and may be exercised and such duties shall be performed by the Judge having precedence next after the President who is present in Brunei Darussalam and able to act during that period.

Appointment of Judges

7. (1) The Judges shall be appointed by His Majesty the Sultan and Yang Di-Pertuan by instrument under His Majesty Sign Manual and the State Seal.

(2) A person shall not be qualified for appointment as a Judge unless —

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; or

(b) he is entitled to practice as an advocate in such a court and has been entitled for not less than 7 years to practice as an advocate or solicitor in such a court.

Tenure of office

8. (1) Subject to the provisions of this section, a person holding the office of a Judge shall vacate that office on attaining the age of 65 years or such later time as His Majesty the Sultan and Yang Di-Pertuan may approve.

(2) His Majesty the Sultan and Yang Di-Pertuan may remove a Judge from office on the ground of his inability to properly perform the function of his office or of his misbehaviour.

[S 9/2020]

(3) *(Repealed by S 9/2020).*

(4) *(Repealed by S 9/2020).*

Remuneration of Judges

9. (1) The remuneration of the Judges shall be prescribed by His Majesty the Sultan and Yang Di-Pertuan in Council and such remuneration shall be charged upon the Consolidated Fund.

(2) Remuneration for the purposes of subsection (1) shall include any monies which may become payable in respect of the services of the Judges under any agreement entered into by Brunei Darussalam for the provision of such Judges and of their services.

Oath of office

10. A Judge shall not enter upon the duties of his office unless he has taken and subscribed the oath of office in such form as may be prescribed by His Majesty the Sultan and Yang Di-Pertuan in Council.

Appointment of Judicial Commissioner

11. (1) His Majesty the Sultan and Yang Di-Pertuan may by instrument under His Majesty Sign Manual appoint a person qualified under section 7(2) to be a Judicial Commissioner of the Supreme Court.

(2) The terms of the appointment of any such Judicial Commissioner shall be set out in his Instrument of Appointment and he shall hold office for such period as may be specified in that Instrument.

(3) For the duration of his appointment, the provisions of section 8 apply to a Judicial Commissioner appointed under this section as they apply in relation to a Judge.

(4) The provisions of section 9 apply to the remuneration of such Judicial Commissioner.

(5) A Judicial Commissioner appointed under this section shall have power to act as a Judge and all things done by him in accordance with the terms of his appointment shall have the same validity and effect as if they had been done by a Judge and in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a Judge.

(6) Section 10 applies to a Judicial Commissioner appointed under this section.

Rules of Court

12. Subject to the provisions of this Act, the Judges may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court for regulating the practice and procedure of the Supreme Court.

Enabling power

13. His Majesty the Sultan and Yang Di-Pertuan in Council may by order make such provisions as may appear to him to be necessary or expedient —

(a) for giving effect to the provisions of this Act;

(b) for the purpose of bringing the provisions of any written law (other than the Constitution of Brunei Darussalam) into accord with the provisions of this Act or any other order made thereunder.

Appeals from Court

14. (1) Subject to, and in accordance with, any Order in Council or any other law or rule for the time being in force relating to appeals from the Court, an appeal in any civil case or matter shall, with the leave of the Court, lie from the Court to His Majesty the Sultan and Yang Di-Pertuan and shall be referred by His Majesty the Sultan and Yang Di-Pertuan to the Judicial Committee of Her Britannic Majesty's Privy Council.

(2) Notwithstanding any Order in Council or any other law or rule for the time being in force relating to appeal from the Court, no appeal in any criminal case or matter shall lie from the Court to His Majesty the Sultan and Yang Di-Pertuan.

Sitting of Supreme Court

15. (1) The Chief Justice may appoint such places as he thinks fit as Court houses for the Supreme Court.

(2) Any place in which the Supreme Court is held is deemed to be an open court to which the public generally may have access:

Provided that —

(a) the Supreme Court shall have power to hear any proceedings or any part thereof in camera if the Court is satisfied that it is expedient in the interests of justice, public security or propriety or for other sufficient reason to do so;

(b) the Supreme Court shall ordinarily exclude a witness until he has given evidence in proceedings where the Court is exercising a criminal jurisdiction.

(3) (a) The Supreme Court may at any time order that no person shall publish the name, address or photograph of any witness in any proceedings or any evidence or any other thing liable to lead to the identification of any such witness.

(b) Any person who acts in contravention of any such order shall, notwithstanding any other written law, be liable to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(4) Whenever any party or the Supreme Court in any proceedings or any part thereof —

(a) makes a reference, whether orally or in writing, directly or indirectly, to any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan; or

(b) intends to refer to any issue or matter that may directly or indirectly pertain to or concern the inviolability, sanctity or interests of the position, dignity, standing, honour, eminence or sovereignty of His Majesty the Sultan and Yang Di-Pertuan,

the Supreme Court shall hold such proceedings or such part thereof in camera:

Provided that His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to the Supreme Court that such proceedings or such part thereof not be heard in camera.

(5) Without prejudice to His Majesty the Sultan and Yang Di-Pertuan's power in subsection (4), His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to the Supreme Court to hold the hearing of any proceedings or any part thereof in camera.

(6) His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to the Supreme Court to hold the hearing of any proceedings or any part thereof at such time and venue as His Majesty the Sultan and Yang Di-Pertuan may determine.

(7) Any direction issued by His Majesty the Sultan and Yang Di-Pertuan under subsection (4), (5) or (6) shall not be called in question in or be subject to any judicial review by or appeal to any Court.

(8) (a) No person shall publish or reproduce in Brunei Darussalam or elsewhere any or any part of proceedings, including but not limited to any evidence, exhibit, judgment or document produced in any proceedings, that may have the effect of lowering or adversely affecting directly or indirectly the position, dignity, standing, honour, eminence or sovereignty of His Majesty the Sultan and Yang Di-Pertuan.

(b) Any person who acts in contravention of this subsection is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(9) Nothing in subsection (8) shall prevent any person from referring to or reproducing any or any part of such proceedings where —

(a) such reference or reproduction is reasonably necessary or required in any court in Brunei Darussalam or elsewhere under the law applicable in that court for the purpose of enabling that person to pursue or defend any proceedings in that court, and the person seeking such reference or reproduction applies to that court, whether successfully or not, for an order that such reference or reproduction be made in camera in that court; or

(b) such reference or reproduction (other than in any court in Brunei Darussalam or elsewhere) is reasonably necessary to enable a party to any proceedings in Brunei Darussalam or elsewhere to prepare for or conduct those proceedings, or to enable a person to obtain legal advice in respect of any dispute or actual or contemplated proceedings:

Provided that that party takes all reasonable steps to ensure the confidentiality of the information or documents to be referred to or reproduced.

Conduct of hearing through electronic means [S 13/2021]

15A. (1) Notwithstanding any provision of this Act, the Supreme Court may conduct the hearing of any matter or proceedings through a live video

link, live television link or any other electronic means of communication within or outside Brunei Darussalam with such directions, which may be of general or particular nature, as may be given by the Chief Justice.

(2) Subsection (1) does not affect the operation of section 60A of the Evidence Act (Chapter 108) and sections 236B, 236C, 236D and 236E of the Criminal Procedure Code (Chapter 7).

PART 2

JURISDICTION AND POWERS

Civil jurisdiction of High Court

16. The civil jurisdiction of the High Court shall consist of —

(a) original jurisdiction and authority of a like nature and extent to that held and exercised by the Chancery, Family and Queen's Bench Divisions of the High Court in England; and

(b) such other jurisdiction, whether original or appellate, as may be conferred upon it by this Act or by any other written law.

Transfer of proceedings to Intermediate Courts

16A. (1) At any stage in any proceedings to which this section applies, the High Court may, in accordance with the Rules of the Supreme Court (R 1), either of its own motion or on the application of any party to proceedings, order the transfer of the whole or any part of the proceedings to the Intermediate Courts if —

(a) the parties consent to the transfer;

(b) the High Court is satisfied that —

(i) after allowance has been made for any payment, set-off or other amount admitted to be due, the amount remaining in dispute in respect of the claim is within the monetary limit of the jurisdiction of the Intermediate Courts;

- (ii) the whole amount recoverable in respect of the claim is likely to be within the monetary limit of the jurisdiction of the Intermediate Courts; or
- (iii) in the case of proceedings not involving an unliquidated claim, the subject matter of the proceedings is or is likely to be within the limits of the jurisdiction of the Intermediate Courts;

(c) where only a counterclaim remains in dispute, the High Court considers that the amount recoverable in respect of the counterclaim is likely to be within the monetary limit of the jurisdiction of the Intermediate Courts; or

(d) the High Court considers that the proceedings are not likely to raise any important question of law or fact and are suitable for determination of the Intermediate Courts.

(2) Subject to subsection (3), this section applies to all proceedings commenced in the High Court which the Intermediate Courts would, apart from any limitation by reason of amount or value or annual value, have jurisdiction to hear and determine if commenced in the High Court.

(3) This section does not apply to family proceedings.

(4) Where proceedings are ordered to be transferred from the High Court to the Intermediate Courts —

(a) any party to the proceedings shall lodge with the Registrar of the Intermediate Courts or cause to be lodged with him, the order of the High Court and the writ, or copies of them, and such other documents (if any) required by such order to be filed in the Intermediate Court; and

(b) the Registrar of the High Court shall, on the application of that party and on the production of the order of the High Court and the filing of a copy of it, deliver to the Registrar of the Intermediate Courts all pleadings, affidavits and other documents filed in the High Court relating to the proceedings.

(5) Subject to subsection (6), upon the documents mentioned in subsection (4) being so lodged or delivered, the proceedings shall be transferred to the Intermediate Court.

(6) The transfer shall not affect any right of appeal from the order of the High Court directing the transfer, or the right to enforce in the High Court any judgment signed, or any other order made in the High Court before the transfer.

(7) In this section, “family proceedings” means proceedings in respect of marriage, divorce, maintenance, guardianship and other matters connected with family life.

Costs reduced or proceedings struck out by High Court

16B. Where a party has commenced proceedings in the High Court and the High Court —

(a) is of the opinion that those proceedings should have been commenced in the Intermediate Courts; or

(b) is satisfied that the party knew or ought to have known that the proceedings should, in the opinion of the High Court, have been commenced in the Intermediate Courts,

the High Court shall have regard to those circumstances and it may in its discretion reduce the award of costs by an amount not exceeding 25 *per cent* or strike out the proceedings.

Allocation of proceedings to Intermediate Courts

16C. (1) The Chief Justice may, where he considers it necessary or expedient to improve efficiency in the administration of justice and to provide for more speedy disposal of proceedings commenced in the High Court, by order direct such class or classes or description of proceedings as may be specified in the order to be heard and determined by the Intermediate Courts.

(2) Notwithstanding any other written law, any order made under subsection (1) may —

(a) confer jurisdiction on an Intermediate Court to hear and determine any proceedings specified in the order which, but for the

order, the Intermediate Court would not have jurisdiction to hear and determine by reason only of the fact that the amount involved exceeds the monetary limit of its jurisdiction;

(b) make such provision governing appeals relating to proceedings transferred to the Intermediate Courts (including provisions restricting the right of appeal) as the Chief Justice thinks fit; and

(c) make such incidental provision for the transfer of the proceedings to the Intermediate Courts (including matters relating to procedure and costs) as the Chief Justice thinks fit.

Criminal jurisdiction of High Court

17. The criminal jurisdiction of the High Court shall consist of such jurisdiction, whether original or appellate, as may be conferred upon it by this Act or by any other written law.

Civil jurisdiction of Court of Appeal

18. The civil jurisdiction of the Court of Appeal shall consist of —

(a) appeals from a judgment or order of the High Court in a civil case or matter; and

(b) such other jurisdiction as may be conferred upon it by this Act or by any other written law.

Criminal jurisdiction of Court of Appeal

19. The criminal jurisdiction of the Court of Appeal shall consist of —

(a) appeals from the High Court; and

(b) *(repealed)*;

(c) such other jurisdiction as may be conferred upon it by this Act or by any other written law.

When civil appeal lies to Court of Appeal

20. (1) Subject to subsection (2), an appeal shall lie as of right to the Court of Appeal from every judgment or order of the High Court in a civil case or matter.

(2) No such appeal shall lie —

(a) from any order allowing an extension of time for appealing against a judgment or order;

(b) from any judgment or order expressed to be final by any law;

(c) from any order made with consent of the parties thereto;

(d) from any order relating only to costs;

(e) without leave of the High Court or Court of Appeal, if the amount or value of the subject matter of the trial does not exceed \$10,000; or

(f) without leave of the High Court or Court of Appeal, from any interlocutory order of judgment.

(3) Any reference in this section to the High Court shall include a reference to any other court, person or tribunal from which appeal lies to the Court of Appeal.

Power of High Court to call for records of civil proceedings in Intermediate and Subordinate Courts

20A. Notwithstanding any other written law, the High Court may call for and examine the record of any civil proceedings before any Intermediate Court or Subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any decision recorded or passed, and as to the regularity of any proceedings of any such Intermediate Court or Subordinate Court.

Power of High Court on revision of civil proceedings

20B. In the case of any civil proceedings in an Intermediate Court or Subordinate Court, the record of which has been called for, or which

otherwise comes to its knowledge, the High Court may give such orders thereon, either by directing a new trial or otherwise, as seem necessary to secure that substantial justice is done.

No revision at instance of party who could have appealed

20C. Where an appeal lies from any decision in any civil matter and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of a party who could have appealed.

General supervisory and revisionary jurisdiction of High Court

20D. (1) For the avoidance of doubt and notwithstanding any other written law, in addition to the powers conferred on the High Court by this Act or by any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all Intermediate Courts and Subordinate Courts.

(2) The High Court may in particular but without prejudice to the generality of subsection (1), if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceedings in any Intermediate Court or Subordinate Court, call for the record thereof and may transfer the matter or proceedings to the High Court or may give to the Intermediate Court or Subordinate Court such directions as to the further conduct of that matter or proceedings as justice may require.

(3) Upon the High Court calling for any record under subsection (2), all proceedings in the Intermediate Courts or Subordinate Court in the matter or proceedings in question shall be stayed pending further order of the High Court.

Discretion of High Court as to hearing parties

20E. (1) Subject to the provisions of any written law, no party shall have any right to be heard before the High Court when exercising its powers of revision and supervision.

(2) No final order shall be made to the prejudice of any person unless that person has had an opportunity of being so heard.

21. — 24. *(No sections).*

Decision and reasons

25. (1) The High Court and the Court of Appeal, as the case may be, shall pronounce a decision at the conclusion of the hearing or at some time thereafter.

(2) Such Court may give reasons for its decision, if it so wishes, at the conclusion of the hearing or at any time thereafter.

(3) The decision, and reasons if any, may be given orally or in writing.

(4) Such decision, and reasons if any, may be sent to the parties and it shall not be necessary for them to appear in person or by counsel.

Absence of Judge of Court of Appeal

26. (1) If at any time before delivery of a decision, or of the reasons if any therefor, a Judge of the Court of Appeal is unable, for any reason, to attend the proceedings or otherwise exercise his functions as a Judge, the hearing of the appeal shall continue, if the parties consent.

(2) In such an event, the appeal shall be decided in accordance with the opinion of a majority of the remaining Judges. If there is no majority, the decision appealed against shall stand.

Authority of Courts

27. For the purposes of and incidental to the hearing and determination of any appeal, the High Court and the Court of Appeal, as the case may be, shall have the powers and jurisdiction of the court, person or tribunal from which or from whom the appeal was brought, in addition to any powers which may be conferred upon it by this Act or by any other written law.

28. *(No section).*

Powers of Registrar

29. (1) In addition to such powers and duties as may by this Act or by any other written law be conferred or imposed upon him, the Registrar, whenever there is no Judge present in Brunei Darussalam or no Judge present and able to exercise his functions as a Judge, shall have and may exercise all the powers of the Court or a Judge under this Act and by any other written law.

(2) The Registrar may also exercise such powers and perform such duties as are exercised and discharged by a Master or like officer of the Supreme Court in England, subject to the provisions of any written law.

Chief Registrar, Deputy Chief Registrar, Senior Registrars and Registrars

30. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Chief Registrar, a Deputy Chief Registrar, Senior Registrars and Registrars for the Supreme Court.

(2) The Chief Registrar, Deputy Chief Registrar, Senior Registrars and Registrars shall be *ex-officio* Commissioners for Oaths and notaries public.

Subordinate officers

31. There shall be attached to the Supreme Court such interpreters, clerks, bailiffs, process servers and other officers as, from time to time, appear to the Chief Justice to be necessary for the administration of justice and the due execution of all powers and duties which are vested in the Supreme Court.

Contempt

32. Notwithstanding any other written law, where any contempt is committed in the face of the Supreme Court, the Court may at any time before rising on the same day, take cognisance of the offence, record the facts constituting the offence and the statement, if any, made by the offender and sentence the offender to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both:

Provided that the Court may, in its discretion —

(a) discharge the offender or remit the punishment on his making an apology to the satisfaction of the Court;

(b) *in lieu* of taking cognisance of the offence, authorise a prosecution.

Protection of judicial and other officers

33. (1) A judicial officer shall not be liable to be sued in any court for any act done by him in the discharge of his judicial duty, whether or not

within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do that act.

(2) No officer of the Supreme Court or other person charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the Supreme Court is liable to be sued for the execution of or attempting to execute such writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect execution, unless he knowingly acted in excess of the authority conferred upon him by such writ, summons, warrant, order, notice or other mandatory process in question, and he is not deemed to have acted knowingly in excess of his authority merely by reason of the existence of a dispute as to the ownership of any property seized under any writ or order or execution.

His Majesty the Sultan and Yang Di-Pertuan not compellable to attend Court

34. (1) For the avoidance of doubt, it is hereby declared that His Majesty the Sultan and Yang Di-Pertuan shall not be compellable to attend any proceedings in or be summoned before the Supreme Court.

(2) His Majesty the Sultan and Yang Di-Pertuan may, in writing, exempt any person who is required to attend any proceedings in or summoned before the Supreme Court, from having to comply with such requirement or summons; and such exemption shall not be called in question in or be subject to any judicial review by or appeal to any court.