



# **LAWS OF MALAYSIA**

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**Act 91**

## **COURTS OF JUDICATURE ACT 1964**

*As at 1 August 2014*

## COURT OF JUDICATURE ACT 1964

First Enacted	...	...	...	1964 (Act No.7 of 1964)
Revised	...	...	...	1972 (Act 91 w.e.f 1 November 1972)
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### *PREVIOUS REPRINTS*

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# LAWS OF MALAYSIA

## Act 91

### COURTS OF JUDICATURE ACT 1964

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**LAWS OF MALAYSIA****Act 91****COURTS OF JUDICATURE ACT 1964**

An act relating to the superior Courts of Judicature.

*[Throughout Malaysia — 16 March 1964, L.N. 85/1694]*

**PART I****PRELIMINARY AND GENERAL***Preliminary***Citation**

1. This Act may be cited as the Courts of Judicature Act 1964.
2. *(Omitted).*

**Interpretation**

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

“action” means a civil proceeding commenced by writ or in such other manner as is prescribed by rules of court, but does not include a criminal proceeding;

“cause” includes any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding;

“Chief Judge” means the Chief Judge of the High Court in Malaya or of the High Court in Sabah and Sarawak, as the case may require;

“Constitution” means the Constitution of Malaysia;

“Court” means the Federal Court, the Court of Appeal or the High Court, as the case may require;

“decision” means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

“High Court” means the High Court in Malaya and the High Court in Sabah and Sarawak or either of them, as the case may require;

“Judge” means a Judge of the Federal Court, of the Court of Appeal or of the High Court, and includes the Chief Justice, the President and a Chief Judge;

“local jurisdiction” means —

- (a) in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territory\* of Kuala Lumpur; and
- (b) in the case of the High Court in Sabah and Sarawak, the territory comprised in the States of Sabah, Sarawak and the Federal Territory of Labuan,

including, in either case, the territorial waters and the air space above those States and the territorial waters;

“Malaysia Day” means the 16 September 1963;

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\*NOTE—This Act is applicable to Federal Territory of Putrajaya—*vide* Section 6 of Constitution (Amendment) Act 2001 [Act A1095].

“matter” includes every proceeding in court not in a cause;

“permanent resident” means a person who has permission granted without limit of time under any federal law to reside in Malaysia, and includes a person treated as such under any written law relating to immigration;

“President” means the President of the Court of Appeal;

“proceeding” means any proceeding whatsoever of a civil or criminal nature and includes an application at any stage of a proceeding;

“Registrar” means the Chief Registrar and any Registrar, Deputy Registrar, Senior Assistant Registrar or Assistant Registrar appointed under section 10;

“subordinate court” means any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court and such court as by any written law has jurisdiction within the local jurisdiction of the High Court.

### **Provision to prevent conflict of laws**

**4.** In the event of inconsistency or conflict between this Act and any other written law other than the Constitution in force at the commencement of this Act, the provisions of this Act shall prevail.

**5.** (*Deleted by Act A606*).

### *General*

#### **Seals of Courts**

**6.** (1) The Federal Court shall have and use as occasion may require a seal or stamp of such nature and pattern as the Chief Justice may, by notification in the *Gazette*, prescribe.

(1A) The Court of Appeal shall have and use as occasion may require a seal or stamp of such nature and pattern as the President may, by notification in the *Gazette*, prescribe.

(2) The High Court shall have and use as occasion may require a seal or stamp of such nature and pattern as the Chief Judge may, by notification in the *Gazette*, prescribe.

### **Process of Courts**

7. (1) All writs, summonses, warrants, orders, rules, notices and mandatory processes whatsoever, whether civil or criminal, shall be issued and shall be expressed to be issued by the Chief Justice, President or Chief Judge, as the case may be, in the name of the Yang di-Pertuan Agong and shall be signed by the Registrar and sealed or stamped with the seal or stamp of the Court issuing or making the same.

(2) All writs, summonses, warrants, orders, rules, notices, and other processes whatsoever, whether civil or criminal, issued or made by or by the authority of the Court respecting any cause or matter within its jurisdiction shall have full force and effect and may be served or executed anywhere within Malaysia.

### **Precedence of Judges**

8. The Judges shall take precedence in the following order:

(a) the Chief Justice;

(b) the President;

(ba) the Chief Judge of the High Court in Malaya;

(bb) the Chief Judge of the High Court in Sabah and Sarawak;

- (c) the Judges of the Federal Court according to the priority of their respective appointments as Judges of the Federal Court and where they are appointed on the same date, in such order as may be assigned to them by the Yang di-Pertuan Agong;
- (ca) the Judges of the Court of Appeal according to the priority of their respective appointments as Judges of the Court of Appeal, and where they are appointed on the same date, in such order as may be assigned to them by the Yang di-Pertuan Agong; and
- (d) the other Judges according to the priority of their respective appointments as Judges and where they are appointed on the same date, in such order as may be assigned to them by the Yang di-Pertuan Agong.

### **Exercise of powers during incapacity or absence**

**9.** (1) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the Chief Justice is unable to exercise the powers or perform the duties of his office (including his functions under the Constitution), or in the event of a vacancy in the office, the powers shall be had and may be exercised and the duties shall be performed —

- (a) by the President; or
- (b) where the President is absent from Malaysia or unable to act, or in the event of a vacancy in the office, by the Chief Judge of the High Court in Malaya; or
- (c) where the President and the Chief Judge of the High Court in Malaya are absent from Malaysia or unable to act, or in the event of a vacancy in the offices, by the Chief Judge of the High Court in Sabah and Sarawak; or
- (d) where the President, the Chief Judge of the High Court in Malaya and the High Court in Sabah and Sarawak are absent from Malaysia or unable to act, or in the event of a vacancy in

the offices, by the Judge of the Federal Court nominated for that purpose by the Yang di-Pertuan Agong.

(1A) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the President is unable to exercise the powers or perform the duties of his office, the powers shall be had and may be exercised and the duties shall be performed by a Judge of the Federal Court designated for that purpose by the Chief Justice after consulting the President.

(1B) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the Chief Judge of the High Court in Malaya is unable to exercise the powers or perform the duties of his office, the powers shall be had and may be exercised and the duties shall be performed by a Judge of the Federal Court designated for that purpose by the Chief Justice after consulting the Chief Judge of that High Court.

(2) Whenever during any period, owing to illness or absence from Malaysia or any other cause, the Chief Judge of the High Court in Sabah and Sarawak is unable to exercise the powers or perform the duties of his office, the powers shall be had and may be exercised and the duties shall be performed by a Judge of the Federal Court or of that High Court designated for that purpose by the Chief Justice after consulting the Chief Judge of that High Court.

(3) Wherever the office of the President or any Chief Judge is vacant, the powers of the President or any such Chief Judge shall be had and may be exercised and his duties shall be performed by —

- (a) Judge of the Federal Court; or
- (b) respect of a vacancy in the office of the Chief Judge of the High Court in Sabah and Sarawak, a Judge of the Federal Court or a Judge of that High Courts,

designated for that purpose by the Chief Justice.

## **Registrars**

**10.** (1) Subject to subsection (4), the Chief Registrar, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars of the Federal Court and the Registrars, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice.

(2) Subject to any directions that the Chief Justice may issue, the Registrars, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars of the High Court may exercise the powers and perform the duties of the Chief Registrar or Registrar, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars respectively of the Federal Court or the Court of Appeal.

(3) The Chief Registrar, Registrars, Deputy Registrars, Senior Assistant Registrars and Assistant Registrars appointed under this Act shall subject to this Act or any other written law have the same jurisdiction, powers and duties as the Masters of the Supreme Court, Clerks of Criminal Courts, Registrars and like officers in the Supreme Court of Judicature in England and, in addition, such further jurisdiction, powers and duties as may be prescribed by rules of court.

(4) The Magistrates the local limits of whose jurisdiction extend to the towns in which registries of the High Court are situate shall be *ex-officio* Senior Assistant Registrars of the High Court for all purposes.

## **Commissioners for Oaths**

**11.** (1) Any Registrar and any person appointed by the Chief Justice to be a Commissioner for Oaths (subject to any limitations expressed in his appointment) may do all or any of the following things:

- (a) receive acknowledgments of married women in all cases where acknowledgments are required by law to be taken before a public officer;

- (b) receive acknowledgments of recognizances of bail and bail-bonds;
- (c) administer oaths for —
  - (i) the justification for bail;
  - (ii) taking any affidavit or affirmation;
  - (iii) receiving and taking the answer, plea, demurrer, disclaimer, allegation or examination of any party or parties to any action;
  - (iv) the examination of any witnesses upon any interrogatories or *de bene esse* or in chief or on any other occasions;
  - (v) swearing executors and administrators; and
  - (vi) swearing persons in any action, matter or proceeding, which is pending or about to be instituted in any court in any of its jurisdictions; and
- (d) take and receive statutory declarations.

(2) The Chief Justice may make rules for the appointment, conduct, fees to be charged by and for all things appertaining to Commissioners for Oaths and persons appointed by him under subsection (1).

### **Sheriffs**

**12.** (1) The Registrar of the High Court shall be Sheriff and there shall be such bailiffs, process servers and other subordinate officers as are appointed.

(2) The Sheriff or his officers shall execute all writs, summonses, warrants, orders, rules, notices, commands and other processes of any Court



which are given to him by the Court for that purpose, 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 receive all such persons as are committed to his custody by the Court.

(3) The Sheriff or his officers 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.

### **Contempt**

**13.** The Federal Court, the Court of Appeal and the High Court shall have power to punish any contempt of itself.

### **Protection of Judges and other judicial officers**

**14.** (1) No Judge 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 Judge 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.

(3) No sheriff, bailiff or other officer of the Court charged with the duty of executing any judgment, order or warrant of distress, or of attaching any property before judgment, shall be liable to be sued in any civil court in respect of any property seized by him, or in respect of damage caused to any property in effecting, or attempting to effect the seizure, unless it shall

appear that he knowingly acted in excess of the authority conferred upon him by the writ, warrant or order in question, and he shall not be deemed to have acted knowingly in excess of his authority merely by reason of knowing of the existence of a dispute as to the ownership of the property so seized.

### **Courts to be open and public**

**15.** (1) The place in which any Court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access:

Provided that the Court shall have power to hear any cause or matter or any part thereof in camera if the Court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason so to do.

(2) A Court may at any time order that no person shall publish the name, address or photograph of any witness in any cause or matter or any part thereof tried or held or to be tried or held before it, 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 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Rules of court**

**16.** Rules of court may be made for the following purposes:

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the High Court, the Court of Appeal and the Federal Court in all causes and matters whatsoever in or with respect to which those Courts have for the time being jurisdiction (including the procedure and practice to be followed in the registries of those Courts), and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provision)

the manner in which, and the time within which, any applications which are to be made to a High Court, to the Court of Appeal or to the Federal Court shall be made;

- (b) for regulating and prescribing the procedure on civil or criminal appeals from any court or person to a High Court, the Court of Appeal or the Federal Court;
- (c) *(Deleted by Act A606)*;
- (d) for regulating the enforcement and execution by a High Court of the decrees, judgments and orders of the Federal Court, of the Court of Appeal or of the other High Court;
- (e) for prescribing what part of the business which may be transacted and of the jurisdiction which may be exercised by Judges in court or in chambers may be transacted or exercised by Registrars;
- (f) for prescribing the fees and percentages to be taken in any Court and for regulating any matters relating to the costs of proceedings in any Court;
- (g) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connection with or at any stage of any proceedings;
- (h) for regulating the joinder of parties and for prescribing in what cases persons absent, but having an interest in a cause or matter, shall be bound by any order made therein, and in what cases orders may be made for the representation of absent persons by one or more parties to a cause or matter;
- (i) for regulating the rate of interest payable on all debts, including judgment debts, or on the sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the Court:

Provided that in no case shall any rate of interest exceed eight per centum per annum, unless it has been otherwise agreed between parties;

- (j) for regulating the modes in which a writ of seizure and sale may be executed, and the manner in which seizure may be made of any property seizable thereunder, and the mode of sale by the Sheriff or any other officer of the Court of any property so seized, and the manner in which the right and title of purchasers of that property at any sale by any officer of the Court may be secured to the purchasers;
- (k) for regulating the discovery of a judgment debtor's property in aid of the execution of any judgment;
- (l) for regulating the taking of evidence before an examiner or on commission or by letters of request, and for prescribing the circumstances in which evidence so taken may be read on the trial of an action;
- (m) for prescribing in what cases the Court may act upon the certificate of accountants, actuaries or other scientific persons;
- (n) for prescribing the duties of the Accountant General in respect of funds or property in the custody of the Court, and in particular for prescribing the mode of transfer of securities into the name of the Accountant General, and the method of investment of any such funds, and the rate of interest to be charged thereon, and, until other provision is made in respect thereof, the manner in which unclaimed funds may be dealt with;
- (o) for amending, altering, or adding to the forms set out in any written law relating to criminal procedure; and
- (p) for any purpose for which rules of court may be made under any written law.

**Making of rules of court**

**17.** (1) Rules of court under section 16 may be made by a Rules Committee appointed as hereinafter provided.

(2) The Rules Committee shall consist of the following persons:

- (a) the Chief Justice, who shall be the Chairman of the Committee;
- (b) the President;
- (c) the Chief Judges;
- (d) a Judge of the Federal Court, a Judge of the Court of Appeal, a Judge of the High Court in Malaya, and a Judge of the High Court in Sabah and Sarawak, to be appointed by the Chief Justice for such period as he may specify in writing;
- (e) the Attorney General, or his nominee;
- (f) the Senior Judge of the Sessions Court of Kuala Lumpur;
- (g) three advocates, one practising in the States of Peninsular Malaysia, one practising in Sabah and one practising in Sarawak, appointed by the Chief Justice for such period as he may specify in writing; and
- \*(h) the Secretary General of the Ministry of Law, or his nominee.

(2A) In the absence of the Chief Justice, the President or the Chief Judge of the High Court in Malaya or the Chief Judge of the High Court in Sabah and Sarawak present shall be Chairman of the Committee.

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\*NOTE—The Ministers of the Federal Government Order 1991 [*P.U. (A)176/1991*] is revoked by the Ministers of the Federal Government Order 1995 [*P.U. (A)203/1995*].

(3) At any meeting of the Rules Committee five members shall form a quorum. All questions shall be decided by a majority of votes of members present and voting:

Provided that —

- (a) no rules shall be made relating to the Federal Court or the Court of Appeal without the consent thereto of the Chief Justice; and
- (b) no rules shall be made relating to any High Court without the consent thereto of the Chief Judge of that High Court.

(3A) Rules of court which have financial implications shall be referred to the Government for approval.

(4) Rules of court shall be published in the *Gazette*, and shall come into force on the date of publication or on such date as may be specified therein.

(5) Rules of court shall be laid before the Dewan Rakyat at the first meeting after their publication, and may be disapproved in whole or in part by a resolution of the Dewan Rakyat.

(6) *(Omitted)*.

(7) *(Omitted)*.

### **Council of Judges**

**17A.** (1) The Chief Justice may convene a Council of all the Judges as and when he deems it necessary but so that there shall be at least one meeting in each year.

(1A) The President may, with the approval of the Chief Justice, convene a Council of Judges of the Court of Appeal as and when he deems it necessary.

(2) The Chief Judge may, with the approval of the Chief Justice, convene a Council of Judges of the High Court as and when he deems it necessary.

PART II

THE HIGH COURT

*General*

**Proceedings in High Court to be disposed of by single Judge**

**18.** (1) Every proceeding in the High Court and all business arising thereout shall, save as provided by any written law, be heard and disposed of before a single Judge.

(2) Whenever any Judge, after having heard and recorded the whole or any part of the evidence in a proceeding, is unable through death, illness or other cause to conclude the proceeding, another Judge may—

(a) continue with the proceeding from the stage at which the previous Judge left it and—

(i) act on the evidence already recorded by the previous Judge; or

(ii) act on the evidence partly recorded by the previous Judge and partly by himself; or

(b) resummon the witnesses and recommence the proceeding.

(3) Where the Judge acts under subparagraph 2(a)(i) he may, either on his volition or at the request of any party to the proceeding, recall any of the witnesses as in respect of any part of the evidence already recorded, or he may take their evidence afresh:

Provided that in respect of a criminal proceeding, the Court of Appeal and

the Federal Court may, on appeal, set aside any conviction had on evidence not wholly recorded by the Judge before whom the conviction was had if such Court is of the opinion that the accused had been materially prejudiced thereby, and may order a new trial.

### **Sittings of the High Court**

**19.** The High Court shall sit at such times and at such places as the Chief Judge shall from time to time appoint.

### **Distribution of business**

**20.** The distribution of business among the Judges of the High Court shall be made in accordance with such directions, which may be of a general or a particular nature, as may be given by the Chief Judge.

### **Vacations**

**21.** The Chief Judge may make rules as to vacations of the High Court not exceeding one month in any calendar year

## *Original Jurisdiction*

### **Criminal jurisdiction**

**22.** (1) The High Court shall have jurisdiction to try—

- (a) all offences committed—
  - (i) within its local jurisdiction;
  - (ii) on the high seas on board any ship or on any aircraft registered in Malaysia;



- (iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
  - (iv) by any person on the high seas where the offence is piracy by the law of nations; and
- (b) offences under Chapters VI and VIA of the Penal Code [*Act 574*], and under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976 [*Act 163*], or offences under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia committed as the case may be, —
- (i) on the high seas on board any ship or on any aircraft registered in Malaysia;
  - (ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
  - (iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia;
  - (iv) by any person against a citizen of Malaysia;
  - (v) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;
  - (vi) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;
  - (vii) by any stateless person who has his habitual residence in Malaysia;
  - (viii) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or

(ix) by any person who after the commission of the offence is present in Malaysia.

(2) The High Court may pass any sentence allowed by law.

### **Civil jurisdiction—general**

**23.** (1) Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —

- (a) the cause of action arose;
- (b) the defendant or one of several defendants resides or has his place of business;
- (c) the facts on which the proceedings are based exist or are alleged to have occurred; or
- (d) any land the ownership of which is disputed is situated,

within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

(2) Without prejudice to the generality of subsection (1), the High Court shall have such jurisdiction as was vested in it immediately prior to Malaysia Day and such other jurisdiction as may be vested in it by any written law in force within its local jurisdiction.

### **Civil jurisdiction—specific**

**24.** Without prejudice to the generality of section 23 the civil jurisdiction of the High Court shall include —

- (a) jurisdiction under any written law relating to divorce and matrimonial causes;
- (b) the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Supreme Court Act 1981;
- (c) jurisdiction under any written law relating to bankruptcy or to companies;
- (d) jurisdiction to appoint and control guardians of infants and generally over the person and property of infants;
- (e) jurisdiction to appoint and control guardians and keepers of the person and estates of idiots, mentally disordered persons and persons of unsound mind; and
- (f) jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property within the territorial jurisdiction of the Court and to alter or revoke such grants.

### **Reference under order of Court**

**24A.** (1) The High Court may refer any question arising in any cause or matter, other than a criminal proceeding by the Public Prosecutor, for inquiry or report to any special referee. The report of a special referee may be adopted wholly or partially by the High Court and enforced as a decree, judgment or order to the same effect.

(2) In any cause or matter other than a criminal proceeding by the Public Prosecutor —

- (a) if all the parties interested who are not under disability consent;
- (b) if the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot,

in the opinion of the High Court, conveniently be conducted by the Court through its ordinary officers; or

- (c) if the question in dispute consists wholly or in part of matters of account,

the High Court may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before a special referee or arbitrator respectively agreed on by the parties or before an officer of the Court.

- (3)
  - (a) In all cases of reference to a special referee or arbitrator under an order of the High Court in any cause or matter, the special referee or arbitrator shall be deemed to be an officer of the Court and shall have such authority and shall conduct the reference in such manner as is prescribed by rules of court, and subject thereto as the High Court may direct.
  - (b) The report or award of any special referee or arbitrator on any such reference shall, unless set aside by the High Court, be equivalent to the decree, judgment or order of the Court.
  - (c) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the High Court shall be determined by the Court.

(4) The High Court shall, as to references under order of the Court, have all the powers which are by the Arbitration Act 1952 [*Act 93*], conferred on the High Court as to references by consent out of Court.

### **Powers of the High Court**

**25.** (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

### **Orders for interim payment**

**25A.** (1) As regards proceedings pending in the High Court, provision may be made by rules of court for enabling the Court in such circumstances as may be prescribed, to make an order requiring a party to the proceedings to make an interim payment of such amount as may be specified in the order, with provision for the payment to be made to such other party to the proceedings as may be so specified or, if the order so provided, by paying it into Court.

(2) Any rules of court which make provision in accordance with subsection (1) may include provision for enabling a party to any proceedings who, in pursuance of such an order has made an interim payment, to recover the whole or part of the amount of the payment in such circumstances and from such other party to the proceedings as may be determined in accordance with the rules.

(3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as may be considered necessary or expedient.

(4) Nothing in this section shall be construed as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs.

(5) In this section “interim payment”, in relation to a party to any proceedings, means a payment on account of any damages, debt or other sum excluding any costs which that party may be held liable to pay to or for the benefit of another party to the proceedings if a final judgment or order of the Court in the proceedings is given or made in favour of that other party.

*Appellate Jurisdiction***Appellate criminal jurisdiction**

26. The appellate criminal jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts according to any law for the time being in force within the territorial jurisdiction of the High Court.

**Appellate civil jurisdiction**

27. The appellate civil jurisdiction of the High Court shall consist of the hearing of appeals from subordinate courts as hereinafter provided.

**Civil appeals from subordinate courts**

28. (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is \*ten thousand ringgit or less except on a question of law.

(2) An appeal shall lie from any decision of a subordinate court in any proceedings relating to maintenance of wives or children, irrespective of the amount involved.

**Civil appeals to be by way of re-hearing**

29. All civil appeals from a subordinate court shall be by way of re-hearing, and the High Court shall have the like powers and jurisdiction on the hearing of appeals as the Court of Appeal has on the hearing of appeals from the High Court.

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\*NOTE —The original provision was “one hundred dollars” (Revised 1972).  
Previously “Five hundred ringgit”—*see* Act A279.  
Previously “Five thousand ringgit”—*see* Act A530.  
Now “ten thousand ringgit”—*see* Act A670.

**Reference of constitutional question by subordinate court**

**30.** (1) Where in any proceedings in any subordinate court any question arises as to the effect of any provision of the Constitution the presiding officer of the court may stay the proceedings and may transmit the record thereof to the High Court.

(2) Any record of proceedings transmitted to the High Court under this section shall be examined by a Judge of the Court and where the Judge considers that the decision of a question as to the effect of a provision of the Constitution is necessary for the determination of the proceedings he shall deal with the case in accordance with section 84 as if it were a case before him in the original jurisdiction of the High Court in which the question had arisen.

(3) Subsections (1) and (2) shall be deemed to be rules of court for the purposes of Article 128(2) of the Constitution.

*Revision*

**Revision of criminal proceedings of subordinate courts**

**31.** The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

**Power of High Court to call for records of civil proceedings in subordinate courts**

**32.** The High Court may call for and examine the record of any civil proceedings before any 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 subordinate court.

**Powers of High Court on revision of civil proceedings**

**33.** In the case of any civil proceedings in 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 seems necessary to secure that substantial justice is done.

**No revision at instance of party who could have appealed**

**34.** Where an appeal lies from any decision in any civil matter, and no appeal is brought, no proceeding 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**

**35.** (1) In addition to the powers conferred on the High Court by this or any other written law, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts, and may in particular, but without prejudice to the generality of the foregoing provision, 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 proceeding, whether civil or criminal, in any subordinate court, call for the record thereof, and may remove the same into the High Court or may give to the subordinate court such directions as to the further conduct of the same as justice may require.

(2) Upon the High Court calling for any record as aforesaid all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.

**Discretion of Court as to hearing parties**

**36.** Subject to any written law for the time being in force no party shall have any right to be heard before the High Court when exercising its powers of revision and supervision:



Provided that no final order shall be made to the prejudice of any person unless the person has had an opportunity of being so heard.

### **Special provision as to States of Malaya**

**37.** Where in any criminal proceeding before a subordinate court in the States of Malaya a sentence has been passed by the court in exercise of the special powers of punishment conferred by subsection 87(2) of the Subordinate Courts Act 1948 [*Act 92*], and no notice of appeal has been lodged against the sentence according to the law for the time being in force relating to criminal procedure, the subordinate court shall transmit the record of the proceeding to the High Court so that the High Court may satisfy itself as to the correctness, legality or propriety of the sentence, and the High Court may thereupon exercise the powers conferred upon it by section 31.

## PART III

### THE COURT OF APPEAL

#### *General*

### **Composition of the Court of Appeal**

**38.** (1) Subject as hereinafter provided, every proceeding in the Court of Appeal shall be heard and disposed of by three Judges or such greater uneven number of Judges as the President may in any particular case determine.

(2) In the absence of the President the senior member of the Court shall preside.

### **Sittings of the Court**

**39.** (1) The Court shall sit on such dates and at such places as the President may from time to time appoint:

Provided that the President may, when he deems it expedient, direct that any appeal be heard at any time and in any place in Malaysia.

(2) The President may cancel or postpone any sitting of the Court which has been appointed under subsection (1).

### **Vacations**

**40.** The President may make rules as to vacations of the Court of Appeal not exceeding one month in any calendar year.

### **Proceedings how decided**

**41.** Proceedings shall be decided in accordance with the opinion of the majority of the Judges composing the Court.

### **Continuation of proceedings notwithstanding absence of Judge**

**42.** (1) If, in the course of any proceeding, or, in the case of a reserved judgment, at any time before delivery of the judgment, any Judge of the Court hearing the proceeding is unable, through illness or any other cause, to attend the proceeding or otherwise exercise his functions as a Judge of that Court, the hearing of the proceeding shall continue before, and judgment or reserved judgment as the case may be shall be given by, the remaining Judges of the Court, not being less than two, and the Court shall, for the purposes of the proceeding, be deemed to be duly constituted notwithstanding the absence or inability to act of the Judge as aforesaid.

(2) In any such case as is mentioned in subsection (1) the proceeding shall be determined in accordance with the opinion of the majority of the remaining Judges of the Court, and, if there is no majority the proceeding shall be re-heard.

(3) *(Deleted by Act A1031).*

### **Applications**

**43.** Wherever application may be made either to the High Court or to the Court of Appeal, it shall be made in the first instance to the High Court.

### **Incidental directions and interim orders**

**44.** (1) In any proceeding pending before the Court of Appeal any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs, and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a Judge of the Court of Appeal.

(2) Every application under subsection (1) shall be deemed to be a proceeding in the Court of Appeal.

(3) Every order made under subsection (1) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.

### *Original Jurisdiction*

**45 - 49.** (*Deleted by Act A886*).

### *Appellate Jurisdiction—Criminal Appeals*

### **Jurisdiction to hear and determine criminal appeals**

**50.** (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court —

- (a) in the exercise of its original jurisdiction; and
- (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.

(2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrates' Court but such appeal shall be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.

(2A) An application for leave under subsection (2) shall be made within fourteen days after the date of the decision of the High Court.

(3) Notice of any appeal by the Public Prosecutor shall be signed by the Public Prosecutor, the Solicitor General or any other officer authorized by the Public Prosecutor and notwithstanding subsection (2) no leave of the Court of Appeal is required.

(4) Except as otherwise provided in this section, an appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

### **Notice of appeal**

**51.** (1) Every appeal shall be by notice in writing which shall be filed with the Registrar of the Court from which the appeal lies at the place where the decision appealed against was given within fourteen days after the date of the decision.

(2) Every notice of appeal shall state shortly the substance of the judgment appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate, and, except where the notice of appeal is given orally under section 54, shall be signed by the appellant or his advocate:

Provided that, in a case of an appeal under subsection 50(2), the computation of the aforesaid period of fourteen days shall commence from the date immediately after leave has been granted by the Court of Appeal.

### **Record of proceedings**

**52.** (1) When a notice of appeal has been filed the Judge by whom the decision was given shall, if he has not already written his judgment, record in writing the grounds of his decision, and the written judgment or grounds of decision shall form part of the record of the proceedings.

(2) As soon as possible after notice of appeal has been filed the Registrar shall cause to be served on the appellant or his advocate at his address for service specified under subsection 51(2) a notice that a copy of the record is available and can be had on applying for the same on payment of the prescribed fee:

Provided that in the case of an appeal by the Public Prosecutor a copy of such record shall be furnished to him without payment of any fee.

### **Petition of appeal**

**53.** (1) Within ten days after service of the notice referred to in subsection 52(2) the appellant shall file with the Registrar of the Court from which the appeal lies a petition of appeal and five copies thereof addressed to the Court of Appeal.

(2) Every petition of appeal shall be signed by the appellant or his advocate and shall contain particulars of the matters of law or of fact in regard to which the High Court is alleged to have erred, and, except by leave of the Court of Appeal, the appellant shall not be permitted on the hearing of the appeal to rely on any ground of appeal other than those set forth in the petition.

(3) If a petition is not filed within the time prescribed by this section the appeal shall be deemed to have been withdrawn, but nothing in this

subsection shall be deemed to limit or restrict the powers of extending time conferred upon the Court of Appeal by section 56.

### **Procedure where appellant in prison**

**54.** (1) If the appellant is in prison he shall be deemed to have complied with the requirements of sections 51 and 53 if he gives to the officer in charge of the prison either orally or in writing notice of appeal and the particulars required to be included in the petition of appeal within the times prescribed by those sections.

(2) The prison officer aforesaid shall forthwith forward the notice and petition or the purport thereof to the Registrar of the Court from which the appeal lies at the place where the decision appealed against was given.

### **Transmission of papers to Court of Appeal**

**55.** (1) When an appellant has complied with sections 51 and 53 the Registrar of the Court from which the appeal lies shall forthwith transmit to the Court of Appeal four copies of the record of the proceedings in the case, together with four copies of the notice of appeal and of the petition of appeal.

(2) The Registrar of the Court from which the appeal lies shall also furnish the respondent or his advocate with a copy of the record of the proceedings in the case and a copy of the notice of appeal and of the petition of appeal.

### **Appeals out of time and formal defects**

**56.** The Court of Appeal may in its discretion, on the application of any person desirous of appealing who may be debarred from so doing by reason of his not having observed some formality or some requirement of this Act, permit an appeal upon such terms and with such directions as it may consider desirable in order that substantial justice may be done in the matter, and may, for the purpose, enlarge any period of time prescribed by section 51 or 53.

**On appeal against acquittal, accused may be arrested**

**56A.** Where an appeal is presented against an acquittal, the Court of Appeal may issue a warrant directing that the accused be arrested and brought before it and may remand him to prison pending the disposal of the appeal or admit him to bail.

**Appeal not to operate as stay of execution**

**57.** (1) Except in the cases mentioned in subsection (3) and section 56A, no appeal shall operate as a stay of execution, but the High Court or the Court of Appeal may stay execution on any judgment, order, conviction or sentence pending appeal on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the judgment, order, conviction or sentence as to the Court may seem reasonable.

(2) If the appellant is ultimately sentenced to imprisonment, the time during which the execution of the sentence was stayed shall be excluded in computing the term of his sentence unless the Court of Appeal otherwise orders.

(3) In the case of a conviction involving sentence of death or corporal punishment —

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal may be given under section 51, or any extension of time which may be permitted under section 56; and

(b) if notice is so given the sentence shall not be executed until after the determination of the appeal.

**Summary rejection of appeal**

**58.** Where the grounds of appeal do not raise any question of law and it appears to the President and two other Judges of the Court of Appeal that the

evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the Court of Appeal to consider that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order under the hand of the President, certifying that the said Judges, having perused the record, are satisfied that the appeal has been brought without any sufficient ground of complaint and notice of the rejection shall be served upon the appellant:

Provided that —

- (i) if, in any case rejected under this section, the appellant gives, within seven days of service of notice of rejection upon him, notice to the Registrar of the Court of Appeal of application for leave to amend his grounds of appeal so as to raise a question of law, accompanied by a certificate signed by an advocate specifying the question to be raised and undertaking to argue it, the Court of Appeal may grant leave to amend accordingly and shall restore the appeal for hearing; and
- (ii) for the purpose of this section, the question whether a sentence ought to be reduced shall be deemed not to be a question of law.

### **Notice and time of hearing**

**59.** Where the Court of Appeal does not reject an appeal summarily under section 58, or where the Public Prosecutor is the appellant, the Court of Appeal shall cause notice of the time and place for the hearing of the appeal to be given to the parties thereto.

### **Powers of Court of Appeal**

**60.** (1) At the hearing of an appeal the Court of Appeal shall hear the appellant or his advocate, if he appears, and, if it thinks fit, the respondent or his advocate, if he appears, and may hear the appellant or his advocate in reply, and the Court of Appeal may thereupon confirm, reverse or vary the



decision of the High Court, or may order a retrial or may remit the matter with the opinion of the Court of Appeal thereon to the trial court, or may make such other order in the matter as to it may seem just, and may by that order exercise any power which the trial court might have exercised:

Provided that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(2) At the hearing of an appeal the Court of Appeal may, if it thinks that a different sentence should have been passed, quash the sentence passed, confirmed or varied by the High Court and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed.

(3) The Court of Appeal shall in no case make any order under this section as to payment of costs of any appeal to or by the appellant or respondent.

### **Additional evidence**

**61.** (1) In dealing with any appeal in a criminal case the Court of Appeal may, if it thinks additional evidence to be necessary, either take such evidence itself or direct it to be taken by the trial court.

(2) When the additional evidence is taken by the trial court, it shall certify the evidence, with a statement of its opinion on the case considered with regard to the additional evidence, to the Court of Appeal, and the Court of Appeal shall thereupon proceed to dispose of the appeal.

(3) The parties to the appeal shall be present when additional evidence is taken.

(4) In dealing with any appeal in a criminal case the Court of Appeal

may also, if it thinks fit, call for and receive from the trial court a report of any matter connected with the trial.

### **Judgment**

**62.** (1) On the termination of the hearing of an appeal the Court of Appeal shall, either at once or on some future day which shall either then be appointed for the purpose or of which notice shall subsequently be given to the parties, deliver judgment in open court.

(2) In criminal appeals and matters the Court of Appeal shall ordinarily give only one judgment, which may be pronounced by the President or by such other member of the Court of Appeal as the President may direct:

Provided that separate judgments shall be delivered if the President so determines.

(3) The judgment of any member of the Court of Appeal who is absent may read by any other Judge.

### **Certification of judgment**

**63.** (1) Whenever a criminal case is decided on appeal, the Court of Appeal shall certify its judgment or order to the courts concerned.

(2) The courts concerned shall thereupon make such orders as are conformable to the judgment to the order of the Court of Appeal, and, if necessary, the record shall be amended in accordance therewith.

(3) Upon the withdrawal or discontinuance of any appeal the Registrar of the Court of Appeal shall notify the courts concerned accordingly, and stay of execution has been granted, the sentence or order of the trial court or as varied by the High Court in its appellate jurisdiction, as the case may be, shall forthwith be enforced, but nothing in this subsection shall be deemed to limit or restrict the powers of extending time conferred upon the Court of Appeal by section 56.

64. (Deleted by Act A328 ).

65-66. (Deleted by Act A909)

*Appellate Jurisdiction—Civil Appeals*

**Jurisdiction to hear and determine civil appeals**

67. (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.

(2) The Court of Appeal shall have all the powers conferred by section 24A on the High Court under the provisions relating to references under order of the High Court.

**Non-appealable matters**

68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

- (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit\*, except with the leave of the Court of Appeal;
- (b) where the judgment or order is made by consent of parties;

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\*NOTE —The original provision was “five hundred dollars” (Revised 1972).  
Previously “two thousand five hundred”—see Act A279.  
Previously “ten thousand ringgit” —see Act A530.  
Previously “one hundred thousand” —see Act A606.  
Now “two hundred and fifty thousand” —see Act A886.

- (c) where the judgment or order relates to costs only which by law are left to the discretion of the Court, except with the leave of the Court of Appeal; and
- (d) where, by any written law for the time being in force, the judgment or order of the High Court, is expressly declared to be final.

(2) *(Deleted by Act A886).*

(3) No appeal shall lie from a decision of a Judge in Chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Court of Appeal, but an appeal shall lie from a judgment given in court on the trial of an interpleader issue.

### **Hearing of appeals**

**69.** (1) Appeals to the Court of Appeal shall be by way of re-hearing, and in relation to such appeals the Court of Appeal shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.

(2) The further evidence may be given without leave on interlocutory applications, or in any case as to matter which have occurred after the date of the decision from which the appeal is brought.

(3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, the further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Court of Appeal.

(4) The Court of Appeal may draw inferences of fact, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.

(5) The powers aforesaid may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and the powers may also be exercised in favour of all or any of the respondents or parties although the respondents or parties have not appealed from or complained of the decision.

### **Costs of appeal**

**70.** The Court of Appeal may make such order as to the whole or any part of the costs of appeal or in the court below as is just.

### **New trial**

**71.** (1) Except as hereinafter provided the Court of Appeal shall have power to order that a new trial be had of any cause or matter tried by the High Court in the exercise of its original or appellate jurisdiction.

(2) A new trial shall not be granted on the ground of improper admission or rejection of evidence unless in the opinion of the Court of Appeal some substantial wrong or miscarriage of justice has been thereby occasioned; and if it appears to the Court of Appeal that the wrong or miscarriage affects part only of the matters in controversy, or some or one only of the parties, the court of Appeal may give final judgment as to part thereof, or as to some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

(3) A new trial may be ordered on any question without interfering with the finding or decision of the court below upon any other question.

### **Immaterial errors**

**72.** No judgment or order of the High Court, or of any Judge, shall be reversed or substantially varied on appeal, nor a new trial ordered by the Court of Appeal, on account of any error, defect, or irregularity, whether in the decision or otherwise not affecting the merits or the jurisdiction of the Court.

**Appeal not to operate as stay of execution**

**73.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court below or the Court of Appeal so orders and no intermediate act or proceeding shall be invalidated except so far as the Court of Appeal may direct.

**\*PART IV****THE FEDERAL COURT***General***Composition of the Federal Court**

**74.** (1) Subject as hereinafter provided, every proceeding in the Federal Court shall be heard and disposed of by three Judges or such greater uneven number of Judges as the Chief Justice may in any particular case determine.

(2) In the absence of the Chief Justice, the most senior member of the Court shall preside.

**Sittings of the Court**

**75.** (1) The Court shall sit on such dates and at such places as the Chief Justice may from time to time appoint:

Provided that the Chief Justice may, when he deems it expedient, direct that any appeal be heard at any time and in any place in Malaysia.

(2) The Chief Justice may cancel or postpone any sitting of the Court which has been appointed under subsection (1).

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\*NOTE—The original provision of PART IV has been repealed by Act A600 –see sections 2 and 3 of that Act.

### **Vacations**

**76.** The Chief Justice may make rules as to vacations of the Federal Court not exceeding one month in any calendar year.

### **Proceedings how decided**

**77.** Proceedings shall be decided in accordance with the opinion the majority of the Judges composing the Court.

### **Continuation of proceedings notwithstanding absence of Judge**

**78.** (1) If, in the course of any proceeding, or, in the case of a reserved judgment, at any time before delivery of the judgment, any Judge of the Court hearing the proceeding is unable, through illness or any other cause, to attend the proceeding or otherwise exercise his functions as a Judge of that Court, the hearing of the proceeding shall continue before, and judgment or reserved judgment, as the case may be, shall be given by, the remaining Judges of the Court, not being less than two, and the Court shall, for the purposes of the proceeding, be deemed to be duly constituted notwithstanding the absence or inability to act of the Judge as aforesaid.

(2) In any such case as is mentioned in subsection (1) the proceeding shall be determined in accordance with the opinion of the majority of the remaining Judges of the Court, and, if there is no majority the proceeding shall be re-heard.

(3) *(Deleted by Act A1031).*

### **Applications**

**79.** Whenever application may be made either to the Court of Appeal or to the Federal Court, it shall be made in the first instance to the Court of Appeal.

**Incidental directions and interim orders**

**80.** (1) In any proceeding pending before the Federal Court any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs, and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a Judge of the Federal Court.

(2) Every application under subsection (1) shall be deemed to be a proceeding in the Federal Court.

(3) Every order made under subsection (1) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.

*Original Jurisdiction***Jurisdiction and powers**

**81.** Save as hereinafter in this Act provided the Federal Court for the purposes of its jurisdiction under Article 128(1) and (2) of the Constitution (herein called the “original jurisdiction”) shall have the same jurisdiction and may exercise the same powers as are had and may be exercised by the High Court.

**Judgment to be declaratory**

**82.** The Federal Court in the exercise of its original jurisdiction under Article 128(1)(b) of the Constitution in respect of a dispute between States or between the Federation and any State shall not pronounce any judgment other than a declaratory judgment.



### **Costs**

**83.** The Federal Court shall not make any order as to the costs of any proceeding had under its original jurisdiction:

Provided that in any proceedings under section 84 the High Court may make any order as to costs in respect of proceedings in the Federal Court.

### **Reference of constitutional question by High Court**

**84.** (1) Where in any proceedings in the High Court a question arises as to the effect of any provision of the Constitution the Judge hearing the proceedings may stay the same on such terms as may be just to await the decision of the question by the Federal Court.

(2) An order staying proceedings under this section may be made by the Judge of his own motion or on the application of any party and shall be made at such stage of the proceedings as the Judge may see fit having regard to the decision of such questions of fact as may be necessary to be settled to assist the Federal Court in deciding the question which has arisen and to the speedy and economical final determination of the proceedings.

(3) Where an order for stay of proceedings has been made under this section the Judge shall state the question which in his opinion has arisen as to the effect of the Constitution in the form of a special case which so far as may be possible shall state the said question in a form which shall permit of an answer being given in the affirmative or the negative.

(4) Where a Judge shall have stated a special case under this section the same shall be transmitted to the Federal Court in accordance with the rules of court of the Federal Court.

### **Proceedings in Federal Court**

**85.** (1) Where a special case has been transmitted to the Federal Court under section 84, the Federal Court shall, subject to any rules of court of the

Federal Court, deal with the case and hear and determine it in the same way as an appeal to the Federal Court.

(2) When the Federal Court shall have determined any special case under this section the High Court in which the proceedings in the course of which the case has been stated are pending shall continue and dispose of the proceedings in accordance with the judgment of the Federal Court and otherwise according to law.

### *Appellate Jurisdiction —Criminal Appeals*

#### **Jurisdiction and powers**

**86.** Save as in this Act provided, in the exercise of its appellate jurisdiction, the Federal Court shall have the same jurisdiction, may exercise the same powers and may make any order as are had and may be exercised or made by the Court of Appeal or by the High Court.

#### **Jurisdiction to hear and determine criminal appeals**

**87.** (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.

(2) Notice of any appeal by the Public Prosecutor shall be signed by the Public Prosecutor, the Solicitor General or any officer authorized by the Public Prosecutor.

(3) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

**On appeal against acquittal, accused may be arrested**

**88.** Where an appeal is presented against an acquittal, the Federal Court may issue a warrant directing that the accused be arrested and brought before it and may remand him to prison pending the disposal of the appeal or admit him to bail.

**Appeal not to operate as stay of execution**

**89.** (1) Except in the cases mentioned in subsection (3) and section 88, no appeal shall operate as a stay of execution on any judgment, order, conviction or sentence pending appeal on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the judgment, order, conviction, or sentence as to the Court may seem reasonable.

(2) If the appellant is ultimately sentenced to imprisonment, the time during which the execution of the sentence was stayed shall be excluded in computing the term of his sentence unless the Federal Court otherwise orders.

(3) In the case of a conviction involving sentence of death or corporal punishment —

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal may be given or any extension of time which may be permitted; and

(b) if notice is so given the sentence shall not be executed until after the determination of the appeal.

**Summary rejection of appeal**

**90.** Where the grounds of appeal do not raise any question of law and it appears to the Chief Justice and two other Judges of the Federal Court that the evidence is sufficient to support the conviction and that there is no

material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead the Federal Court to consider that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order under the hand of the Chief Justice, certifying that the said Judges, having perused the record, are satisfied that the appeal has been brought without any sufficient ground of complaint and notice of the rejection shall be served upon the appellant:

Provided that —

- (i) if, in any case rejected under this section, the appellant gives, within seven days of service of notice of rejection upon him, notice to the Registrar of the Federal Court of application for leave to amend his grounds of appeal so as to raise a question of law, accompanied by a certificate signed by an advocate specifying the question to be raised and undertaking to argue it, the Federal Court may grant leave to amend accordingly and shall restore the appeal for hearing; and
- (ii) for the purpose of this section, the question whether a sentence ought to be reduced shall be deemed not to be a question of law.

### **Notice and time of hearing**

**91.** Where the Federal Court does not reject an appeal summarily under section 90, or where the Public Prosecutor is the appellant, the Federal Court shall cause notice of the time and place for the hearing of the appeal to be given to the parties thereto.

### **Powers of Federal Court**

**92.** (1) At the hearing of an appeal the Federal Court shall hear the appellant or his advocate, if he appears, and, if it thinks fit, the respondent or his advocate, if he appears, and may hear the appellant or his advocate in reply, and the Federal Court may thereupon confirm, reverse or vary the decision of the Court of Appeal, or may order a retrial or may remit the

matter with the opinion of the Federal Court thereon to the High Court, or may make such other order in the matter as to it may seem just, and may by that order exercise any power which the Court of Appeal or the High Court might have exercised:

Provided that the Federal Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(2) At the hearing of an appeal the Federal Court may, if it thinks that a different sentence should have been passed, quash the sentence passed, confirmed or varied by the Court of Appeal and pass such other sentence warranted in law (whether more or less severe) in substitution therefor as it thinks ought to have been passed.

(3) The Federal Court shall in no case make any order under this section as to payment of costs of any appeal to or by the appellant or respondent.

### **Additional evidence**

**93.** (1) In dealing with any appeal in a criminal case the Federal Court may, if it thinks additional evidence to be necessary, either take such evidence itself or direct it to be taken by the High Court.

(2) When the additional evidence is taken by the High Court, it shall certify the evidence, with a statement of its opinion on the case considered with regard to the additional evidence, to the Federal Court, and the Federal Court shall thereupon proceed to dispose of the appeal.

(3) The parties to the appeal shall be present when additional evidence is taken.

(4) In dealing with any appeal in a criminal case the Federal Court may also, if it thinks fit, call for and receive from the High Court a report of any matter connected with the trial.

**Judgment**

**94.** (1) On the termination of the hearing of an appeal the Federal Court shall, either at once or on some future day which shall either then be appointed for the purpose or of which notice shall subsequently be given to the parties, deliver judgment in open court.

(2) In criminal appeals and matters the Federal Court shall ordinarily give only one judgment, which may be pronounced by the Chief Justice or by such other member of the Federal Court as the Chief Justice may direct:

Provided that separate judgments shall be delivered if the Chief Justice so determines.

(3) The judgment of any member of the Federal Court who is absent may be read by any other Judge.

**Certification of judgment**

**95.** (1) Whenever a criminal case is decided on appeal, the Federal Court shall certify its judgment or order to the courts concerned.

(2) The courts concerned shall thereupon make such orders as are conformable to the judgment or order of the Federal Court, and, if necessary, the record shall be amended in accordance therewith.

(3) Upon the withdrawal or discontinuance of any appeal the Registrar of the Federal Court shall notify the courts concerned accordingly and, if any stay of execution has been granted, the sentence or order of the High Court or as varied by the Court of Appeal shall forthwith be enforced.

*Appellate Jurisdiction — Civil Appeals*

**Conditions of appeal**

**\*96.** Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court —

- (a) from any judgment or order of the Court of Appeal in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction involving a question of general principle decided for the first time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage; or
- (b) from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to any such provision.

**Leave to appeal**

**97.** (1) An application under section 96 for leave to appeal to the Federal Court shall be made to the Federal Court within one month from the date on which the decision appealed against was given, or within such further time as may be allowed by the Court.

(2) Where the judgment appealed against requires the appellant to pay money or perform a duty, the Federal Court shall have power, when granting leave to appeal, either to direct that the judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just; and in case the Court shall direct the judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security to the satisfaction of that Court for the due performance of any order as the Federal Court may make in order to give effect thereto.

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*\*NOTE*—This amendment shall apply to any application for leave to appeal pending in the Federal Court and shall not affect any order previously made by the Federal Court in respect of any application for leave to appeal and no such order shall be nullified—*see* subsections 8(2) & (3) of Act A1031.

(3) Notwithstanding section 74, an application for leave to appeal to the Federal Court may be heard by a Judge of the Court, and any direction or order that could be given or made by the Court on such application may be given or made by such Judge.

(4) Any direction or order given or made under subsection (3) may, upon application by the aggrieved party made within ten days after the direction or order is given or made, be affirmed, varied or discharged by the Court.

### **Procedure to enforce order of the Federal Court**

**98.** Any person who desires to enforce or obtain execution of any order of the Federal Court shall file in the trial court a certified copy of the order which shall be enforced or executed in the same way as is enforced or executed a judgment of the Court of Appeal.

### **Costs**

**99.** (1) The costs incurred in the prosecution of any appeal or application for leave to appeal under this Part shall be paid by such party, person as the Federal Court may by order direct and the amount of any such costs shall be taxed by the Chief Registrar of the Federal Court in accordance with the rules of court.

(2) The Federal Court may make such order as to the whole or any part of the costs in the Federal Court, or in the Court of Appeal or in the High Court as is just.

### **New trial**

**100.** (1) Except as hereinafter provided, the Federal Court shall have power to order that a new trial be had of any cause or matter tried by the High Court in the exercise of its original or appellate jurisdiction.

(2) A new trial shall not be granted on the ground of improper admission



or rejection of evidence unless in the opinion of the Federal Court some substantial wrong or miscarriage of justice has been thereby occasioned; and if it appears to the Federal Court that the wrong or miscarriage affects part only of the matters in controversy, or some or one only of the parties, the Federal Court may give final judgment as to part thereof, or as to some or one only of the parties, and direct a new trial as to the other part only, or as to the other party or parties.

(3) A new trial may be ordered on any question without interfering with the finding or decision of the court below upon any other question.

### **Immaterial errors**

**101.** No judgment or order of the High Court, or of any Judge, shall be reversed or substantially varied on appeal, nor a new trial ordered by the Federal Court, on account of any error, defect, or irregularity, whether in the decision or otherwise, not affecting the merits or the jurisdiction of the Court.

### **Appeal not to operate as stay of execution**

**102.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from unless the court below or the Federal Court so orders and no intermediate act or proceeding shall be invalidated except so far as the Federal Court may direct.

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## SCHEDULE

[Subsection 25(2)]

## ADDITIONAL POWERS OF HIGH COURT

**Prerogative writs**

1. Power to issue to any person or authority directions, orders or writs, including writs of the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any others, for the enforcement of the rights conferred by Part II of the Constitution, or any of them, or for any purpose.

**Distress for rent**

2. Power to issue and enforce writs or warrants of distress for arrears of rent.

**Partition of land**

3. Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and consequential directions.

**Sale of land**

4. Power to order land to be charged or mortgaged, as the case may be, in any case in which there is jurisdiction to order a sale.

**Interpleader**

5. Power to grant relief by way of interpleader—

- (a) where the person seeking relief is under liability for any debt, money, or goods or chattels, for or in respect of which he has been, or expects to be, sued by two or more parties making adverse claims thereon; and
- (b) where a Sheriff, bailiff or other officer of court is charged with the execution of process of court, and claim is made to any money or goods or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process is issued,

and to order the sale of any property subject to interpleader proceedings.

**Preservation of property**

6. Power to provide for the interim preservation of property the subject matter of any cause or matter by sale or by injunction or the appointment of a receiver or the registration of a caveat or a *lis pendens* or in any other manner whatsoever.

**Interest**

7. Power to direct interest to be paid on debts, including judgment debts, or on sums found due on taking accounts between parties, or on sums found due and unpaid by receivers or other persons liable to account to the Court.

**Time**

8. Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, although any application therefor be not made until after the expiration of the time prescribed:

Provided that this provision shall be without prejudice to any written law relating to limitation.

**Writs of seizure and sale**

9. Power to enforce judgment of the Court for the payment of money to any person or into Court by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except property which is exempt from seizure and sale under any written law.

**Other execution**

10. Power to enforce a judgment of the Court in any other manner which may be prescribed by any written law or rules of court.

***Res judicata***

11. Power to dismiss or stay proceedings where the matter in question is *res judicata* between the parties, or where by reason of multiplicity of proceedings in any court or courts the proceedings ought not to be continued.

**Transfer of proceedings**

12. Power to transfer any proceedings to any other Court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof:

Provided that this power shall be exercised in such manner as may be prescribed by any rules of court.

**Set-off**

13. Power to allow a defence of set-off.

**Discovery and interrogatories**

14. Power to order discovery of facts or documents by any party or person in such manner as may be prescribed by rules of court.

**Costs**

15. Power to award costs.

**Execution of documents**

16. Power to execute, or direct any of its officers to execute, any transfer, conveyance, assignment, contract or other document, including an endorsement on a negotiable instrument, which any person has been ordered by the Court to execute, if he has neglected or refused to execute the same or is out of the jurisdiction, and the same shall operate to all intents as if executed by that person.

**Vexatious litigants**

17. Power to restrain any person who has habitually and persistently and without reasonable cause instituted vexatious legal proceedings in any court, whether against the same or different persons, from instituting any legal proceedings in any court save by leave of a Judge. A copy of any such order shall be published in the *Gazette*.

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## LAWS OF MALAYSIA

### ACT 91

#### COURTS OF JUDICATURE ACT 1964

##### LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 35/1964	Courts of Judicature (Amendment) Act 1964	16-03-1964
P.U. 400/1966	Modification Laws (Courts of Judicature) Order 1966	03-11-1966
Ord. 14/1969 [P.U. (A) 521/1969]	Emergency (Essential Powers) Ordinance No. 14 1969	19-12-1969
P.U. (A) 7/1970	Corrigendum to Ordinance 14/1969	09-01-1970
Act A33	Courts (Amendment) Act 1971	30-04-1971
Act A63	Courts of Judicature (Amendment) Act 1971	31-08-1971
Act A126	Courts of Judicature (Amendment) Act 1972	01-11-1972
Act A279	Courts of Judicature (Amendment) Act 1975	01-01-1975
Act 160	Malaysia Currency (Ringgit) Act 1975	29-08-1975
Act A328	Courts of Judicature (Amendment) Act 1976	23-01-1976; Except s. 13: 01-01-1978
Act A514	Constitution (Amendment) Act 1981	27-08-1976
P.U. (A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
Act A530	Courts of Judicature (Amendment) Act 1982	23-02-1982
Act A556	Courts of Judicature (Amendment) Act 1983	13-05-1983
Act A566	Constitution (Amendment) Act 1983	16-12-1983;

Amending law	Short title	In force from
		Except S. 2: 01-02-1974; s. 15 – 17: 01-01-1985
Act A600	Courts of Judicature (Amendment) Act 1984	01-01-1985
Act A606	Courts of Judicature (Amendment) (No. 2) Act 1984	01-01-1985
Act A670	Courts of Judicature (Amendment) Act 1987	22-05-1987
Act A671	Subordinate Courts (Amendment) Act 1987	22-05-1987
Act A746	Courts of Judicature (Amendment) Act 1990	12-01-1990
Act A886	Courts of Judicature (Amendment) Act 1994	24-06-1994
Act A909	Courts of Judicature (Amendment) Act 1995	24-06-1994
Act A940	Courts of Judicature (Amendment) Act 1996	02-02-1996
Act A1031	Courts of Judicature (Amendment) Act 1998	01-08-1998
Act A1229	Courts of Judicature (Amendment) Act 2004	06-03-2007

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**LAWS OF MALAYSIA**

**ACT 91**

**COURTS OF JUDICATURE ACT 1964**

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
3	P.U. 400-1966	03-11-1966
	Act A126	01-11-1972
	Act A328	23-10-1976
	Act A606	01-01-1985
	Act A886	24-06-1994
	Act A1031	01-08-1998
5	Act A126	01-11-1972
	Act A606	01-01-1985
6	Act A886	24-06-1994
7	Act A126	01-11-1972
	Act A886	24-06-1994
8	Act A556	13-05-1983
	Act A886	24-06-1994
	Act A940	02-02-1996
9	Ord. 14/1969	19-12-1969
	Act A33	30-04-1971
	Act A746	12-01-1990
	Act A886	24-06-1994
	Act A940	02-02-1996
10	Act A126	01-11-1972
	Act A671	22-05-1987
	Act A886	24-06-1994
	Act A1031	01-08-1998

Section	Amending authority	In force from
11	Act A126 Act A886	01-11-1972 24-06-1994
12	Act A126	01-11-1972
13	Act A886	24-06-1994
14	P.U. 400/1966 Act A126	03-11-1966 01-11-1972
16	Act A126 Act A606 Act A886	01-11-1972 01-01-1985 24-06-1994
17	P.U. 400/1966 Ord. 14/1969 Act A126 Act A746 Act A886	03-11-1966 19-12-1969 01-11-1972 12-01-1990 24-06-1994
17A	P.U. (A) 7/1970 Act A33 Act A126 Act A886	09-01-1970 30-04-1971 01-11-1972 24-06-1994
18	Act A940	02-02-1996
19	Act A886	24-06-1994
20	Act A886	24-06-1994
21	Act A886	24-06-1994
22	Act A328 Act A1229	23-01-1976 06-03-2007
23	P.U. 400/1966	03-11-1966
24	Act A606 Act A670	01-01-1985 22-05-1987
24A	Act A126	01-11-1972



*Courts of Judicature*

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Section	Amending authority	In force from
25	P.U. 400/1966	03-11-1966
25A	Act A606	01-01-1985
28	Act A279 Act A530 Act A670	01-01-1975 23-02-1982 22-05-1987
29	Act A886	24-06-1994
30	Act 35/1964	16-03-1964
37	Act A556	13-05-1983
38	Act A886	24-06-1994
39	Act A886	24-06-1994
40	Act A886	24-06-1994
42	Act A1031	01-08-1998
43	Act A886	24-06-1994
44	Act A1031	01-08-1998
45	Act A886	24-06-1994
46	Act A886	24-06-1994
47	Act A886	24-06-1994
48	Act 35/1964 Act A886	16-03-1964 24-06-1994
49	Act A886	24-06-1994
50	Act A328 Act A530 Act A556 Act A606 Act A886 Act A909	23-01-1976 23-02-1982 13-05-1983 01-01-1985 24-06-1994 24-06-1994

Section	Amending authority	In force from
	Act A1229	06-03-2007
51	Act A909 Act A886	24-06-1994 24-06-1994
52	Act A328 Act A909	23-01-1976 24-06-1994
53	Act A909	24-06-1994
55	Act A328	23-01-1976
56A	Act A328	23-01-1976
57	Act A328 Act A909	23-01-1976 24-06-1994
59	Act A328	23-01-1976
60	Act A909	24-06-1994
61	Act A909	24-06-1994
63	Act A909	24-06-1994
64	Act A328	23-01-1976
65	Act A909	24-06-1994
66	Act A328 Act A530 Act A909	23-01-1976 23-02-1982 24-06-1994
67	Act A126 Act A909	01-11-1972 24-06-1994
68	Act A279 Act A530 Act A606 Act A670 Act A886	01-01-1975 23-02-1982 01-01-1985 22-05-1987 24-06-1994

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Section	Amending authority	In force from
74	Act A63 Act A328 Act A530 Act A600 Act A886	31-08-1971 01-01-1978 23-02-1982 01-01-1985 24-06-1994
75	Act A600 Act A886	01-01-1985 24-06-1994
76	Act A886	24-06-1994
77	Act A886	24-06-1994
78	Act A886 Act A1031	24-06-1994 01-08-1998
79	Act A600 Act A886	01-01-1985 24-06-1994
80	Act A600 Act A886	01-01-1985 24-06-1994
81	Act A600 Act A886	01-01-1985 24-06-1994
82	Act A600 Act A886	01-01-1985 24-06-1994
83	Act A600 Act A886	01-01-1985 24-06-1994
84	Act A600 Act A886	01-01-1985 24-06-1994
85	Act A600 Act A886	01-01-1985 24-06-1994
86	Act A600 Act A886	01-01-1985 24-06-1994
87	Act A600 Act A886 Act A1229	01-01-1985 24-06-1994 06-03-2007

Section	Amending authority	In force from
88	Act A600 Act A886	01-01-1985 24-06-1994
89	Act A600 Act A886	01-01-1985 24-06-1994
90	Act A600 Act A886	01-01-1985 24-06-1994
91	Act A600 Act A886	01-01-1985 24-06-1994
92	Act A600 Act A886 Act A909	01-01-1985 24-06-1994 24-06-1994
93	Act A600 Act A886 Act A909	01-01-1985 24-06-1994 24-06-1994
94	Act A600 Act A886	01-01-1985 24-06-1994
95	Act A600 Act A886 Act A909	01-01-1985 24-06-1994 24-06-1994
96	Act A600 Act A886 Act A909 Act A1031	01-01-1985 24-06-1994 24-06-1994 01-08-1998
97	Act A600 Act A886 Act A1031	01-01-1985 24-06-1994 01-08-1998
98	Act A600 Act A886	01-01-1985 24-06-1994
99	Act A600 Act A886	01-01-1985 24-06-1994
100	Act A600	01-01-1985

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Section	Amending authority	In force from
	Act A886	24-06-1994
101	Act A600 Act A886	01-01-1985 24-06-1994
102	Act A600 Act A886	01-01-1985 24-06-1994
Throughout the Act	Act 160	29-08-1975

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