

LAWS OF BRUNEI

CHAPTER 6

SUBORDINATE COURTS

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CHAPTER 6
SUBORDINATE COURTS

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SUBORDINATE COURTS ACT

An Act to establish Subordinate Courts in Brunei Darussalam, to provide for the appointment of coroners, to amend and consolidate the law relating to the constitution, jurisdiction and powers of the Subordinate Courts and the administration of justice therein

Commencement: 1st January 1983
[S 2/1983]

PART 1

PRELIMINARY

Citation

1. This Act may be cited as the Subordinate Courts Act.

Interpretation

2. In this Act, unless the context otherwise requires —

“action” means a civil proceeding commenced by summons or in such other manner as may be prescribed by Rules of Court;

“Judge” has the meaning assigned to that expression by section 2 of the Supreme Court Act (Chapter 5);

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

“judicial officer” means a Magistrate, Coroner or Registrar;

“Registrar” means the Registrar of the Subordinate Courts and includes a Deputy Registrar;

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

“seal” includes stamp.

PART 2**CONSTITUTION****Subordinate Courts**

3. (1) There shall be within Brunei Darussalam the following Subordinate Courts with such jurisdiction as is conferred by this Act or any other written law —

- (a) Courts of Magistrates;
- (b) Juvenile Courts;
- (c) Small Claims Tribunals.

(2) The Small Claims Tribunals shall have such jurisdiction as is conferred by the Small Claims Tribunals Order, 2006 (S 81/2006) or any other written law.

(3) Except as provided in the Small Claims Tribunals Order, 2006 (S 81/2006), no provision of this Act or the Rules of Court shall apply to a Small Claims Tribunal.

Court houses

4. His Majesty the Sultan and Yang Di-Pertuan may constitute under appropriate names so many Subordinate Courts as he shall think fit, and shall appoint some place or places as the Court house or court houses of each such court.

Seal of courts

5. Subordinate Courts shall have and use as occasion may require a seal or seals of such nature as the Chief Justice may, by notification published in the *Gazette*, prescribe.

Language of Subordinate Courts

5A. All proceedings in the Subordinate Courts shall be in the English language:

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

Process of courts

6. All writs, summonses, warrants, orders, notices and other mandatory processes issued by Subordinate Courts shall be signed by a judicial officer and shall bear the seal of the Court issuing the same.

Sitting in camera etc.

7. (1) The place in which any Subordinate Court is held, is deemed an open and public court to which the public generally may have access:

Provided that —

(a) the 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; and

(b) the Court shall ordinarily exclude witnesses until they give evidence in proceedings where the Court is exercising criminal jurisdiction in accordance with section 16.

(2) A Subordinate Court may at any time order that no person shall publish the name, address or photograph of any witness in any proceedings or any part thereof, or any evidence or any other thing, likely to lead to the identification of any such witness; and any person who acts in contravention of any such order is liable to a fine of \$5,000 and imprisonment for one year.

(3) Whenever any party or a Subordinate 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 Subordinate 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 Subordinate Court that such proceedings or such part thereof not be heard in camera.

(4) Without prejudice to His Majesty the Sultan and Yang Di-Pertuan's power in subsection (3), His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to a Subordinate Court to hold the hearing of any proceedings or any part thereof in camera.

(5) His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to a Subordinate 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.

(6) Any direction issued by His Majesty the Sultan and Yang Di-Pertuan under subsection (3), (4) or (5) shall not be called in question in or be subject to any judicial review by or appeal to any court.

(7) 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; and 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.

(8) Nothing in subsection (7) 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 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 15/2021]

7A. (1) Notwithstanding any provision of this Act, a Subordinate 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).

Contempt

8. Where any contempt is committed in the face of a Subordinate 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 of \$1,000 and imprisonment for 6 months:

Provided that the Court may, in its discretion, discharge the offender or remit the punishment on his making an apology to the satisfaction of the Court:

And provided further that in any case where the contempt is punishable as an offence under section 175, 178, 179, 180 or 228 of the Penal Code (Chapter 22), the Court may, *in lieu* of taking cognisance of the offence, authorise a prosecution.

PART 3

APPOINTMENTS, POWERS AND DUTIES

Appointment of Magistrate

9. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint any fit and proper person to be a Magistrate.

(2) For the purpose of the administration of this Act, His Majesty the Sultan and Yang Di-Pertuan may appoint a Chief Magistrate who shall have seniority over all other Magistrates and over all Coroners.

Coroner

10. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a fit and proper person to be a Coroner.

(2) A Coroner appointed under this section shall have power to act as a Magistrate for the purpose of discharging the functions of a Magistrate under Chapter XXX of the Criminal Procedure Code (Chapter 7) and all things done by a Coroner in the due discharge of such functions shall have the same validity and effect as if they had been done by a Magistrate; and as respects such functions a Coroner shall have the same powers and enjoy the same immunities as if he were a Magistrate.

Appointments of Registrar and Deputy Registrars of Courts of Magistrates

11. (1) His Majesty the Sultan and Yang Di-Pertuan may appoint a Registrar and so many Deputy Registrars as may be necessary for Courts of Magistrates.

(2) The Registrar and Deputy Registrars shall be *ex-officio* Commissioners for Oaths.

Powers and duties of Deputy Registrars

12. Subject to the Rules of Court, all the powers and duties conferred and imposed on the registrar may be exercised and performed by a Deputy Registrar.

Subordinate officers

13. There shall be attached to the Subordinate Courts 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 Subordinate Courts.

Powers and duties of certain subordinate officers

14. The bailiffs and process servers shall execute all writs, summonses, warrants, orders, notices and other mandatory processes of the Subordinate Courts given to them, and shall make a return of the same together with the manner of the execution thereof to the Court from which the process issued, and shall arrest and receive all such persons and property as are committed to the custody of the Subordinate Courts.

Special powers of bailiffs

15. The bailiffs in executing any writ of seizure and sale, or any other writ of execution or of distress, may effect an entry into any building and for that purpose if necessary may break open any outer or inner door, or window, of the building, or any receptacle therein, using such force as is reasonably necessary to effect an entry.

PART 4

JURISDICTION

Jurisdiction of Juvenile Courts

15A. A Juvenile Court shall have the jurisdiction and powers conferred on it by the Children and Young Persons Act (Chapter 219).

Criminal jurisdiction of Courts of Magistrates

16. A Court of a Magistrate exercising criminal jurisdiction shall have the jurisdiction and powers conferred on it by the Criminal Procedure Code (Chapter 7) and any other written law.

Civil jurisdiction of Courts of Magistrates

Civil jurisdiction of Courts of Magistrates

17. (1) Subject to the provisions of this Act and any other written law and subject to the Rules of Court, a Court of a Magistrate shall have jurisdiction in every civil proceedings where the amount claimed or the value of the subject matter in dispute does not exceed the appropriate prescribed limit if —

(a) the cause of action arose in Brunei Darussalam;

(b) the defendant or any one of the defendants at the time of the institution of the proceeding resides or carries on business or has property or personally works for gain in Brunei Darussalam; or

(c) the facts on which the proceedings are based exist or are alleged to have occurred in Brunei Darussalam.

(2) Notwithstanding that the amount claimed or the value of the subject matter in dispute exceeds the appropriate prescribed limit, a Court of a Magistrate shall have jurisdiction in any proceedings for the recovery of immovable property, other than proceedings in which there is a genuine dispute as to a title registered under the Land Code (Chapter 40), where the rent payable in respect of such property does not exceed \$500 per month or such other sum as may be prescribed by the Rules of Court in respect of any area specified in such Rules.

(3) A Court of a Magistrate shall have no jurisdiction in proceedings —

(a) concerning any acts done by the order of His Majesty the Sultan and Yang Di-Pertuan, or of His Majesty the Sultan and Yang Di-Pertuan in Council, or of the head of any Government department, or of a Judge or another Magistrate;

(b) for the recovery of immovable property where there is a genuine 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 interpretation of trust instruments or the enforcement or administration of trusts;

(g) for the grant of probate or letters of administration in respect of any deceased person;

(h) for the interpretation of wills or the administration of the estate and effects of any deceased person;

(i) for declaratory decrees.

(4) His Majesty the Sultan and Yang Di-Pertuan in Council may by order amend any provision of this section.

(5) In this section, “appropriate prescribed limit” means \$10,000 or, in the case of the Chief Magistrate, \$15,000:

Provided that the Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, increase the appropriate prescribed limit in the case of the Chief Magistrate or any other Magistrate.

Civil appeals from decisions of Courts of Magistrates

Civil appeals from Courts of Magistrates

18. (1) Subject to subsections (2) and (3) and the provisions of any Rules of Court or of any other written law, an appeal in civil matters shall lie to the High Court —

(a) as of right, from a final judgment of a Court of a Magistrate in any proceedings for the recovery of immovable property or in any proceedings where the amount claimed or the value of the subject matter in dispute exceeds \$500;

(b) by leave of a Judge —

- (i) from any interlocutory order or decision of a Court of a Magistrate in any proceedings;
- (ii) from a final judgment of a Court of a Magistrate in any proceedings (not being for the recovery of immovable property) where the amount claimed or the value of the subject matter in dispute does not exceed \$500;
- (iii) from any order as to costs only; or
- (iv) from an order made by consent of the parties.

(2) Such appeals may be heard before one Judge provided that the Judge, if he thinks fit, may reserve any appeal for the decision of a Court consisting of three Judges, and in such case the appeal shall be decided in

accordance with the opinion of the majority of the Judges composing the High Court.

(3) The High Court shall not entertain any appeal under this section unless the appellant has fulfilled all the conditions of appeal imposed in accordance with the Rules of Courts or any other written law.

(4) In this section, “Rules of Court” means the Rules of Court made under the Supreme Court Act (Chapter 5).

Revision of civil proceedings in Courts of Magistrates

Power of High Court to call for records of civil proceedings in Courts of Magistrates

19. The High Court may call for and examine the record of any civil proceedings before any Court of a Magistrate for the purpose of satisfying itself as to the correctness, legality or propriety of any judgment, and as to the regularity of any proceedings of any such court.

Powers of High Court on revision of civil proceedings

20. In the case of any civil proceedings in a Court of a Magistrate, the record of which has been called for under section 19, 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 the substantial justice is done.

No revision at instance of party who could have appealed

21. Where an appeal lies (with or without the leave of the High Court) from any judgment of a Court of a Magistrate 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.

Civil reference by Courts of Magistrates to High Court

Civil references

22. (1) Where before or on the hearing of any civil proceedings in a Court of a Magistrate any question of law arises on which that Court desires to have the opinion of the High Court, the Court of a Magistrate 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.

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

PART 5

GENERAL

Miscellaneous

Protection of judicial and other officers

23. (1) A judicial officer shall not be liable to be sued 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 or order the act complained of.

(2) No officer of a Subordinate Court charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the Subordinate Courts shall be 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 of the Court 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 of execution.

Judges to have power of Magistrates

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***Rules of Court**

25. (1) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan in Council*, make Rules of Court regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Courts of Magistrates in the exercise of their civil jurisdiction.

(2) The power to make Rules of Court shall extend to all matters of procedure or practice, or matter relating to or concerning the effect or operation in law of any procedure or practice or the enforcement of judgments or orders, in any case within the cognisance of the Courts of Magistrates in the exercise of their civil jurisdiction as to which Rules of Court regulating the practice and procedure of the Supreme Court have been or might lawfully be made for cases within the cognisance of the High Court.

(3) Without prejudice to the generality of subsections (1) and (2), the power to make Rules of Court shall extend to —

(a) prescribing the scales of allowances, costs and fees to be taken or paid or refunded to any party or witness in any civil proceedings in a Court of a Magistrate, and to regulating any matters relating to the costs of such proceedings;

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

(c) prescribing the books, registers and accounts required to be kept by the registrar and bailiffs;

(d) empowering Courts of Magistrates to refer civil proceedings or any matter arising out of civil proceedings to a referee for inquiry and report, and to direct how the reference shall be conducted;

(e) providing for the giving and enforcement of security for costs or otherwise;

* Transferred from His Majesty the Sultan and Yang Di-Pertuan in Council to His Majesty the Sultan and Yang Di-Pertuan with effect from 22nd September 1988 — [S 32/1988]

(f) prescribing the office or offices where process may be issued and business other than the hearing of proceedings transacted;

(g) prescribing the circumstances and procedure by which proceedings may be transferred from one court to another;

(h) prescribing what part of the business which may be transacted and of the jurisdiction and powers which may be exercised by a Magistrate in court or in chambers may be transacted or exercised by the Registrar (including provisions for and concerning appeals from decisions of the Registrar);

(i) directing interest to be paid on debts, including judgment debts and making provision for the rate or rates of such interests;

(j) regulating the issue of judgment debtor summonses for the discovery of a judgment debtor's property or means and the procedure and practice relating thereto, and the making of orders against judgment debtors for the payment, by instalments, or otherwise of sums due under judgments and orders and the enforcement thereof by committal;

(k) requiring any party at whose instance —

- (i) any writ of execution;
- (ii) any order of arrest or committal;
- (iii) any order of attachment of property; or
- (iv) any order to bring up a prisoner as a witness,

is issued, to deposit from time to time a sum of money to, provide for the expenses of executing the writ or order or of bringing the person to be arrested or the person ordered to be committed before the Court or to prison and of his subsistence while in the custody of the bailiff or in prison and of keeping possession of the property attached;

(l) prescribing the manner in which money in a Court of a Magistrate is to be dealt with.

*Exemption from attendance***His Majesty the Sultan and Yang Di-Pertuan not compellable to attend Subordinate Courts**

26. (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 a Subordinate 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 a Subordinate 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.