

THE COURTS ACT 1945

Act 5/1945

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PART I - PRELIMINARY

1. Short title

This Act may be cited as the **Courts Act**.

2. Interpretation

In this Act -

“District Magistrate” includes Senior District Magistrate;

“prescribed amount”, in relation to the Intermediate Court or a District Court, means such sum as the President may, by regulations, determine.

Amended by [\[Act No. 48 of 1991\]](#)

PART II - THE SUPREME COURT

Sub-Part I - Constitution of the Supreme Court

3. Constitution

The Supreme Court of Mauritius shall be constituted in the manner prescribed in Chapter VII of the Constitution.

4. Repealed

5. Vacancies

The Supreme Court shall be deemed to be duly constituted during and notwithstanding any vacancy caused by the death, resignation, sickness, incapacity or absence from Mauritius on vacation leave, or for any other reason, of the Chief Justice, the Senior Puisne Judge or any Puisne Judge.

6. Repealed

7. Powers, precedence and office of judges

- (1) Subject to the other provisions of this Act, all judges of the Supreme Court shall have equal power, authority and jurisdiction.
- (2) The Puisne judges shall take precedence after the Chief justice and the Senior Puisne judge, in such manner as the President, acting in accordance with the advice of the Judicial and Legal Service Commission, may determine.
- (3) Except with the approval of the President no judge shall, with or without remuneration, undertake any other work or hold any other office.

Amended by [\[Act No. 48 of 1991\]](#)

8. Seal

- (1) The Supreme Court shall have a seal bearing on it the Arms of Mauritius with the words 'Supreme Court, Mauritius'.
- (2) (a) The seal shall be kept by the Chief Justice.
- (b) The Chief Justice may entrust the seal to such officers of the Court as he thinks fit.

Amended by [\[Act No. 29 of 1992\]](#)

9. Sittings

Sittings of the Supreme Court may be appointed and held at any time at the discretion of the Court.

10. Place of sittings

The sittings of the Supreme Court shall usually be held in such building as the President shall assign as a Court House for that purpose, but where the Supreme Court sits in any other building or place for the transaction of legal business, the proceedings shall be as valid in every respect as if they had been held in such Court House.

Amended by [\[Act No. 48 of 1991\]](#)

11. Adjournment of court

Where the judge before whom any case is to be heard is from any cause unable or fails to attend on the day appointed, and no other judge attends in his stead, the Master may adjourn the Court de die in them until the judge attends or until the Court is adjourned or closed by order under the hand of a judge.

12. Right of audience

In any proceedings before the Supreme Court, any of the following persons may address the Court -

- (a) any party to the proceedings, with leave of the court;
- (b) a barrister, and, if the proceedings are before the Bankruptcy Division, an attorney retained by or on behalf of any party.

13. Supreme Court open at all times

- (1) Subject to section 15, the Supreme Court shall be open throughout the year for the transaction of the general legal business pending there other than the criminal causes, and may at any time hear and determine any cause or matter pending in Court other than the criminal causes, upon such notice to the parties and otherwise as shall be determined by rules of Court or as shall seem just and reasonable.

Amended by [\[Act No. 11 of 2007\]](#)

- (2) The offices of the Supreme Court shall remain open for public business during office hours throughout the vacation and the vacation shall only apply to the officers of the Supreme Court in so far as is provided by rules of Court.

14. Language to be used in Supreme Court

- (1) The official language to be used in the Supreme Court of Mauritius shall be English.
- (2) Where a person appearing before the Court satisfies the Court that he does not possess a competent knowledge of the English language, he may give his evidence or make any statement in the language with which he is best acquainted.

Sub-Part II - Jurisdiction of the Supreme Court

15. Powers of Supreme Court

The Supreme Court shall be a superior Court of record and, in addition to any other jurisdiction conferred on it, shall have all the powers and judicial jurisdiction necessary to administer the laws of Mauritius.

16. Supreme Court - a Court of Equity

The Supreme Court shall be a Court of Equity vested with power, authority and jurisdiction to administer justice, and to do all acts for the due execution of such equitable jurisdiction, in all cases where no legal remedy is provided by any enactment.

17. Jurisdiction and process

The Supreme Court shall have full original jurisdiction to hear, conduct and pass decisions in civil suits, actions, causes, and any matters that may be brought and may be pending before the Supreme Court, and the Supreme Court and the judges shall sit and proceed to and conduct, and carry on, business in the same manner as the High Court of justice in England and its judges.

17A. Mediation

- (1) The Supreme Court shall have the power and jurisdiction to conduct mediation in any civil suit, action, cause and matter that may be brought and may be pending before the Supreme Court.
- (2) The Chief Justice may, before or at any stage of any proceedings, refer any civil suit, action, cause or matter to a Judge for mediation with a view to disposing of that civil suit, action, cause or matter by agreement or narrowing down the issues therein.
- (3) Where a civil suit, action, cause or matter is referred for mediation under subsection (2) –
 - (a) the Judge to whom it is referred shall have such powers as may be prescribed for conducting mediation; and
 - (b) the parties shall submit themselves to mediation and shall endeavour to dispose of the civil suit, action, cause or matter.
- (4) Where a civil suit, action, cause or matter has not been disposed of through mediation, the Judge shall cause the case to be fixed for trial.

Added by [\[Act No. 20 of 2009\]](#)

18. Disciplinary Powers

- (1) Notwithstanding any other enactment, the Supreme Court shall have power and jurisdiction to hear and determine any complaint of a disciplinary nature in respect of the professional conduct of a law practitioner or a ministerial officer including a. land surveyor.
- (2) For the purposes of subsection (1), 'complaint' includes a motion by a law officer, a written report by, or on behalf of the Chief Justice, of the Master and Registrar, of the Bar Council or of any other body or authority exercising powers of supervision over the conduct of a person referred to in subsection (1).
- (3) The Court may require the Ministère Public to intervene in any such matter in such manner as it thinks fit.
- (4) A hearing under this section shall be governed by section 14 of the Law Practitioners Act 1984..

Amended by [\[Act No. 29 of 1992\]](#)

18A. Innocent publication and distribution

- (1) A person shall not commit a contempt of Court on the ground that he has published any matter calculated to interfere with the course of justice in connection with any proceedings pending or imminent at the time of publication if at that time, having taken reasonable care, he did not know and had no reason to suspect that the proceedings were pending, or that such proceedings were imminent, as the case may be.
- (2) A person shall not commit a contempt of Court on the ground that he had distributed a publication containing such matter as is mentioned in subsection (1) if at the time of distribution, having taken all reasonable care, he did not know that it contained any such matter and had no reason to suspect that it was likely to do so.
- (3) The proof of any fact tending to establish a defence afforded by this section to any person in proceedings for contempt of Court shall lie upon that person.

18B. Proceedings in private

- (1) The publication of information relating to proceedings before any Court sitting in private shall not of itself be contempt of Court except -
 - (a) where the proceedings relate to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;

- (b) where the Court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
 - (c) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
 - (d) where the Court, having power to do so, expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.
- (2) Without prejudice to subsection (1), the publication of the text of a summary of the whole or part of an order made by a Court sitting in private shall not of itself be contempt of court except where the court, having power to do so, expressly prohibits the publication.
- (3) In this section, references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a Judge or a tribunal, and references to a court sitting in private include references to a court sitting in camera or in Chambers.
- (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section.

18C. Powers of Supreme Court in cases of contempt

Where the Supreme Court, on a motion made to that effect supported by affidavit, finds that a person has committed a contempt, the Court may -

- (a) sentence that person to imprisonment for a term not exceeding one year or to a fine not exceeding 300,000 rupees;
- (b) make such other order as it thinks fit.

Added by [\[Act No. 15 of 1994\]](#)

Sub-Part III - Officers of the Supreme Court

19. Master and Registrar

- (1) There shall be a Master and Registrar of the Supreme Court who shall be a barrister of not less than 5 years standing at the bar.
- (2) The duties of the Master shall include –
- (a) the conduct and hearing of all formal matters relating to cases, other than criminal matters, pending before the Supreme Court including the power to hold pre-trial conferences and the power to make such orders or give such

directions for the just, expeditious and economical disposal of proceedings;

- (b) the taxation of costs, the conduct and management of judicial sales, probate of wills and incidental matters connected therewith;
- (c) the dealing with matters of audit, inquiry and accounts; and
- (d) all such matters as may be referred to him by the Chief Justice, Judge or Court.

Deleted and Replaced by [\[Act No. 15 of 2000\]](#)

20. Deputy to Master and Registrar

Subject to such directions as may be given by the Chief Justice, the Deputy Master and Registrar and judge in Bankruptcy shall have and exercise all the powers, and perform all duties, vested in the judge in Bankruptcy and Master and Registrar under any enactment.

Amended by [\[Act No. 29 of 1992\]](#)

21. Taxation by Chief Clerk

- (1) The Chief Justice may, in the case of the absence of the Master and Registrar, make an order directing and authorising the Chief Clerk of the Registry to tax costs during the absence of the Master and Registrar.
- (2) The Chief Clerk of the Registry shall have during the absence of the Master and Registrar, the same power of taxing costs as is vested in the Master and Registrar by this Act, and any taxation of costs by the Chief Clerk shall be deemed a taxation by the Master and Registrar.

Amended by [\[Act No. 29 of 1992\]](#)

22. Delegation of other powers of Master and Registrar

Notwithstanding any other enactment, the Secretary to the Chief Justice or the Chief Registrar or any officer of the court designated for that purpose by the Chief Justice may –

- (a) administer an oath; and
- (b) exercise such powers or perform such duties of an administrative nature vested in the Master and Registrar as the Chief Justice may determine.

Amended by [\[Act 29 of 1992\]](#); [\[Act No. 15 of 1994\]](#); [\[Act No. 4 of 1999\]](#)

23. Minutes of proceedings

- (1) In every case, civil or criminal, tried before the Supreme Court, or any division of it, minutes of proceedings shall be drawn up and shall be signed by the Master and Registrar, or by any other officer of the court acting on behalf of the Master and Registrar with the authority of the Chief Justice.
- (2) These minutes, with the notes of evidence taken at the hearing or trial, as required by section 177, shall be preserved as records of the court.
- (3) The minutes and notes of evidence, or a copy thereof purporting to be signed and certified as a true copy by the Master and Registrar, or such other officer, shall at all times, without further proof, be admitted as evidence of such proceedings and of the statement made by the witnesses.

Amended by [\[Act No. 29 of 1992\]](#)

24. Shorthand notes

In every case, civil or criminal, where the presiding judge so directs, the Master and Registrar or such other officer shall ensure that shorthand notes are taken of any proceedings before the Supreme Court, and a transcript of such notes shall be made if the presiding judge so directs, and such transcript shall, for all purposes, be deemed prima facie to be the official record of such proceedings.

Amended by [\[Act No. 29 of 1992\]](#)

25-30. Repealed

31. Interpreters

- (1) All interpreters appointed by the Public Service Commission shall be deemed to be clerks attached to the Supreme Court.
- (2) They shall be subject, as officers of the court, to the control of the Chief Justice and they shall perform such duties, including clerical duties as the Chief Justice may direct.

32. Other officers of the court

- (1) (a) The Supreme Court shall have such other officers as may be appointed by the Public Service Commission.
- (b) The Chief Justice may transfer any clerk or interpreter of the Supreme Court to any Intermediate Court, District Court or Industrial Court, and any clerk or interpreter so transferred shall have the same powers and be subject to the same liabilities as an Intermediate Court, District Court or Industrial Court clerk or as an Intermediate Court, District Court or Industrial Court interpreter, as the case may be.

- (2) (a) The Public Service Commission may appoint such number of persons as may be necessary to be shorthand writers of the Supreme Court.
- (b) They shall be deemed to be clerks attached to the court and shall perform such duties, including clerical duties, as the Chief Justice may direct.

33. Officers under control of Chief justice

Without prejudice to the powers of the Public Service Commission, every officer of the Supreme Court, including clerks, shall, for all purposes, be subject to the orders and directions of the Chief Justice.

Sub-Part IV - Sittings and Distribution of Business of the Supreme Court

34. Civil jurisdiction of Supreme Court

- (1) The Supreme Court shall be the principal court of original civil jurisdiction and shall exercise general powers of supervision over all District and Industrial Courts and other special courts established or which may be established in Mauritius.
- (2) In the exercise of civil jurisdiction, the Supreme Court may hear and determine all civil matters whether sitting as a Court of Appeal or in exercise of its original jurisdiction, and it may sit publicly in more than one division at the same time for the despatch of civil business, each such division may be composed of one or more judges as the nature of the suit or matter may require.

35. Proceedings to be before one judge

Every proceeding in the Supreme Court and all business arising from that proceeding shall, save as provided by this Act, be heard and disposed of by a single judge.

36. Quorum of 2 or more judges

The Chief Justice may, either proprio motu or on application in writing made to him by any party to a case stating the reasons for such application, direct that any case shall be heard by 2 or more judges, having regard to the magnitude of the interests at-stake or the importance or intricacy of the questions of fact or law involved.

37. Difference of opinion between 2 judges

- (1) Where the Supreme Court or any divisional court is held by 2 judges only, the unanimous decision of these judges shall be taken to be the decision of the Supreme Court.

- (2) In the event of any difference of opinion between them, the decision of the court shall be suspended until a third judge is present, and the unanimous decision or the decision of the majority of the 3 judges, shall be taken to be the decision of the Supreme Court.

38. Criminal business of the Supreme Court
Amended by [\[Act No. 11 of 2007\]](#)

- (1) The Supreme Court shall be the principal court of original criminal jurisdiction and shall exercise general powers of supervision over all Intermediate, District and Industrial Courts and any other special courts that are or may be established in Mauritius.
- (2) The Supreme Court shall, acting in the exercise of its original criminal jurisdiction, hold sittings for the despatch of criminal business.

Amended by [\[Act No. 15 of 1994\]](#); [\[Act No. 11 of 2007\]](#)

39. Case before 3 or 5 judges

In any case pending before the Supreme Court, which the law requires to be taken before the full court, 3 or 5 judges shall hear the case, and in such case, as well as in any case where the judges think it expedient to hold a sitting before 3 or 5 of them, the unanimous decision of such 3 or 5 judges or the decision of a majority of them, shall be taken to be the decision of the full court.

40. Criminal and civil sittings

The Supreme Court may hold –

- (a) 2 or more sittings at the same time for the despatch of criminal business; and
- (b) sittings for the despatch, at the same time, of criminal business and civil business.

Amended by [\[Act No. 11 of 2007\]](#)

41. Repealed by [\[Act No. 11 of 2007\]](#)

42. Trial by jury

- (1) Subject to section 10 of the Criminal Procedure Act and to any other enactment relating to trials without a jury, criminal trials before the Supreme

Court shall be held before a Presiding Judge and a jury consisting of 9 persons who are qualified to serve as jurors.

- (2) Subject to subsection (3) and to section 57 every citizen of Mauritius who –
 - (a) has at any time resided in the island of Mauritius for one year; and
 - (b) is between the ages of 21 and 65, shall be qualified to serve as a juror.
- (3)
 - (a) No person who has been convicted of a crime shall be qualified to act as a juror.
 - (b) No proceeding shall be open to objection or challenge on the ground that a person disqualified under paragraph (a) has acted as a juror.
- (4) The Judges shall, by rules of Court, make provision for the preparation of a list of jurors and for the summoning of panels.
- (5)
 - (a) A judge may, on the trial of any cause before him, excuse a person summoned as a juror from serving on the jury if he is satisfied that the person -
 - (i) is not qualified to act as a juror;
 - (ii) is not sufficiently conversant with the English language to act as a juror;
 - (iii) ought to be excused from acting as a juror on account of any serious physical incapacity or any mental deficiency; or
 - (iv) being a woman, ought to be excused from so serving for any medical reason or any other reason which the judge may consider to be just and reasonable having regard to the conditions of her family life.
 - (b) Where a person is excused from serving on jury pursuant to paragraph (a), the name of the person shall be erased from the jury book for the current year and any longer time as the judge may think proper.

Amended by [\[Act No. 29 of 1992\]](#)

43. Penalty for nonattendance by jury

Any person who, when duly summoned as a juror, makes default and fails to attend court, or when called, does not answer or wilfully withdraws himself from the presence of the court before the jury, of which he is one, has delivered its verdict or been discharged, shall forfeit a sum not exceeding 500 rupees, at the direction of the judge, unless some just cause for such defaulters absence shall be made to appear to the satisfaction of the court.

44. Drawing of jurors to serve

- (1) At the sitting of the court for the trial of any such issue, the name, condition and place of abode of each juror summoned as aforesaid shall be written on a separate piece of card, paper, parchment, or otherwise and put into a box.
- (2) When such issue is called on to be tried, the Registrar or other officer of the court shall, in open court, draw therefrom, until the names of 9 persons appear who are not objected to or challenged, and after the trial, such names shall be returned to the box, to be kept with the other undrawn names, and so on as long as any issue shall remain to be tried.

Amended by [\[Act No. 29 of 1992\]](#)

45. Where number of jurors is insufficient

Where a case appointed to be tried by a jury is called, and a sufficient number of jurors summoned to attend such court is not in attendance, the court or Judge may then order any officer of the court forthwith to summon as many good and lawful men of the bystanders (being qualified as jurors), or any such jurors residing in Port Louis, as shall be sufficient to make up a full jury for the trial of that case.

46. Challenge of jurors

The State and the prisoner shall each be able to challenge –

- (a) not more than seven persons peremptorily; and
- (b) any other person on good cause shown.

Amended by [\[Act No. 29 of 1992\]](#)

47. Oath by jurors

Every juror shall take the following oath which shall be administered to him by the Presiding judge -

"I shall well and truly" the matter at issue between the State and the prisoner at the bar and a true verdict give according to the evidence. So help me God."

Amended by [\[Act No. 29 of 1992\]](#)

48. Foreman to be elected by jury

After the oaths have been- administered, the jury shall elect their foreman.

49. Giving the accused in charge

The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of

the court shall inform them of the charge specified in the information, and of their duty as jurors upon the trial.

50. Presiding judge to sum up case

The evidence and arguments at the trial on both sides being closed, the presiding judge shall, in the presence of the parties, sum up the whole case to the jury, stating where the main question and principal issue lies, commenting on the evidence, and affording such explanations and making such remarks as he thinks necessary for their direction, further stating his opinion on any matter of law arising on the evidence which he may consider to require it.

51. Verdict

- (1) The verdict of the jury shall be in ordinary cases "Guilty" or "Not Guilty".
- (2) The jury may if they so desire in any particular case, return instead a special verdict, setting out the facts which they find to have existed in the case before them, with an alternative conclusion of "Guilty" or "Not Guilty" according as the court may determine the matter of law arising from the facts so found.

Amended by [\[Act No. 29 of 1992\]](#)

52. Verdict to be given by a majority

- (1) The verdict of the jury shall be given by a majority of 7.
- (2) The verdict shall be delivered in open court and shall be recorded by the Master and Registrar or other officer of the court.

Amended by [\[Act No. 29 of 1992\]](#)

53. Sentence to be pronounced by the court

After the Master and Registrar or other officer has recorded the verdict in criminal matters, the court shall pronounce sentence on the prisoner either forthwith or on some future day.

Amended by [\[Act No. 29 of 1992\]](#)

54. Communication by or with juror

- (1) Any juryman who is guilty of any extraneous communication pending the conference of the jury, shall be fined by the court in a sum not exceeding 500 rupees.
- (2) The same penalty shall apply to any person guilty of having, from without, held any communication with any juryman and to the officer in charge of the jury who has not prevented such communication.

55. Bribes offered to or accepted by juror

Every person who is guilty of the offence of attempting corruptly to influence a jury by persuasion or by bribery or by offer of bribery, and every juror who wilfully and corruptly consents thereto, shall be respectively punished by imprisonment for a term not exceeding 2 years, either in a summary manner by the Supreme Court, where the commission of the offence is discovered whilst a trial is pending before the Court, or by the Supreme Court on a criminal information filed by the Director of Public Prosecutions against the offender where the commission of the offence is not discovered whilst a trial was pending before the Court.

Amended by [\[Act No. 11 of 2007\]](#)

56. Law of England to decide procedure

Where any question arises as to any procedure, or conduct in or respecting any matter, in the trial by jury, not herein provided for, the law of England shall be followed and rule the point or question at issue.

57. Jurors to know English

- (1) No person who has made an oath or affirmation that he is not sufficiently acquainted with the English language to serve as a juror shall be called upon to act as a juror in any criminal case, nor shall the name of that person be inserted by the Master and Registrar in the Jury Book compiled by him, so long as such person continues not to be sufficiently conversant with the English language to serve as a juror.
- (2) A judge in Chambers may ex-officio, direct the Master and Registrar to re-insert, and it shall also be competent for the Master and Registrar, ex officio, to re-insert in the Jury List of any year, the name of any person under subsection (1), who, there is reason to believe, has become sufficiently conversant with the English language to serve as a juror.

Amended by [\[Act No. 29 of 1992\]](#)

58. Illness of accused

Where during a trial the accused, in the opinion of the court becomes incapable, through sickness or other sufficient cause, of remaining at the bar, the court may discharge the jury and adjourn the trial.

59. Absence of a juror

- (1) Where in the course of a trial, at any time prior to the delivery of the verdict, any juror from any sufficient cause is prevented from attending through the trial, or from further attendance at the time, or where any juror absents himself, and his further attendance cannot be immediately enforced, the court may postpone the trial till the juror can attend, within a reasonable time.
- (2) Where the attendance of such juror cannot be procured within a reasonable time, the court may direct that a juror shall be added, and the jury re-sworn, or that the jury shall be discharged, and a new jury empanelled, and in either case the trial shall commence anew.

60. When jury to be kept together

- (1) It shall not be necessary in any case to keep the jury together during any adjournment previous to the close of the Judge's summing up, but the court may, if it appears to it to be advisable in the interests of justice in any trial, require the jury to be kept together during any adjournment.
- (2) Where the jury has retired to consider its verdict, the court may give such direction as it thinks fit with respect to their accommodation, custody and refreshment.

61. Jurors to attend adjournments

Where a trial is adjourned, the jurors shall be required to attend at the adjournment sitting and at every subsequent sitting until the conclusion of the trial.

62. Bankruptcy Division of Supreme Court

- (1) There shall be a division of the Supreme Court to be called the Bankruptcy Division of the Supreme Court having jurisdiction to deal with all matters of bankruptcy, insolvency or the winding up of companies.
- (2) The jurisdiction of the Bankruptcy Division of the Supreme Court shall vest in and be exercised by the Master and Registrar concurrently with the judges.
- (3) The jurisdiction of the Master and Registrar when sitting as a judge of the Bankruptcy Division shall not extend to the trial of criminal offences against the law of bankruptcy, insolvency or the winding up of companies.
- (4) The Master and Registrar when acting in the Bankruptcy Division shall have all the powers and privileges of the judges.
- (5) Several sittings of the Bankruptcy Division may be held concurrently for the despatch of business.

Amended by [\[Act No. 29 of 1992\]](#)

63. Judge of Bankruptcy Division

- (1) Where in any enactment dealing with bankruptcy and insolvency, the expressions "Master", "Court", "Judge" or "Judge in Bankruptcy" are used, they shall mean the Registrar sitting as a judge of the Bankruptcy Division of the Supreme Court, or a judge exercising jurisdiction in the Bankruptcy Division of the Supreme Court, and any jurisdiction exercisable under any such enactment by the Registrar in Chambers shall be exercised by a judge in Chambers.
- (2) Where in any enactment dealing with bankruptcy or insolvency the words "Bankruptcy Court" or "Court" are used, they shall mean the Bankruptcy Division of the Supreme Court.

64. Custody of records

All records and other documents in matters relating to insolvency, bankruptcy and winding up of companies shall be kept in the Registry.

65. Registrar of the Bankruptcy Division

The Chief Clerk and such other clerk of the Registry as the Chief justice may appoint, shall act as Registrar of the Bankruptcy Division, and all warrants, orders or proceedings issued by that Division shall be under the seal of the Supreme Court and under the hand of the officer so acting as Registrar.

Amended by [\[Act No. 29 of 1992\]](#)

66. Registrar may tax costs

The powers as Registrar of the Bankruptcy Division, of the Chief Clerk or of any other clerk or clerks of the Registry, shall include that of taxing costs and of doing any other act, or issuing any order appertaining to the function of Registrar in Bankruptcy, or which it would be the duty of the Registrar to do or to issue in his capacity of Registrar.

67. Power to make rules

The Judges may make rules regulating the procedure in insolvency, bankruptcy, and winding up and specifying the fees and costs to be taken and allowed in court and at Chambers, and for the distribution of business in the Bankruptcy Division.

68. Attendance of ministère public

Where the court or any judge certifies by writing that the attendance in court of any law officer, as representing the ministère public, is essential to the proper administration of justice in any case -

- (a) where the State or the public revenue is concerned;
- (b) where the civil status of any person, or the guardianship of any minor or interdicted person is concerned,

the Attorney-General or any other law officer duly authorised by him may appear as a party to the case and give his conclusion thereon.

Amended by [\[Act No. 48 of 1991\]](#)

68A. Reference to ministère public optional

Notwithstanding anything to the contrary in article 83 of the Code de Procédure Civile, it shall no longer be necessary for the Supreme Court, or a judge, before giving judgment or making an order in any cause or matter mentioned in that article to refer such cause or matter to the ministère public for conclusions, but in any such cause or matter, the Supreme Court or a judge may request the ministère public to give conclusions.

Sub-Part V - The appellate jurisdiction of the Supreme Court

69. Appellate jurisdiction of the Supreme Court

- (1) Subject to any other enactment, the Supreme Court shall have full power and jurisdiction to hear and determine all appeals, whether civil or criminal, made to the court from -
 - (a) a judge in the exercise of his original jurisdiction;
 - (b) -
 - (c) the Bankruptcy Division;
 - (d) the Registrar;
 - (e) the Intermediate Court;
 - (f) the Industrial Court;
 - (g) a Magistrate;
 - (h) any other court or body established under any other enactment.
- (2) An appeal to the Supreme Court under any of the enactments set out in the First Schedule shall be dealt with in the same manner as an appeal from a Magistrate pursuant to the District and Intermediate Courts (Civil Jurisdiction) Act, but the appellant shall not be required to furnish security.
- (3) (a) Every appellant shall, not less than, 45 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by rules of Court, skeleton arguments and submissions on the grounds of appeal.

- (b) Every other party to an appeal shall, not less than 30 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by rules of Court, skeleton arguments and submissions on the grounds of appeal.
- (c) Where any appellant or party to an appeal does not comply with any of the provisions of paragraph (a) or (b), the Court may make -
 - (i) such order as to costs as it thinks fit; or
 - (ii) a wasted costs order.

Repealed and Replaced by [\[Act No. 15 of 2000\]](#)

- (4) (a) Where, pursuant to any enactment, a person may appeal to the Supreme Court against a decision of a Court or body specified in subsection (1), the notice of appeal shall contain a warning to the party on whom it is served to the effect that he shall, if he wishes to resist the appeal, comply with paragraph (b).
- (b) Every person who is served with a notice of appeal and who wishes to resist the appeal shall, not later than 2 months after the date of service, serve on the appellant and file in the Registry a notice of his intention so to do.
- (c) Any person on whom notice of appeal is served and who fails to comply with paragraph (b) shall be deemed to have elected not to resist the appeal.

Amended by [\[Act No. 29 of 1992\]](#); [\[Act No. 15 of 1994\]](#); [\[Act No. 15 of 2000\]](#)

70. Appeals to be heard before at least 2 judges

Save as otherwise expressly provided in any other enactment, appeals to the Supreme Court shall be heard before at least 2 judges.

70A. Appeals to the Judicial Committee in criminal matters

An appeal shall lie from final decisions of the Court of Appeal or of the Supreme Court to the Judicial Committee in criminal cases where, in the opinion of the Court, the question involved in the appeal is one that, by reason of its great general public importance or otherwise, ought to be submitted to the Judicial Committee.

Amended by [\[Act No. 29 of 90\]](#); [\[Act No. 48 of 1991\]](#)

70B. Frivolous appeals

Notwithstanding any other enactment, where an appeal is made to the Supreme Court in a civil case and the court is satisfied that the appeal is frivolous or is an

abuse of its process, it may order that interest on the judgment debt be paid at 15 per cent or such other rate as may be prescribed by Rules of Court made by the judges.

Amended by [\[Act No. 15 of 1994\]](#)

Sub-Part VI - Jurisdiction in Chambers of judges

71. Matters disposed of by judge in Chambers

- (1) Subject to subsection (2), applications for or concerned with or in respect to any matter specified in this section and any matter connected therewith may, subject to the discretion of the judge in any particular case to refer them to the court, be finally disposed of at Chambers by a judge's order, which order shall be a sufficient authority to the Registrar to issue thereon a rule of court de piano
 - (a) applications to be let into possession of the unadMinistèred property and rights of a party deceased or absent (envoi en possession);
 - (b) applications for affirmative declaration;
 - (c) applications for cancellation or reduction of mortgage inscriptions;
 - (d) applications for removal of seizures;
 - (e) applications for the validity or nullity of attachments;
 - (f) applications for partitions of property;
 - (g) -
 - (h) applications for admission of a relinquishment of immovable property;
 - (i) applications touching absent persons under article 115 of the Code Napoléon;
 - (j) -
 - (k) applications for homologations of compromises (transactions) under article 441 of the Code Napoléon;
 - (l) applications for nomination of surveyors, appraisers, skilled witnesses (experts).
- (2) In applications under subsection (1) (c), (d), (e) or (f), no order shall be made by a judge in Chambers, where a party to the application objects.

72. Repealed

73. Power to grant an injunction

A judge may, whether in term time or in vacation, grant an injunction subject to a motion to the court to set aside the injunction, and the court may then set aside or modify it.

74. Rule or summons to show cause

Where a party seeks to obtain a rule or summons to show cause, he shall apply to the Master and Registrar who may issue the rule or summons and make it returnable before the judge in Chambers.

Amended by [\[Act No. 29 of 1992\]](#); [\[Act No. 20 of 1993\]](#)

75. Record of judge's orders made in Chambers

(1) (a) The date and nature of every order made by a judge in Chambers shall be recorded in a book kept for that purpose at the Judge's Chambers.

(b) The orders shall be exempted from registration in the office of the Registrar-General.

(2) The order may be written on unstamped paper.

Amended by [\[Act No. 3 of 1985\]](#)

76. Judges may issue warrant or summons

A Judge may issue a summons or warrant of arrest in the case of any offence committed within the jurisdiction of the Supreme Court and in such case the judge shall order the offender to appear or to be taken before the nearest Magistrate.

76A. Time for appeal

(1) Any person who wishes to appeal to the Supreme Court against any order, decision or judgment of a judge at Chambers in any matter in which an appeal lies, shall, unless otherwise expressly provided, lodge his appeal in the Registry and serve notice of the appeal on the other party or parties to the case within 21 days from the date of the order, decision or judgment.

(2) Section 69 (4) shall apply to an appeal under subsection (1).

Amended by [\[Act No. 29 of 1992\]](#); [\[Act No. 15 of 1994\]](#)

Sub-Part VII - Costs for and against the State

77-79. Repealed by [\[Act No. 29 of 1992\]](#)

PART III - INTERMEDIATE COURT AND DISTRICT COURTS

Sub-Part I - Constitution of the Intermediate Court and District Courts

80. Establishment of Intermediate Court

- (1) There shall be an Intermediate Court which shall be a court of record and which shall have civil and criminal jurisdiction in all districts in such cases and matters and to such extent as are provided in this Part.
- (2) For the purposes of section 5(1), the civil jurisdiction of the Intermediate Court shall extend to Rodrigues.

Amended by [\[Act No. 4 of 1999\]](#)

81. President and Magistrates of the court

- (1) The Intermediate Court shall consist of a President, to be known as the President of the Intermediate Court, and such number of Magistrates as may be established under the Civil Establishment Act, to be known as Magistrates of the Intermediate Court.
- (2) Notwithstanding subsection (1), a temporary Magistrate of the Intermediate Court may be appointed when and as often as, in the opinion of the Chief Justice, his appointment is required.
- (3) The Chief Justice may direct that any civil case lodged before the Intermediate Court in Rodrigues.
- (4) For the purposes of subsection (3), the Chief Justice may –
 - (a) direct one or more Magistrates to try the case;
 - (b) designate a clerk who shall have the same powers and duties in relation to the case as those of the Head Clerk of the Intermediate Court.
- (5) Any Magistrate under subsection (4) shall have the same powers and jurisdiction as those conferred on a Magistrate of the Intermediate Court.

Amended by [\[Act No. 4 of 1999\]](#)

82. Sittings of Intermediate Court

- (1) The Intermediate Court shall hold its sittings at such place, on such days and at such time as the Chief Justice may direct.
- (2) Where the Intermediate Court adjourns any proceedings before the court, it may resume them at such place or time as it may determine.

83. Seal of Intermediate Court

The Intermediate Court shall have a seal and all warrants, summonses and other process required to be under seal and issuing out of the court shall be sealed with the seal.

84. Audience before Intermediate Court

In any proceeding before the intermediate Court, any of the following persons may address the court -

- (a) any party to the proceedings with the leave of the court;
- (b) a person who is authorised to do so pursuant to the Law Practitioners Act 1984.

Amended by [\[Act No. 46 of 1988\]](#)

85. Proceedings before Intermediate Court

- (1) Subject to subsections (2) and (5), the hearing of every case before the Intermediate Court shall take place before one Magistrate;

Amended by [\[Act No. 4 of 1999\]](#); [\[Act No. 30 of 2003\]](#)

- (2) The President of the Intermediate Court may, either proprio motu or on application in writing made to him by any party to a case stating the reasons for such application, direct that any case shall be heard by 2 or more Magistrates, having regard to the magnitude of the interests at stake or the importance or intricacy of the questions of fact or law involved.

Amended by [\[Act No. 4 of 1999\]](#)

- (3) except where the case is heard before one Magistrate, the decision of the Intermediate Court shall –
 - (a) where the court is composed of 2 Magistrates, be the unanimous decision of the Magistrates;
 - (b) where the court is composed of 3 Magistrates, be the unanimous decision, or the decision of the majority, of the Magistrates.
- (4) Where the Intermediate Court is composed of 2 Magistrates and there is a difference of opinion between them, the trial shall be started anew before 3 Magistrates.
- (5) Where a person is prosecuted for an offence of rape under section 249(1) of the Criminal Code, the case shall be heard by -Magistrate, or Where the President of the Intermediate Court so directs, more than 2 Magistrates.

**Amended by [\[Act No. 46 of 1988\]](#); [\[Act No. 20 of 1993\]](#);
[\[Act No. 4 of 1999\]](#); [\[Act No. 30 of 2003\]](#)**

86. Cases coming for mention

- (1) (a) Where a case before the Intermediate Court comes for mention or has, for any reason, to be adjourned, the proceedings may take place before, one Magistrate, who may take and record the plea of an accused party or the pleadings of a party in a civil suit.

Amended by [\[Act No. 4 of 1999\]](#)

- (2) Where a criminal case is adjourned under subsection (1), the Magistrate adjourning the case may remand any accused party or may take or enlarge bail for his appearance.
- (3) Where in a civil matter the plaintiff or the defendant or both of them do not appear, one Magistrate may exercise any of the powers specified in section 15 or 16, as the case may be, of the District and Intermediate Courts (Civil Jurisdiction) Act.

Amended by [\[Act No. 46 of 1988\]](#); [\[Act No. 4 of 1999\]](#)

87. Documents and the Intermediate Court

Any information, warrant, summons or other process required to be laid before, issued or authenticated by, the Intermediate Court may be laid before, issued or authenticated by, any Magistrate of the Intermediate Court.

88. Minutes of trials

- (1) Subject to subsection (3), the minutes of evidence and the proceedings in any criminal trial shall be recorded by any Magistrate of the intermediate Court and it shall not be necessary that the minutes be recorded throughout by the same Magistrate.

Amended by [\[Act No. 28 of 1999\]](#)

- (2) The minute of every unanimous judgment shall be signed by all the Magistrates and, if the judgment is not unanimous, each Magistrate shall sign the minute of his judgment.
- (3) The evidence and proceedings in any criminal or civil case before the Intermediate Court may be recorded by tape or other technological means.

Amended by [\[Act No. 28 of 1999\]](#)

89. Head Clerk

The senior officer attached to the Intermediate Court shall be known as the Head Clerk but any other officer attached to the court shall have the same powers as the

Head Clerk and may perform any act which the law requires the Head Clerk to perform.

90. Issue of process and other documents

- (1) The Head Clerk shall issue all warrants, summonses or any other process and shall register all orders and judgments.
- (2) The Head Clerk shall keep such books for such purposes as the Chief Justice may direct.

91. Custody of records

- (1) The Head Clerk shall have the custody of all records of the Intermediate Court.
- (2) The Head Clerk shall cause notice of all claims, informations, warrants and summonses and of all orders, judgments and executions and of all proceedings to be entered in a book which shall be kept at the Intermediate Court.
- (3) Any entry in a book kept under subsection (1), or a copy of the entry purporting to be signed and certified as a true copy by the Head Clerk, shall in any proceedings in any court, be admitted, without further proof as evidence of the entry and of the proceedings to which it refers and of the regularity of such proceedings.

92. Other duties of Head Clerk

The Head Clerk shall have such other duties as may be assigned to him.

93. Establishment of District Courts

- (1) There shall be a court in every district to be known as a District Court, which shall be a court of record and which shall have civil and criminal jurisdiction in such causes and matters and to such extent as are provided in this Part.
- (2) The Chief Justice may, by regulations, declare that any District Court shall sit in 2 or more divisions and may determine the name by which every division shall be known.
- (3) The Chief Justice may, by Order, direct that a District Court shall have jurisdiction in respect of any part of another district.

Amended by [\[Act No. 20 of 1993\]](#)

94. District Magistrates

A District Court shall be presided by a Magistrate to be known as a District Magistrate.

95. Sittings of District Court

A District Court shall hold its sittings at such place, on such days and at such times as the Chief Justice may direct.

96. Seal of District Court

A District Court shall have a seal and every warrant, summons, or other process required to be under seal and issuing out of the court shall be sealed with the seal.

96A. Audience before District Court

In any proceedings before a District Court, any of the following persons may address the Court –

- (a) any party to the proceedings with the leave of the Court;
- (b) any person who is authorised to do so pursuant to the Law Practitioners Act.

Amended by [\[Act No. 4 of 1999\]](#)

97. Jurisdiction of District Magistrates

- (1) Every District Magistrate shall have jurisdiction in every district, but the Chief Justice may direct that a District Magistrate shall have special charge of a District Court or, as the case may be, of any of its divisions.
- (2) The Chief Justice may assign the Island of Rodrigues or any other island forming part of the Republic of Mauritius to any Magistrate who shall have and exercise therein the same rights, duties, powers and jurisdiction as a District Magistrate in the Island of Mauritius and shall, in addition, perform such administrative or other duties as may, with the consent of the Chief Justice, be assigned to him.
- (3) Any assignment or direction under this section shall be signified in writing to the Magistrate by the Master and Registrar.
- (4) For the purposes of this section, Round island, Flat Island and Gabriel Island shall be deemed to be part of the district of Rivière du Rempart.

Amended by [\[Act No. 20 of 1993\]](#)

98. District Clerk

The senior officer attached to a District Court shall be known as a District Clerk but any other officer attached to that court shall have the same powers as the District Clerk and may perform any act which the law requires the District Clerk to perform,

99. Issue of process and other documents

- (1) The District Clerk shall issue all warrants, summonses or any other process and shall register all orders and judgments.
- (2) The District Clerk shall keep such books for such purposes as the Chief Justice may direct.

100. Custody of records

- (1) The District Clerk shall have the custody of all records of the District Court to which he is attached.
- (2) The District Clerk shall cause notice of all claims, informations, warrants and summonses and of all orders, judgments and executions and of all other proceedings, to be entered in a book which shall be kept at the District Court.
- (3) Any entry in a book kept under subsection (1), or a copy of it purporting to be signed and certified as a true copy by the District Clerk, shall, in any proceedings before any court, be admitted, without further proof, as evidence of the entry and of the proceedings to which it refers and of the regularity of such proceedings.

101. Other duties of District Clerk

A District Clerk shall have such other duties as may be assigned to him.

102. Change of venue

- (1) (a) Any Judge may, upon the application by or on behalf of the Director of Public Prosecutions, any District Magistrate or any private party to any cause or matter, civil or criminal, pending before a District Court, order, if he is satisfied that the interests of justice so require, that the venue of the cause or matter be transferred from that District Court to any other District Court.
- (b) No change of venue shall be authorised if the trial of any cause or matter has begun on the merits.
- (2) Any Judge's order under subsection (1) shall be subject to such conditions as the judge thinks fit to impose and shall be final and conclusive.
- (3) Any District Magistrate shall, on receiving notice of a judge's order under subsection (1), stay all proceedings in relation to the cause or matter referred to in the order and shall forward the original warrants, informations, complaints, summonses, process or other documents before him to the District Court to which the cause or matter has been transferred.
- (4) The warrants, informations, complaints, summonses, process or documents forwarded to a District Court under subsection (3) shall be deemed to have been issued, received or entered in the District Court to which they have been forwarded.

103. Errors as to venue

No act done by or under the authority of a District Magistrate shall be void or impeachable by reason that the act was done in respect of or in relation to any offence, cause or matter which occurred or arose beyond the limits of the district to which he has been assigned.

Amended by [\[Act No. 20 of 1993\]](#)

Sub-Part II - Jurisdiction of Intermediate and District Courts

104. Civil jurisdiction

- (1) Subject to this Part, the Intermediate Court or a District Court shall have jurisdiction in all civil cases where the sum or matter in dispute, whether in balance of account or otherwise, does not exceed the prescribed amount, exclusive of interest and costs.
- (2) The jurisdiction conferred upon the intermediate Court or a District Court by subsection (1) shall include the power to make such orders and to issue such warrants or other process as may be necessary for the enforcement of the rights of the parties and no order made or warrant or process issued under this subsection shall be deemed invalid by reason only that it is in the nature of a mandatory injunction or other equitable remedy.
- (3) Orders in the nature of an injunction and all orders within the competence of the Intermediate Court or a District Court, as the case may be, which, if they were made in an action or matter in the Supreme Court, could in that court be enforced by attachment or committal, may be enforced by order of the Intermediate Court or District Court, as the case may be, by attachment or committal.

104A. Small claims jurisdiction

Notwithstanding any other enactment, a District Court shall have jurisdiction in any civil action, where the sum claimed or matter in dispute does not exceed 25,0-00 rupees and the case has been lodged under Part IIA of the District and Intermediate Courts (Civil Jurisdiction) Act, to hear and determine the action in accordance with the procedure set out under that Part.

Added by [\[Act No. 4 of 1999\]](#)

105. When jurisdiction not ousted

- (1) The jurisdiction of the Intermediate Court or a District Court shall not be ousted if, in order to adjudicate upon a claim within its jurisdiction, it has to decide upon a right to or contract concerning money or property exceeding the prescribed amount.

- (2) Where a claim is made to goods seized in execution of a judgment and the value of the goods does not exceed the prescribed amount, the Intermediate Court or a District Court, as the case may be, shall have jurisdiction to entertain the claim even if the goods have been seized in execution of a judgment of the Supreme Court, provided the claim is made within such period and in such form as may be prescribed by rules of court.

106. Action by landlord

- (1) The Intermediate Court or a District Court shall have jurisdiction in any action by a landlord to obtain cancellation of a lease, with or without damages, or to recover possession of real property from a tenant or occupier, including an action where the value of the property exceeds the prescribed amount.
- (2) Where the yearly rent or rental value of the property does not exceed the prescribed amount and the sum claimed for damages, if any, and for rent do not together exceed the prescribed amount, the cancellation of any lease, damages and possession of real property from a tenant or occupier may be claimed in the same plaint in which rent is claimed.
- (3) This section shall not affect the operation of the Landlord and Tenant Act 1999.

Amended by [\[Act No. 6 of 1999\]](#)

107. Alimony

- (1) A District Court shall have jurisdiction in actions, for payment of alimony by a wife against her husband, or in a case where the law gives a right to an alimony.
- (2) Notwithstanding any other enactment relating to the attachment of salaries or pensions, a District Court may, in execution of its judgment under this section, issue an attachment against any portion of any salary or pension of which the defendant may be in receipt.

108. Possessory actions

- (1) A District Court shall have jurisdiction in possessory actions concerning any land, premises, runs of water or other immovable property or any other rights arising out of immovable property including actions where the value of the property or right exceeds the prescribed amount if -
 - (a) the plaintiff claims to be maintained or restored to the quiet enjoyment and possession of the property or rights;
 - (b) the possessory action is entered within one year from the imputed trespass; and

- (c) the plaintiff has been in quite possession for at least one full year before the imputed trespass.
- (2) In any possessory action damages not exceeding the prescribed amount may also be claimed.
- (3) Notwithstanding article 25 of the Code de Procédure Civile, where the value of the property or right in relation to which a possessory action is brought does not exceed the prescribed amount, the District Court may, if the issue of ownership is raised, adjudicate on it.

109. Powers of Magistrate under Codes

A District Magistrate shall have all the powers vested by the Code Napoléon and the Code de Procédure Civile in all matters relating to the apposition and removal of seals.

110. Security for costs

Any court may, on the application of the defendant, in any cause or matter, require the plaintiff to give security for costs in all cases in which under the Code Napoléon security may be required or where the plaintiff is known to be insolvent.

111. Jurisdiction taken away in certain cases

- (1) The Intermediate Court or a District Court shall have no jurisdiction in any action or suit for divorce, judicial separation, interdiction of persons, or in matters of bankruptcy, or in any action where the civil status of any person, or any right of an inheritance, or any right arising out of a contract of marriage or the ownership or usufruct of immovable property or servitude thereon of a value exceeding the prescribed amount is in question, or where the validity of any will or other testamentary instrument, or any donatio inter vivos is disputed.
- (2) The Intermediate Court shall have no jurisdiction in actions for payment of alimony or possessory actions.

112. Criminal jurisdiction of Intermediate Court

The Intermediate Court shall have jurisdiction to try any of the following criminal matters which the Director of Public Prosecutions may refer to it -

- (a) any offence which a District Magistrate has jurisdiction to try;
- (b) any offence triable in Rodrigues or any island under the jurisdiction of the State of Mauritius other than the Island of Mauritius;
- (c) any offence specified in section 117;

- (d) any offence under sections 104, 122, 123(2), 228 (3) and (4), 235, 239 (1), 249(1), (4) and (5), 251, 257, 283, 284, 291 and 346 of the Criminal Code;
- (e) any offence under the Forests and Reserves Act 1983;
- (e) any offence declared triable by the Intermediate Court under any other enactment.

Amended by [\[Act No. 26 of 1991\]](#)

113. Penalties

- (1) Subject to subsection (2), the Intermediate Court shall have jurisdiction to inflict the penalties and forfeitures specified in the law applicable to the offence charged.
- (2) (a) Subject to paragraph (b) and any other enactment, the Court shall not award against any person penal servitude for more than 15 years or imprisonment for more than 10 years.
 - (b) In the case of a persistent offender, if the court is satisfied that, by reason of his previous conduct and of the likelihood of his committing further offences, it is expedient to protect the public from him for a substantial period, the court may increase the sentence to 20 years penal servitude.
- (3) For the purposes of subsection (2) -(a) "Persistent offender" means any person who -
 - (i) commits any offence listed in the Second Schedule,' in this Act referred to as a scheduled offence, before the expiration of 3 years from his previous conviction for a scheduled offence or from his final release from prison after serving a sentence passed on such conviction, whichever is the latter; or
 - (ii) has been convicted of a scheduled offence on at least 3 previous occasions since he has attained the age of 21 and has, on those 3 previous occasions, received sentences the total length of which was not less than 10 years;
- (b) a certificate purporting to be signed by the Commissioner of Prisons regarding the date of final release from prison of an offender shall be sufficient evidence of the facts therein stated without proof of his handwriting.

Amended by [\[Act No. 5 of 1985\]](#); [\[Act No. 29 of 1992\]](#); [\[Act No. 36 of 2008\]](#)

114. Criminal jurisdiction of District Courts

- (1) Subject to subsection (2), every District Court before whom any person is charged with having committed an offence, not being one of the offences mentioned in section 116, shall have power and jurisdiction to hear, try and

determine the charge and all questions of fact and law arising in the case and to convict the person, and on conviction, to award against him any penalties not exceeding the maximum penalties applicable to the offence of which the person is convicted.

- (2) A District Court shall not award against any person, imprisonment with or without hard labour for more than 5 years, and a fine exceeding 100,000 rupees.

Amended by [\[Reprint No. 7 of 1986\]](#); [\[Act No. 5 of 1999\]](#); [\[Act No. 36 of 2008\]](#)

115. Preliminary inquiry by Magistrate

Where upon the hearing of an offence within his jurisdiction, the Magistrate is of opinion that the offence deserves a punishment which is beyond his jurisdiction or that the evidence discloses another offence which is not within his jurisdiction, the Magistrate may, refer the matter to the Director of Public Prosecutions who, in accordance with section 3(1A) of the Criminal Procedure Act, may, at his sole discretion, decide whether or not a preliminary inquiry shall be held before the person is made to stand trial before the appropriate Court.

Amended by [\[Act No. 18 of 2011\]](#)

116. Matters excluded from summary jurisdiction

A District Magistrate shall have no jurisdiction to convict, but shall proceed to hold a preliminary inquiry and, if necessary, to commit for trial in accordance with the law relating to preliminary inquiries and commitment for trial if an accused is charged with any of the following offences -

- (a) offences under sections 50 to 79, 82, 83, 86, 88 to 91, 100 (1), 101, 102, 104, 122 to 131, 215 to 223, 228 (3), and (4), 234, 235, 236 (1) and (2), 239 (1), 249(1) and (4), 251, 257, 259, 276 to 281 (where the offence is committed before the Supreme Court), 2, 83, 284, 291, 346 and 347 of the Criminal Code;
- (b) attempts at or complicity in offences excepted from the jurisdiction of the Magistrate;
- (c) offences which, under any other enactment, are punishable by death or penal servitude for life, or are excluded from the jurisdiction of the Magistrate.

117. Referral of cases by Director of Public Prosecutions

Notwithstanding section 116, where a person is charged with any of the offences provided for by sections 77, 79, 124, 126, 127, 128 and 214 of the Criminal Code, the Director of Public Prosecutions may either before or after commitment of the

accused, authorise the Magistrate to entertain the case and to proceed to adjudication thereon, and thereupon the Magistrate may try, acquit or convict the person charged with the offence.

118. Further powers of District Magistrates

- (1) A District Magistrate may, and may be required to, even in a district which has not been assigned to him -
 - (a) issue a warrant to apprehend a party charged, or a search warrant;
 - (b) take bail for the appearance of a party arrested before the proper court;
 - (c) take and receive any dying declaration;
 - (d) take and receive the deposition of a witness in the presence of a party charged with any offence specified in section 116;
 - (e) order the performance of a post mortem examination, and, for the purpose of such examination, order the body of a person which has already been interred to be disinterred.
- (2) Any act done under subsection (1) shall be as valid as if it has been done by a Magistrate to whom the district in which the act is done has been assigned.
- (3) Nothing in this section shall authorise a Magistrate to hear a case or to make an inquiry in any district which has not been assigned to him.

Sub-Part III - Miscellaneous

119. Qualifications of Magistrates

No person shall be eligible for appointment to the office of Magistrate unless he is a barrister admitted to practise and has at least 2 years standing at the bar.

Amended by [\[Act No. 41 of 1991\]](#); [\[Act No. 6 of 1993\]](#)

120. Disqualification from holding other office

Except with the permission of the Chief Justice, no Magistrate shall, with or without remuneration, hold any office other than that of Magistrate and perform any duties other than those relating to his office.

121. Control of Magistrates

Every Magistrate shall, for administrative purposes, be subject to the direction and control of the Chief Justice.

122. Control of Intermediate and District Courts

Subject to section 121, the Intermediate Court shall be under the control and supervision of the President of the Intermediate Court and every District Court shall be under the control and supervision of the District Magistrate to whom the Chief Justice has assigned its special charge.

123. Reports to Chief Justice

The Chief Justice may, where he thinks fit so to do, require any Magistrate to furnish to him in such form as he may direct, a report on any case, civil or criminal, brought before the Magistrate and may call for the record of any such case.

124. Replacement of Magistrates

- (1) Subject to the Constitution, where a magistrate is, by reason of illness, challenge or for any other reason incapable of acting the Chief Justice may direct another magistrate to replace him.
- (2) In this section, 'magistrate' means a magistrate of the Industrial or Intermediate Court, a Senior District Magistrate or a District Magistrate.

Amended by [\[Act No. 46 of 1988\]](#); [\[Act No. 29 of 1990\]](#)

125. Challenge

- (1) No challenge shall be allowed against a Magistrate save on the ground of personal interest in any cause or matter brought before him or of his being related to one of the parties in the suit by blood or marriage, either in the direct line or in the collateral line to the degree of first cousin inclusively.
- (2) Any challenge against a Magistrate shall be deposited at the registry of the court where the Magistrate sits and the Magistrate against whom the challenge is made shall either accept the challenge or set down in writing the reasons for not abstaining from hearing the cause or matter.
- (3) Where a Magistrate does not abstain from hearing a cause or matter upon a challenge made against him, the reasons in answer to the challenge as set down in writing under subsection (2) shall be transmitted to the Registrar for submission to a judge in Chambers.
- (4) The Judge in Chambers shall determine the question of challenge summarily, in the absence of the parties and, where the challenge is not admitted, may award costs not exceeding 50 rupees against the party having made the challenge.
- (5) Where a Magistrate considers that he should abstain from hearing a cause or matter, he shall give notice of his reason to the Chief Justice who shall adjudicate on it and make an order accordingly.

126. Reservation of questions of law

- (1) Without prejudice to the right of appeal conferred by any enactment, the Intermediate Court or any District Court may state a case for the opinion of the Supreme Court on any question of law which may arise on the trial of any civil suit or matter and may adjudicate on it subject to the opinion of the Supreme Court.
- (2) The Supreme Court may after hearing the interested parties, determine any question of law on a case stated under subsection (1) for its opinion.

127. Contempt

- (1) Where any person wilfully insults a Magistrate, the usher or any officer of a court during a sitting of, or while in attendance in, the court or wilfully interrupts the proceedings of the court or otherwise misbehaves in court, any usher or officer of the court may, with or without assistance from any person, by order of the court, take the person into custody and detain him until the sitting of the court ends.
- (2) The court may commit any person as is mentioned in subsection (1) to prison for a period not exceeding 7 days or may impose upon him a fine not exceeding 100 rupees and, in a default of payment, may commit him to prison for a period not exceeding 7 days unless the fine is sooner paid.

128. Summonses to witnesses

- (1) Any party to a civil or criminal case, inquiry or other proceeding may obtain at the registry of the Intermediate Court or the District Court, as the case may be, summonses to witnesses, with or without a clause requiring the production of books, deeds, papers or writings in their possession, and in any such summons any number of names may be inserted.
- (2) Any person on whom a summons is served and who refuses or neglects without sufficient cause, to appear or to produce any books, papers or writings required by the summons to be produced, or any person who appears in answer to a summons and who on being required to give evidence refuses to be sworn or affirmed or to make a solemn declaration, as the case may be, and to give evidence, shall be liable to a fine not exceeding 2000 rupees to be inflicted by the court before whom the default or refusal occurs.
- (3) Any person not appearing when duly served with a summons may, by warrant under the hand of the Magistrate, be arrested and brought before him to give evidence.
- (4) (a) In the case of any prosecution entered by any public officer acting in the discharge of his duties, any officer of the department to which the officer belongs, whose attendance as a witness is required may be served by any other officer of the same department, duly authorised to that effect by the head thereof, with a notice in writing to attend court.

- (b) The notice, duly signed or initialled by the witness, with the return of service duly entered thereon, shall be the equivalent, to all intents and purposes, of a summons served by an usher.

Amended by [\[Act No. 20 of 1993\]](#); [\[Act No. 4 of 1999\]](#)

129. Examination of witnesses

Any witness heard in any proceeding before a court shall be heard upon oath, and maybe examined, cross-examined and re-examined in accordance with the law of evidence.

Amended by [\[Act No. 20 of 1993\]](#)

130. Evidence outside court

Where any person cannot appear before the Intermediate Court or a District Court through illness or other lawful impediment and it appears to the court that it is necessary in the interests of justice to do so, the court may, on giving adequate notice to interested parties, proceed to any place to examine that person upon his personal answers or to give his evidence upon oath.

131. Language to be used

- (1) The language to be used in the Intermediate Court or in any District Court shall be English, but any person may address the court in French.
- (2) Where any person who is required to give evidence, satisfies the court that he does not possess a competent knowledge of English or French, he may give his evidence in the language with which he is best acquainted.
- (3) Where any person gives evidence in a language other than English or French, the proceedings shall, if the court so directs, be translated.

132. Interpreters

Any person appointed to act as interpreter at the intermediate Court or any District Court may, in addition to his duties as interpreter, be assigned such other duties as the Magistrate having the supervision of the court may determine.

133. Absence of Magistrate

- (1) Where the Intermediate Court or a District Court is unable to sit on any day appointed and no Magistrate is in attendance, the Head Clerk of the Intermediate Court or the District Clerk, as the case may be, may adjourn the hearing of any case fixed for that day to any subsequent day and the order shall, for all intents and purposes, be the equivalent of an order of adjournment by a Magistrate.

- (2) Where a criminal case is adjourned under subsection (1), the order of adjournment may provide for the remand of any accused party or for the taking or enlargement of bail for his appearance.

134. Repealed by [\[Act No. 39 of 2011\]](#)

Amended by [\[Act No. 18 of 2011\]](#)

135. Error and certiorari taken away

- (1) Subject to subsection (2), no judgment, order, or determination, given or made by any court, nor any cause or matter brought or pending before him, shall be removed by appeal, motion, writ of error, certiorari or otherwise into any other court, save and except in the manner and in accordance with the law governing appeals.
- (2) **Repealed by [\[Act No. 27 of 2006\]](#)**

136. Transfer of proceedings

- (1) In any action commenced in the Supreme Court, the court may at any time, on application made in that behalf by any party by way of motion, make an order that the claim and counterclaim, if any, or, if the only matter remaining to be tried is the counterclaim, the counterclaim, be transferred to any court which has jurisdiction to hear and determine the subject matter of the claim or counterclaim, as the case may be, and the amount thereof.
- (2) Where an order is made under subsection (1), the costs of the proceedings before the Supreme Court, including the costs of the application for the transfer, shall be in the discretion of the Supreme Court.
- (3) The court to which any claim or counterclaim has been transferred by an order made under subsection (1) shall adjudicate upon the claim or counterclaim as if the action had been commenced there and the provisions regulating the procedure of that court in civil matters shall apply, mutatis mutandis, to any claim or counterclaim so transferred.
- (4) (a) Where -
 - (i) the trial of an action which has been entered in the Intermediate Court has not yet begun; and
 - (ii) the sum or matter in dispute, whether in balance of account or otherwise, but exclusive of interest and costs, does not exceed the prescribed amount in relation to District Courts,

the Intermediate Court may, with the written consent of the Chief Justice, order that the action be removed to the appropriate District Court.

- (b) Where an action is removed to a District Court under paragraph (a), it shall be heard and determined by that court as if it had been originally entered there.

137-154. Repealed

PART IV - LAW IN FORCE AND TO BE APPLIED IN THE COURTS

155-156. Repealed

157. Extension of enactments to other islands

The President may extend any enactment to any island under the jurisdiction of the State of Mauritius other than the island of Mauritius, subject to such modifications and restrictions as he thinks fit, in order to adapt the enactment to the local circumstances of such island and may amend any enactment in force in the island.

Amended by [\[Act No. 48 of 1991\]](#)

158. Power to legislate for other islands

Without prejudice to section 157, the President may make such regulations as he thinks necessary or desirable for the good government and general well-being of the islands under the jurisdiction of the State of Mauritius and all such regulations shall have the same force and effect as though they were enactments passed by the Assembly.

Amended by [\[Act No. 48 of 1991\]](#)

159. Penalties for contravention of regulations

Regulations made under section 158 may also provide penalties for their non-observance not exceeding a penalty of 500 rupees and imprisonment for a term not exceeding 3 months for any one offence, and for the infliction of such penalties by a Magistrate or other person.

160. Regulations to be laid before Assembly

All regulations made under section 158 shall be laid before the Assembly.

PART V – EVIDENCE

Sub-Part I - General provisions as to evidence

161. Interpretation

In this Part -

“evidence” includes testimony upon oath or solemn affirmation given viva voce or by affidavit in writing and unsworn personal answers of parties to trials;

"sexual offence case" means a case in which the accused is being prosecuted for rape, attempt upon chastity or illegal sexual intercourse in breach of section 249 of the Criminal Code;

Added by [\[Act No. 30 of 2003\]](#)

"trial" includes any inquiry, hearing or other proceeding in any court or before any person having by law or by consent of parties authority to hear, receive or examine evidence.

161A. Persons may be excluded from proceedings

Any judge, Magistrate or other person having by law authority to bear, receive or examine evidence may, where he considers it necessary or expedient -

- (a) in circumstances where publicity would prejudice the interests of justice or of public morality;
- (b) in order to safeguard the welfare of persons under the age of 18;
- (c) in order to protect the privacy of persons concerned in the proceedings;
- (d) in the interests of defence, public safety or public order,

exclude from the proceedings (except the announcement of the decision) any person other than the parties to the trial and their legal representatives.

161B Live Video and Television Link

Notwithstanding any other enactment, the Court may, in its discretion and on motion made by the prosecution, allow a complainant in a sexual offence case or any witness in relation to an offence under the Piracy and Maritime Violence Act 2011 to appear before it, and depone, through such live video or live television link system as may be approved in writing by the Chief Justice.

In exercising its discretion under subsection (1), the Court shall ensure that there is a fair hearing in the matter.

Added by [\[Act No. 30 of 2003\]](#); [\[Act No. 39 of 2011\]](#)

161C. Summons to judicial officer

Notwithstanding any other enactment, no summons shall be issued calling a judicial officer as a witness before any Court except by leave of a judge in Chambers and on satisfying the judge that the judicial officer has some material evidence to give in the matter.

Amended by [\[Act No. 20 of 1993\]](#); [\[Act No. 30 of 2003\]](#)

162. English law of evidence to be followed

Except where it is otherwise provided by special laws now in force in Mauritius or hereafter to be enacted, the English law of evidence for the time being shall prevail and be applied in all courts of Mauritius.

163. No exclusion because of relationship or interest

No person shall, except as hereinafter provided, be excluded or excused from giving evidence at any trial by reason of his being a party to or having an interest in the event of such trial or by reason of his relationship by marriage or otherwise to any party to, or person having an interest in the event of, such trial.

164. Saving as to accused person and spouse

Nothing in this Part shall render any person charged with having committed an offence punishable by law, or the husband or wife of that person, a competent witness at the trial of that person for such offence before any court of criminal jurisdiction, except in cases where the offence is charged to have been committed against the person or property or conjugal rights of the husband or wife of the accused, in which cases such husband or wife shall be a competent and compellable witness.

165. Questions tending to incriminate

- (1) Nothing in this Sub-Part shall render any person (other than a bankrupt examined before any court or judge under any law relating to bankruptcy) compellable to answer any question the answer to which would tend to expose him to prosecution for an offence punishable by law, or shall render any person compellable to answer the question whether he has or has not committed adultery.
- (2) Where any person has stated voluntarily as a witness that he has or has not committed adultery, he may be further examined or cross-examined upon such statement.

166. Proof of occupation of immovable property

- (1) (a) In any claim to rent or indemnity for the occupation of immovable property, oral evidence shall, when a lease is denied and is not completely established by writing, be admissible to prove or disprove the occupation and the amount or payment of the indemnity, and the party suing shall be entitled to the indemnity although it may result from the oral evidence given that the occupation existed under a lease.
 - (b) Such a claim for indemnity shall be barred by one years prescription.
- (2) Nothing in this section shall alter any law by virtue of which the possessor of immovable property is entitled to retain the fruits of the property and to make them his own.

167. Examination on faits et articles

Where a party to a suit is called upon to give his unsworn personal answers, he may be examined as an adverse witness by a party calling him and afterwards examined on his own behalf, but only as to matters arising out of the examination made by the party calling him, and he may then be reexamined touching any question put to him on his behalf.

168. Insufficiency of notices not to exclude evidence

- (1) Where the State or any other party to a trial is required by any law or rule of court to file a list of witnesses or give a notice of facts, if at the trial witnesses be tendered whose names have not been included in such list, or who have not been sufficiently described therein, or if evidence is tendered of a fact omitted from or not sufficiently set out in such notice of facts, or if such list or notice has not been filed or given within the time fixed by law, the court shall not reject the proof of such facts or refuse the witnesses offered merely on the ground that such notice of facts, list or description of witnesses has not been served in time, where it is satisfied that there has been no mala fides, but it may postpone the trial on such terms as to costs, if any, as to the court seems just.
- (2) The State shall not be condemned in costs in any criminal trial.

Amended by [\[Act No. 48 of 1991\]](#)

169. State need not file list of witnesses

It shall not be necessary for the State to file any list of witnesses to be called in reply to witnesses for the defendant in any criminal trial, but where the State calls any witnesses in reply the court may allow the defendant to produce further evidence to rebut the witnesses heard in reply.

Amended by [\[Act No. 48 of 1991\]](#)

170. Copies of public documents admissible

- (1) At any trial, the contents of any record, book deed, map, plan or other document in the official custody of the Supreme Court, of the Conservator of Mortgages, of any Government department, of any intermediate Court, of any District Court, or of any notary may be proved by means of a copy or extract certified under the hand of the Registrar, the Conservator of Mortgages, the chief clerk or head of such department, the Head Clerk of the Intermediate Court, the District Clerk, or such notary as the case may be, to be a true copy or extract.
- (2) The copy shall be admissible in evidence at any trial to the same extent and in the same manner as the original would but for this Act be admissible.

- (3) Certificates that such copies or extracts are true and purporting to be signed by the Registrar or other person under subsection (1) shall, in the absence of proof to the contrary, be held to have been so signed.

171. Custodians of public documents

- (1) (a) No person having the official custody of such original documents as are mentioned in section 170 shall be subpoenaed or summoned to produce the documents, nor shall they be admissible in evidence at any trial except upon the order of a judge.
- (b) Such order shall only be made where it appears to the Judge that the authenticity of the document itself is in question, or that the proof sought to be given cannot be given by means of a copy or extract, and that the proof of the authenticity or the proof sought to be given is material to the matter at issue, and in every such case the same fee shall, in addition to the allowance to be paid for the attendance of the person so subpoenaed or summoned, be charged for the production of such document as would have been payable for a copy or extract.
- (2) Notwithstanding subsection (1), any record of any court shall be admissible in evidence in the court to which its custody belongs to the same extent and in the same manner as it would have been if this section had not been enacted.

172. Privilege not affected

Nothing in this Sub-Part shall, except where there is an express provision to the contrary, be held in any way to affect any right to refuse to produce any document or to answer any question on the ground of privilege.

173. Statements of witnesses

- (1) (a) Any witness may be cross-examined at any trial as to previous statements made by him in writing or reduced into writing relative to the subject matter of the trial, without the writing being shown to him, or read, but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him.
- (b) The court may at any time during the trial require the production of the writing to be used for the purposes of the trial in any way that to the court seems proper.
- (2) (a) It shall be competent to examine any witness who may be called in any judicial proceeding as to whether he has on any specified occasion made a statement on any matter pertaining to the issue which is different from the evidence given by him in that proceeding, and it shall be competent in the course of such proceeding to adduce

evidence to prove that the witness, whether he has shown himself hostile or not, has made a different statement on the occasion specified.

- (b) Nothing in paragraph (a) shall make any such statement of itself evidence of the proof of any fact or facts embodied in it.

174. De bene esse proceedings

- (1) Any party who intends to call a witness who on the day of the trial -
 - (a) will not be in Mauritius; or
 - (b) may not be alive or fit to give evidence because of his failing health,shall make an ex-parte application of a de bene esse hearing of the witness before the Judge in Chambers.
- (2) Where an application under subsection(1) is granted, the Judge shall direct that the order be served on all other parties to the proceedings.
- (3) The de bene esse hearing shall take place on a date to be fixed by the Judge in Chambers.
- (4) The de bene esse proceedings shall form part of the record of the main case and shall be admitted in evidence.

Amended by [\[Act No. 15 of 2000\]](#)

175. Translation of evidence

Where in any proceedings before the Supreme Court, whether civil, criminal, or in bankruptcy or of any other nature, or before any other court, a witness or a party gives evidence in a language other than English, such evidence shall, subject to sections 176 and 189 be translated into English and shall be recorded and form part of the record.

176. Translation when not necessary in civil cases

Where in any proceedings before the Supreme Court on the civil side or the Master and Registrar or the judge in Bankruptcy, a witness speaks in a language which is well known to both plaintiff and defendant as the case may be, the judges, the law officers of the State, the Master and Registrar or the judge in Bankruptcy and the counsel engaged in the case, the examination of that witness may take place in that language and it shall not be necessary to translate the deposition or answers in English, except where the depositions or answers are given in Creole, in which case they shall be taken down by the Master and Registrar or other officer of the court.

Amended by [\[Act No. 48 of 1991\]](#); [\[Act No. 29 of 1992\]](#)

177. Recording evidence before Supreme Court

- (1) (a) In any criminal case heard before the Supreme Court, and at every stage thereof, the presiding judge shall, save as hereinafter provided, take down in writing the oral evidence given before the court, and in every civil case so heard the Master and Registrar or other officer of the court performing the duties of Master and Registrar in court shall, if the presiding judge so directs, take down in writing, the oral evidence given before the court.
- (b) Where the presiding judge in a criminal case finds himself temporarily incapacitated from taking down such evidence, he may direct that such evidence be taken down by the Master and Registrar, or by the officer performing the duties of Master and Registrar in court or by any officer of the court or other person whom the presiding judge considers competent, reliable, and suitable for the purpose.
- (2) (a) Before the Master and Registrar, officer, or other person other than the presiding judge takes down in writing any oral evidence an oath shall be tendered to and taken by such Master and Registrar, officer, or person for the accurate and faithful recording of such oral evidence according to the true purpose and meaning thereof, and such oath shall be in such terms as seem apt and sufficient to the presiding judge.
- (b) Where the Master and Registrar or officer of the court performing the duties of Master and Registrar in court, has once duly taken such oath he shall not again be required to take such oath in respect of the same or any subsequent case.
- (3) Notwithstanding subsection (1), the evidence and proceedings in any criminal or civil case before the Supreme Court may be recorded by tape or other technological means and the Judge may give such directions with regard to the recording of evidence and proceedings as he deems fit.

Amended by [\[Act No. 29 of 1992\]](#); [\[Act No. 28 of 1999\]](#)

177A. Objection to form of evidence

- (1) Where under this Act or any other enactment, the evidence or proceedings are recorded by tape or other technological means-
- (a) no objection shall be allowed or taken on the ground that there is a defect in the recording of the evidence or the form of the evidence recorded;
- (b) any defect in the recording of the evidence shall not affect the validity of the proceedings.

(2) Where it appears to the trial Magistrate or trial Judge that there exists-

- (a) any defect in the evidence recorded by tape or other technological means: or
- (b) any variance between such evidence and any record kept by the Magistrate or Judge,

the Judge or Magistrate may make such, order as he considers appropriate in respect of the recording of evidence or proceedings

Added by [\[Act No. 28 of 1999\]](#)

178. Inspection of property

In any cause or matter, the court may, on the application of either party, or on its own motion make such order for the inspection by the court, the jury, the parties, or witnesses, of any movable or immovable property, the inspection of which may be material to the proper determination of the question in dispute and give such direction respecting the inspection as to the court seems fit.

179. Penalty for nonattendance of witness

- (1) Without prejudice to section 128, any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend at any subsequent sitting, shall be liable by order of the court to a fine not exceeding 2000 rupees.
- (2) The fine shall be levied by attachment and sale of any movable property belonging to the witness within the limits of the jurisdiction of the court.
- (3) In default of recovery of the fine by attachment and sale, the witness may, by order of the court, be imprisoned for a term not exceeding 15 days unless the fine is paid before the end of that term.
- (4) For good cause shown, the court may remit or reduce any fine imposed under this section.

Amended by [\[Act No. 4 of 1999\]](#)

180. Repealed by [\[Act No. 20 of 1993\]](#)

181. Certificates of certain officers as evidence

- (1)(a) In subsection (2), "officer" means, subject to paragraph (b), a public officer who is the holder of, or is acting in, an office as -
 - (i) Chief Government Analyst;

- (ii) Government Analyst;
- (iii) Medical and Health Officer;
- (iv) Pathologist;
- (v) Police Medical Officer;
- (vi) Principal Forensic Science Officer;
- (vii) Principal Veterinary Officer;
- (viii) Scientific Officer (Forensic Science);
- (ix) Senior Forensic Laboratory Assistant;
- (x) Senior Pathologist;
- (xi) Senior Police Medical Officer;
- (xii) Veterinary Officer;
- (xiii) Police Officer, or
- (xiv) Director, Pharmaceutical Services

Amended by [\[Act No. 5 of 1999\]](#)

- (b) Where an office specified in paragraph (a) is restyled, a public officer who is the holder of, or is acting in the restyled office shall, for the purposes of subsection (2), be an officer.
- (3) In all proceedings before any court or before any person authorised by law or by consent of parties to hear, receive and examine evidence, a certificate under the hand of –
 - (a) any officer; or
 - (b) in the case of a medical certificate, the officer in charge of the hospital where the examination of the person to whom the certificate relates was carried out, shall be sufficient evidence of the fact therein stated without proof of the handwriting of such officer unless the court or such person authorised as aforesaid decides that the attendance of the officer is necessary.

**Amended by [\[Act No. 29 of 1992\]](#); [\[Act No. 4 of 1999\]](#)
[\[Act No. 5 of 1999\]](#)**

181A. Microfilms and other reproductions

- (1) Where the copy of a document which is admissible in evidence -
 - (a) purports to be a machine copy or a print made from a microfilm; and
 - (b) bears or is accompanied by a certificate signed by an authorised person certifying that the copy is a reproduction of an original document,

the copy shall be admissible in evidence in any legal proceedings.
- (4) In subsection (1), "authorised person" means –
 - (a) a public or local government officer;

- (b) an officer in the employment of a statutory body;
- (c) an employee of a bank authorised by the Bank of Mauritius; and
- (d) any other person authorised in writing by the Attorney-General.

181B. Admissibility of out-of-court statements in civil proceedings – Amended by [\[Act No. 39 of 2011\]](#)

(1) A statement made, whether orally or in a document or otherwise, by person, whether called as a witness or not, shall, subject to subsection (2) and to rules of Court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence by the witness would be admissible.

(2) Where a party wishing to put in a statement under subsection (1), has called, or intends to call, as a witness in the proceedings, the person by whom the statement was made, the statement shall not be given in evidence -

- (a) without leave of the Court; and
- (b) before the conclusion of the examination-in-chief of the person by whom it was made except –
 - (i) where the Court allows evidence of the making of the statement to be given on behalf of that party by some other person; or
 - (ii) in so far as the Court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from so doing would adversely affect the intelligibility of this evidence.

(3) Subject to subsection (4), where a statement made otherwise than in a document is admissible under subsection (1), no evidence other than direct oral evidence by the person who made the statement, or any person who heard or otherwise perceived it being made, shall be admissible for the purpose of proving it.

(4) Where a statement is made by a person while giving oral evidence in any other legal proceedings, the statement may be proved in such manner as the court thinks fit.

Added by [\[Act No. 18 of 1998\]](#)

181C Admissibility of certain records in civil proceedings – Amended by [\[Act No. 39 of 2011\]](#)

- (1)A statement contained in a document shall, subject to section 181E, to subsection (2) and to Rules of court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence would be admissible,

where the document is, or forms part of, a record compiled, by a person acting under a duty, from information which-

- (a) Was supplied by a person who had, or may reasonably be supposed to have had personal knowledge of the matters dealt with in that information; or
 - (b) In case the information was not supplied directly by the person referred to in paragraph (a) to the compiler of the record, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.
- (2) Where a party wishing to put in a statement under subsection (1) has called, or intends to call, as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement shall not be given in evidence —
- (a) without leave of the court: and
 - (b) before the conclusion of the examination-in-chief of the person who originally supplied the information.
- (2) For the purposes of subsection (1), a person acting under a duty includes a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

Added by [\[Act No. 18 of 1998\]](#)

181D. Evidence in rebuttal

- (1) Where a statement is given in evidence under section 181 B and the person who made the statement is not called as a witness in the proceedings, any evidence which if that person had been so called, could be admissible for the purpose of impeaching or supporting his credibility, shall, subject to rules of Court, be admissible for that purpose.
- (3) Where a statement is given in evidence under section 181C, and the person who originally supplied the information from which the record was compiled is not called as a witness in the proceedings, any evidence which, if that person had been called, could be admissible for the purpose of impeaching or supporting his credibility shall, subject to rules of Court, be admissible for that purpose.

Added by [\[Act No. 18 of 1998\]](#)

181E. Admissibility of statements produced by computers in civil proceedings – Amended by [\[Act No. 39 of 2011\]](#)

- (1) In this section, “computer” means any device for storing and processing information, whether or not the information is derived from other information by calculation, comparison or otherwise.
- (2) Where, over a period, the function of storing or processing information for the purpose of carrying on an activity was regularly performed by —

(a) a combination of computers;

(b) different computers operating in succession;

(c) different combinations of computers operating in succession;

(d) the successive operation of one or more computers and one or more combinations of computers,

all the computers shall, for the purposes of this section, be treated as constituting a single computer.

- (3) A statement contained in a document produced by a computer shall, subject to rules of Court, be admissible in any civil proceedings as evidence of any fact stated therein of which direct oral evidence would be admissible where —

(a) the document was produced during a period over which the computer was regularly used to store or process information for the purpose of any activity regularly carried by a person over this period.

(b) information of the kind contained in the statement, or of the kind from which the information is derived, was regularly supplied to the computer over that period in the ordinary course of that activity.

(c) the computer was operating properly during the material part of that period; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of that activity.

- (4) Where a party wishes to give in evidence a statement under subsection (3), a certificate which —

(a) identifies the document containing the statement and described the manner in which it was produced;

- (b) gives particulars of any device involved in the production of the document to show that it was produced by a computer;
- (c) deals with any matter referred to in paragraphs (a), (b), (c) or (d) of subsection (3); and
- (d) purports to be signed by a person occupying a responsible position in relation to the operation of the relevant device or to the management of the relevant activity,

shall be evidence of any matter stated in the certificate.

- (5) For the purposes of subsection (4), it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Added by [\[Act No. 18 of 1998\]](#)

181F. Proof of statements contained in a document

Where a statement contained in a document is to be given in evidence under section 181B, 181C or 181E it may be proved by the production of that document or by the production of a copy thereof, or of the material part thereof, authenticated in such manner as the court thinks fit.

Added by [\[Act No. 18 of 1998\]](#)

182. Illness of juror

A certificate under the hand of any qualified medical practitioner shall be received before the Supreme Court, in case of illness of any juror, witness, or party to a suit, or any officer of the court, as prima facie evidence, without proof of the handwriting of such medical practitioner.

183. This Sub-Part extended to the other islands

This Sub-Part shall, so far as it is applicable, extend to all trials in the other islands under the jurisdiction of the State of Mauritius.

Sub-Part II - Evidence in Criminal Cases

184. Competency of witnesses in criminal cases

- (1) Subject to subsection (2), every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings,

whether the person so charged is charged solely or jointly with any other person.

- (2) (a) A person so charged shall not be called as a witness in pursuance of this Sub-Part except upon his own application.
- (b) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution.
- (c) The wife or husband of the person charged shall not, save as provided in this Sub-Part, be called as a witness in pursuance of this Sub-Part, except upon the application of the person so charged.
- (d) Nothing in this Sub-Part shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.
- (e) A person charged and being a witness in pursuance of this Sub-Part may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged.
- (f) A person charged and called as a witness in pursuance of this Sub-Part shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless -
 - (i) the proof that he has committed or been convicted of such offence-is admissible evidence to show that he is guilty of the offence with which he is then charged;
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution; or
 - (iii) he has given evidence against any other person charged with the same offence.
- (g) Every person called as a witness in pursuance of this Sub-Part shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

- (h) Nothing in this Sub-Part shall affect section 51 of the District and Intermediate Courts (Criminal Jurisdiction) Act, or any right of the person charged to make a statement without being sworn.

185. Evidence of person charged

Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

186. Right of reply

In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

187. Evidence of husband and wife

- (1) The wife or husband of a person charged with an offence against the person, property, or conjugal rights of such husband or wife or against the person or property of any child of either party to the marriage, or with an offence under section 26 (9) of the Criminal Code (Supplementary) Act, may be called as a witness either for the prosecution or defence and without the consent of the person charged.
- (2) Nothing in this Sub-Part shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

188. Application

This Sub-Part shall apply to all criminal proceedings.

188A. Admissibility of sound recording

- (1) Subject to subsection (2), the sound recording of any evidence given by any person charged with an offence shall be admissible in evidence in any criminal proceedings where it is given to an investigating officer in the course of an investigation of an offence.
- (2) In the case of evidence of an admission, the sound recording of any evidence shall be admissible where -
- (a) the recording is made in the course of official questioning in accordance with the requirements set out in the third Schedule; and
- (b) the admission is made by a person who is reasonably suspected by an investigating officer as having committed an offence.

(3) The President may, by Order, specify the offences in relation to which the sound recording of evidence of an admission by an accused party shall be a condition precedent to the admissibility of such admission in evidence.

(4) In this section -

"sound recording" includes recording of visual images or sound;

"investigating officer" means a police officer or any public officer whose function or duties includes functions or duties in respect of prevention or investigation of offences.

(6) The common law rule against hearsay shall not prevent the admissibility or use of a sound recording as evidence under this section and the sound recording shall be admissible in evidence at any trial to the same extent and in the same manner as documentary evidence would be admissible.

Added by [\[Act No. 4 of 1999\]](#)

188B. Admissibility of written statements

(1) In any criminal proceedings, a written statement by a person shall, be admissible as evidence to the like extent as oral evidence where-

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he could be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and

(d) none of the other parties or their Counsel, within 7 days from the service of the copy of the statement, serves a notice on the party proposing to tender it in evidence objecting to the statement being so tendered.

(2) Notwithstanding subsection (1), if the parties agree before or during the hearing that the statement shall be tendered in evidence, the conditions set out in subsection (1)(c) and (d) shall not apply.

- (3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section -
- (a) where the statement is made by a person under the age of 21, the age of the person shall be stated;
 - (b) where it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
 - (c) where it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (1)(c), shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.
- (4) Notwithstanding subsection (1) –
- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; or
 - (b) the Court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the Court and give evidence.
- (5) An application to a Court may be made under subsection (4)(b) before the hearing and, on any such application, the powers of the Court shall be exercisable -
- (a) in the case of a District Court, by the Magistrate of the District Court;
 - (b) in the case of the Intermediate Court, by the President of the Intermediate Court;
 - (c) in the case of the Industrial Court, by the President of the Industrial Court;
 - (d) in the case of the Supreme Court, by any Judge of the Supreme Court.
- (6) The statement admitted in evidence under this section shall, be read aloud at the hearing unless the Court directs that only part of the statement shall be so read and, where the Court so directs, an account shall be given orally of the part of the statement that is not read aloud.

- (7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.
- (8) A document required by this section to be served on any person may be served -
 - (a) by delivering it to him or to his Counsel;
 - (b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his Counsel and leaving it at his office;
 - (c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his Counsel at his office; or
 - (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body corporate at that office.

Added by [\[Act No. 4 of 1999\]](#)

188C. Admissibility of out of Court statement in piracy cases where maker is unavailable

- (1) In any criminal proceedings under the Piracy and Maritime Violence Act 2011, a statement made out of Court shall be admissible as evidence, with leave of the Court, of any matter stated when –
 - (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
 - (b) the person who made the statement is identified to the Court's satisfaction; and

(c) one of the 5 conditions specified in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1)(c) are that the person who made the statement –

(a) is dead;

(b) is unfit to be a witness because of his bodily or mental condition;

(c) is outside Mauritius and it is not reasonably practicable to secure his attendance;

(d) cannot be found although such steps as is reasonably practicable to take to find him have been undertaken;
or

(e) through fear, does not give or does not continue to give oral evidence in the proceedings, either at all or in connection with the subject matter of the statement.

(3) Where a statement is admitted in evidence under subsection (1) any evidence which, if that person had been called as a witness, could have been admissible for the purpose of impeaching or supporting his credibility, shall be admissible for that purpose.

(4) In assessing the weight, if any, to be attached to a statement admitted in evidence under subsection (1), the Court shall have regard to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise.

Added by [\[Act No. 39 of 2011\]](#)

189. Translation when not necessary in criminal cases

Where at a trial before a judge, either with or without a jury, a witness speaks in a language which is well understood by the accused, by all the jurors, as well as by the judge, the law officers of the State and the counsel engaged in the case, the examination of the witness may take place in such language and it shall not be necessary to translate the deposition in English.

Amended by [\[Act No. 48 of 1991\]](#)

189A. Evidence of a formal character

- (1) in all criminal proceedings before any court, an affidavit sworn by a person whose evidence is of a formal character shall be sufficient evidence of the facts stated therein.
- (2) The court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

Sub-Part III - Declarations instead of oath

190 Declaration instead of oath

Every person who objects to being sworn and states, as the ground of his objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his declaration instead of taking an oath in all places and for all purposes where an oath is required by law, which declaration shall be of the same force and effect as if he had taken the oath.

191. Form of declaration

Every such declaration shall be as nearly as may be in the form -

I do solemnly, sincerely and truly declare ...and shall then proceed with the words of the oath prescribed by law, omitting words of imprecation or calling to witness.

192. Solemn affirmations

- (1) Every person of the Hindu or Moslem faith shall make affirmation to the following effect -

I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth.

- (7) Any person who knowingly makes a false affirmation shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 10 years.

- (3) -

- (4) Without prejudice to subsections (1) and (2), any party to, or witness in, any judicial proceeding, civil or criminal, who is a Hindu or Moslem, or any person whose religious belief prevents him from taking the ordinary oath, may be called upon -
- (a) by any other party to such proceeding; or
 - (b) in any criminal proceeding by the prosecutor or the accused, to give evidence on oath or solemn affirmation in any form common among, or held binding by persons of the race or persuasion to which he belongs and not repugnant to justice or decency, and the court may tender such oath or affirmation notwithstanding subsection (1) or any other enactment.
- (5) Where the oath or affirmation is of such a nature that it may be more conveniently made out of court, the court may issue a commission to any person to administer it, and the court on being satisfied that the oath or affirmation has been administered may proceed to take evidence of the party or witness accordingly.
- (6) Where the party or witness refuses to make the oath or solemn affirmation referred to in subsection (4), he shall not be compelled to make it, but shall give evidence on making the solemn affirmation, referred to in subsection (1), or the declaration prescribed by section 190, and the court shall record as part of the proceedings, the nature of the oath or affirmation proposed, the fact that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.
- (7) Subsections (4), (5) and (6) shall apply to articles 1357 to 1369 of the Code Napoléon.

193. Validity of oath, affirmation or declaration

Where an oath has been duly administered and taken, the fact that the person to whom the oath was administered should have made a solemn affirmation under section 192 or a declaration under sections 190 and 191 or where a solemn affirmation or a declaration has been made by a person who should have taken an oath, such error shall not affect the validity of the oath, solemn affirmation or declaration respectively, if no protest is made by the person sworn, solemnly affirmed or making the declaration, at the time such oath, solemn affirmation or declaration is made or taken.

194. Form of declaration in writing

Every declaration in writing shall commence -

I, of... do solemnly, sincerely and truly declare...and the form in lieu of jurat shall be-

Delivered at... this... day of...

Before me...

195. Penalty for swearing false affidavits

- (1) Any person who swears a false affidavit where an affidavit is required or may be used, shall be liable to penal servitude for a term not exceeding 3 years and to a fine not exceeding 10,000 rupees.
- (2) The prosecution may, in any case, take place before a District Court or the Intermediate Court at the discretion of the Director of Public Prosecutions.

Amended by [\[Act No. 5 of 1999\]](#)

196. Swearing with uplifted hands

Where any person to whom an oath is administered desires to swear with uplifted hand, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

PART VI - MISCELLANEOUS

197. Reasons of judgment in criminal matters

- (1) Notwithstanding any other enactment, a judge or Magistrate, sitting without a jury and exercising his jurisdiction, whether original or appellate, in a criminal matter, shall, after hearing the case on both sides, record his judgment in writing.
- (2) Every such judgment shall contain the point or points for determination, the decision and the reasons for the decision, and shall be dated and signed by the judge or Magistrate at the time of judgment.

197A. Interest on judgment debts in accident cases

Notwithstanding any other enactment, where any person is adjudged by a Court to be liable in damages pursuant to article 1382,1383 or 1384 of the Code Napoléon in respect of a road accident or an accident at work, the Court may order that he shall pay interest on the judgment debt at 15 per cent or such other rate as may be prescribed by Rules of Court made by the judges from the day on which the action was started unless the Court is satisfied that there are good reasons for ordering such payment from the date on which the pleadings were closed, up to the date of payment.

Amended by [\[Act No. 29 of 1990\]](#); [\[Act No. 15 of 1994\]](#)

197B. Costs in exaggerated claims

Notwithstanding any other enactment where in any civil case, any Court is of opinion that a claim for any sum of money was exaggerated and could have appropriately been entered before a Court of lesser jurisdiction, the Court may award costs in such manner as it shall determine.

Added by [\[Act No. 29 of 1990\]](#)

197C. Enquiry as to genuineness of deed

Subject to article 1319 of the Code Napoleon, any action as to the Genuineness of any deed, whether authentic or under private Signatures, shall be entered by way of plaint with summons before the Supreme Court.

Added by [\[Act No. 4 of 1999\]](#)

197D. Wasted costs order

- (1) The Magistrate, Master, Judge in Chambers or Court, as the case may be, may, at any stage Of any civil proceedings, on an application by a party who has incurred wasted costs, order the legal representative of a party to meet personally the whole or part of those costs as specified in the fourth Schedule.
- (2) In this section-
 - (a) "wasted costs" means any costs incurred by a party-
 - (i) as a result of any improper, unreasonable or negligent act or omission on the part of any legal representative or employee of the representative; or
 - (ii) which, in the light of any act or omission occurring after the costs were incurred, the Court considers it unreasonable to expect that party to pay;
- (3) Before making a wasted costs order, the Magistrate, Master, Judge in Chambers or Court, as the case may be, shall give the legal representative a reasonable opportunity to show cause why he or it should not make a wasted costs Order and may make such enquiry as he or it thinks fit.
- (4) Where the Magistrate, Master, Judge in Chambers or Court makes a wasted costs, he or it shall specify the amount to be paid in accordance with the costs as specified in the Fourth Schedule.
- (5) The Magistrate, Master, Judge in Chambers or Court may direct that notice shall be given to the legal representative's client, in such manner as he or it may direct -
 - (a) of any proceedings under this section;
 - (b) of any order made by him or it against his legal representative.

- (6) Any person, against whom a wasted costs order has been made, may appeal within 21 days of the order, to the Court exercising jurisdiction in respect of the appeals from the Court which made the order.

Added by [\[Act No. 15 of 2000\]](#)

**197E.
Adjournment costs**

Where any party applies for an adjournment at any stage of any civil proceedings the Magistrate, Master, Judge in Chambers or Court, may, where he or it grants the postponement on good cause shown, and there is an application by the party who has incurred costs, make such order as to costs as, specified in the Fourth Schedule including costs in respect of the attendance of witnesses.

Added by [\[Act No. 15 of 2000\]](#)

197F. Vexatious proceedings

- (1) Where, on an application made by the Attorney-General, a Judge is satisfied that any person has habitually, persistently and without any reasonable grounds –
- (a) instituted vexatious legal proceedings against the same person or against different persons; or
 - (b) made vexatious applications in any legal proceedings instituted by him or another person,

the Judge may, after giving that person an opportunity of being heard, declare the person to be a vexatious litigant and order that –

- (i) no legal proceedings shall, without the leave of the Supreme Court, be instituted by him in any Court;
- (ii) any legal proceedings instituted by him in any Court before the making of the order shall not be continued by him without the leave of the Supreme Court; or

- (iii) no application, other than an application for leave under this section, shall, without the leave of the Supreme Court, be made by him in any legal proceedings instituted by him or another person in any Court.
- (2) The Master and Registrar of the Supreme Court shall cause a copy of any order made under subsection (1) declaring any person to be a vexatious litigant to be published in the *Gazette* and in such other manner as a Judge may direct.
- (3) An order made under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (4) Leave for the institution or continuance of, or for the making of an application in, any legal proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the Supreme Court is satisfied that the proceedings or the application are not an abuse of the process of the Court in question and that there are reasonable grounds for the proceedings or application.
- (5) No appeal shall lie from a decision of the Supreme Court refusing leave for the institution or continuance of, or for the making of an application in, legal proceedings by a person who is the subject of an order for the time being in force under subsection (1).
- (6) The provisions of this section shall be in addition to and not in derogation from
 -
 - (a) the provisions of any other law for the striking out of vexatious pleadings or prevention of abuse of process of the Court, or which require consent, sanction or approval in any form of any other authority for the institution or continuance of any civil or criminal proceedings;

- (b) the inherent jurisdiction of the Supreme Court to prevent its process from being abused or obstructed.

Added by [\[Act No. 6 of 2011\]](#)

198. Rules of court

- (1) The Chief Justice may, after consultation with the Rules Committee and the Judges, make such rules as he thinks fit for the purposes of this Act.
- (2) The following enactments shall be deemed to have been made by the Chief Justice under subsection 198(i) -
- (a) The Supreme Court Rules 2000 and the Legal Fees and Costs Rules 2000 respectively set out in the Third and Fourth Schedules;
 - (b) River Rules of 12 June 1885;
 - (c) River Rules of 22 October 1886;
 - (d) Bankruptcy Rules 1888;
 - (e) Sale of immovable Property Rules 1889;
 - (f) Bankruptcy Court Rules 1899;
 - (g) Three-Judge Cases Rules 1906;
 - (h) District, Court (Execution of Judgments) Regulations 1997;
 - (i) District Courts (State Proceedings) Rules 1954;
 - (j) Rules of the Supreme Court(State Proceedings) 1954;
 - (k) Letters of Requests Rules 1985;
 - (l) District and Industrial and Intermediate Court Rules 1992;
 - (m) Supreme Court (Jury Lists and Panels) Rules 1992;
 - (n) Intermediate Court Rules 1971;
- (3) Rules made under subsection (1) may provide for –
- (a) the practice and procedure before any court;
 - (b) the means by which particular facts may be proved and the mode in which evidence thereof may be given in civil cases before any court;

- (c) the forms, registers and books that may be required for the transaction of the business of the courts;
- (d) the fees to be charged and to accrue to the Consolidated Fund in respect of any proceedings before any court;
- (e) the sums allowable on taxation in respect of any proceedings before any Court.
- (f) the electronic filing of documents and management of cases;
- (g) the practice and procedure for mediation before a Judge.

Amended by [\[Act No. 15 of 2000\]](#); [\[Act No. 20 of 2009\]](#)

199. Rules Committee

- (1) There shall, for the purposes of section 198, be set up a Rules Committee which shall consist of-
 - (a) a Judge appointed by the Chief Justice who shall be the Chairperson;
 - (b) the Master or his representative;
 - (c) a representative of the Bar Council;
 - (d) a representative of the Law Society;
 - (e) a representative of the Attorney-General's Office;
 - (f) 2 other law practitioners appointed by the Chief Justice.
- (2) The functions of the Rules Committee shall be to advise and make recommendations to the Chief Justice in respect of the rules to be made under section 198.
- (3) For the purposes of its functions, the Rules Committee may undertake such review as it thinks fit and give its advice or make its recommendations, on its own initiative, or as requested by the Chief Justice.
- (5) The Rules Committee shall regulate its meetings and proceedings in such manner as it thinks fit.
- (6) The Chairperson and members of the Rules Committee shall be paid such allowances as may be determined by the Chief Justice.

Added by [\[Act No. 15 of 2000\]](#)

200. Amendment of Schedules

The Chief Justice may, after consultation with the Rules Committee and the Judges, amend the Third and Fourth Schedules.

Added by [\[Act No. 15 of 2000\]](#)

201. Practice directions

The Chief Justice may give such practice directions as he thinks fit to regulate the practice and procedure before the Supreme Court.

Added by [\[Act No. 15 of 2000\]](#)

FIRST SCHEDULE

(section 69)

Excise Act
Ground Water Act
Labour Act
Nursing Council Act
Registered Professional Engineers Council Act
Tea Industry Control Act
Bus Industry Property Acquisition Act 1983
Forests and Reserves Act 1983
Medical Council Act 1988
Occupational Safety, Health and Welfare Act 1988
Professional Architects Council Act 1988
Ayurvedic and Other Traditional Medicines Act 1989
Veterinary Council Act
Waste Water Act 1991

Amended by [\[Act No. 29 of 1992\]](#)

SECOND SCHEDULE

(section 113)

Civil Status Act 1981	section 66	counterfeiting and altering documents.
	section 68	false statements or documents.
	section 69	offences in respect of children.
	section 70.	concealment of birth.
Courts Act	section 195	swearing false affidavit.
Criminal Code	sections 37	

and 38 in so far as they affect the other offences mentioned in this Schedule accomplices in cases of crimes and misdemeanours

sections 40 and 41 possession of property obtained unlawfully and possession of property bearing mark of Government or third party.

sections 92 to 99 counterfeiting coin.

sections 108 to 112 forgery by private individual and making use of forged public and private writing.

section 128 bribery of public officer.

sections 156 to 160 outrage towards public officers and against agent of civil or military authorities.

sections 215, 216, 220 and 223 manslaughter, murder and infanticide.

section 227 threats.

sections 228 and 229 assault.

section 236 administering noxious substance.

section 249 rape, attempt upon chastity and illegal sexual intercourse.

section 251 debauching youth.

sections 276 to 282 giving false evidence and subornation of perjury.

sections 301 to 310, 321 and 322 larceny.

sections 330 and 330A swindling.

sections 331 to 333 embezzlement.

sections 346 to 360 and 362 arson and damaging property.

Criminal Code (Supplementary) section 90 brothel keeping.

	sections 103 to 107	personation.
Dangerous Drugs Act	sections 27 and 28	importation and exportation of raw opium and certain other prohibited drugs; trade in certain prohibited drugs; importation and exportation of prepared opium; manufacture, sale of prepared opium, and other cognate offences.
District and Intermediate Courts (Criminal jurisdiction) Act	section 126(2)	Perjury.
Excise Act	sections 31 and 32	illicit distillery offences.
Interpretation and Clauses Act	section 45, in so far as it affects the other offences mentioned in this Schedule.	attempts to commit crimes and misdemeanours

SCHEDULE
(section 2(g))

THIRD SCHEDULE
(section 198)

SUPREME COURT RULES 2000
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1. Title

These rules may be cited as the Supreme Court Rules 2000.

Part I - Commencement of proceedings

2. Initiation of proceedings

- (1) Except as otherwise provided for under any enactment, and subject to paragraph (2), civil and commercial proceedings before the Supreme Court sitting in its original jurisdiction (other than the Bankruptcy Court) shall be initiated by way of plaint with summons.
- (2) An action may be initiated by way of motion supported by affidavit where -
 - (a) the action is one for a prerogative Order;
 - (b) the circumstances require urgency; or
 - (c) it is so prescribed in these rules.
- (3) Except as otherwise provided under any other enactment, an action before the Judge in Chambers, including an application formerly entered by way of petition to be heard on the merits before the Judge, shall be initiated by way of proceipe and affidavit.
- (4) An action for a prerogative order shall be governed by the practice prevailing for the time being in the Courts of England and Wales.
- (5) (a) Subject to paragraph (b), no objection shall be allowed on the ground that the wrong procedure has been adopted for initiating any process
- (b) The Master or the Court may direct that the pleadings be redrafted for the purpose of complying with the correct procedure and of identifying the real issue between the parties

3. Contents of plaint with summons

- (1) A plaint with summons shall-
 - (a) state the names, occupations and addresses of the parties;

- (b) state the substance of the cause of action;
 - (c) call upon the defendant or other party to appear before the Court on a date and time specified in the summons, hereinafter referred to as "the returnable date";
 - (d) be accompanied by a notice describing the documentary evidence which the plaintiff intends to adduce at the hearing and indicating where the documents may be examined within a reasonable time before the hearing.
- (3) Every plaint with summons shall be endorsed with the full name, office address and stamp of the plaintiff's attorney which shall be the elected domicile of the plaintiff.
- (4) Every plaint shall specify -
- (a) the purpose of the appearance of the defendant or other party;
 - (b) that a failure by the defendant or other party to appear or be represented may result in the Court delivering judgment against him in favour of the plaintiff in terms of the plaint;
- (5) Any misnomer or inaccurate description of any person or place in any plaint or summons shall not vitiate any process where the person or place is described so as to be commonly known.

4. Lodging of plaint with summons

- (1) The plaint with summons shall -
- (a) be lodged in the Registry;
 - (b) be numbered according to the order in which it is lodged;
- (2) Every summons shall bear the signature of the Master and the stamp of the Court;
- (3) Every plaint with summons shall be served upon the defendant or other party not later than 14 clear days before the returnable date.

5. Methods of service

- (1) Service of Process may be effected by -
- (a) registered post with a request for advice of delivery; or
 - (b) an usher.
- (2) Any process shall be drawn up and signed by the party's attorney and served in accordance with paragraph (1).
- (3) Subject to any enactment, where a party is represented by an attorney, service of the process in the action and in all related

matters may be effected on the attorney up to the date of judgment in the action.

- (4) Any answer made on occasion of the service of process may be addressed in writing to the attorney who has caused the process to be issued.

6. Service by post

- (1) Where the summons or other document is to be effected in accordance with rule 5(1) (a), it shall be posted in an envelope on which there is a notice that if the envelope is undelivered it shall be returned to the attorney whose name shall appear on the envelope.
- (2) The attorney shall file in the Registry a declaration which shall -
- (a) contain the name and address of the party on whom the process is to be served;
 - (b) be accompanied by -
 - (i) the certificate of posting; and
 - (ii) in the case of delivery, the advice of delivery.
- (3) Where the summons or other document is returned undelivered, the attorney shall proceed with the service by an usher.

7. Alternative methods of service

Where it appears to the Court that there is good reason to authorise service by a method not provided for in rule 5, the Court may make an order permitting substituted service by -

- (a) affixing the document to be served at the door of the party's last known residence or business address;
- (b) publication in a daily newspaper; or
- (c) any other appropriate method of service.

8. Return of plaint with summons

The plaint with summons shall be returnable before the Master, who shall have jurisdiction to deal with all formal matters arising prior to the hearing of a case, including any dispute arising out of or in connection with particulars and inspection of documents.

9. Non-appearance of defendant before date of hearing

- (1) Where, on the returnable date, or at any continuation or adjournment of a case prior to the hearing, the defendant or other party-
- (a) does not appear or is not represented;
 - (b) neglects to answer when called; or

- (c) does not sufficiently, excuse his absence or failure to answer,

the Master shall, upon proof of the service of the summons, refer the case to be heard by the Court on a day to be fixed by him.

- (2) Where a case has been fixed under paragraph (1), no notice of the day of the trial shall be required to be served upon the defendant or other party.
- (3) (a) The defendant or other party may apply to the Court to have any judgment entered against him recalled and the case reinstated.
 - (b) The Court may, where the application under subparagraph (a) is made on the day judgment is entered and on good cause shown, recall the judgment and reinstate the case.

Part II - Pleadings

10. Particulars of plaint with summons

The defendant or any other party may apply for such particulars of the plaint as he may require and for inspection of any document which the plaintiff proposes to adduce in evidence.

11. Plea and counter claim

- (1) Where all particulars have been filed and documents communicated in accordance with rule 10, the defendant or other party shall file his plea.
- (2) The defendant may include a counterclaim in his plea.
- (3) The plea and the counterclaim, if any, shall be -
 - (a) accompanied by a notice describing the documentary evidence which the party intends to adduce at the hearing of the case; and
 - (b) indicate where the documents may be examined within a reasonable time before the hearing of the case.
- (4) The plaintiff may apply for such particulars of the plea or counterclaim and for inspection of any document which the defendant or other party intends to adduce in evidence.
- (5) The plaintiff shall also file a plea to the counterclaim on a day to be fixed by the Master.

12. Reply

Except for a reply which may be filed solely in response to the averments of the plea, no further pleading shall be allowed.

13. Contents of pleadings

- (1) Every pleading shall clearly and distinctly state all matters of fact that are necessary to sustain the plaint, plea or counterclaim as the case may be.
- (2) No pleading shall contain any statement that need not be proved
- (3) No pleading shall state any fact -
 - (a) which the law presumes in favour of the party pleading;
 - (c) in relation to which the burden of proof lies on the other party,unless the fact has been specifically denied.

14. Filing of pleadings

All pleadings and particulars shall be filed before the Master and copies communicated to all the parties.

15. Striking out pleadings

- (1) Where any pleading contains a statement which is -
 - (a) unnecessary;
 - (b) made vexatiously; or
 - (c) made with unnecessary prolixity,the Court or the Master may strike out that pleading or amend it with or without costs.
- (2) The Court may after hearing any interested party order any pleading to be struck out where it discloses no reasonable cause of action or answer.
- (4) The Court may after hearing any interested party, order an action to be stayed or dismissed, or judgment to be entered on such terms as may be just and reasonable, where the plaint, the plea or the counterclaim, as the case may be, is -
 - (a) frivolous, scandalous or vexatious;
 - (b) an abuse of the process of the Court.

16. Pleadings calculated to embarrass or mislead

- (1) Where any pleading is, by reason of its duplicity, argumentativeness, uncertainty, omission, defect, lack of form or other imperfection, framed in a way to embarrass or mislead the other party, the latter may apply to the Master to have the pleading amended.
- (2) Upon hearing the parties, the Master may order the appropriate party to amend the pleadings in such manner and on such terms as he may direct.

- (3) Where the party fails to amend the pleadings as ordered by the Master, the pleading shall be struck out.
- (4) Nothing in these rules shall be deemed to prevent alternative pleadings, including the pleading of averments in tort or alternatively in contract.

17. Amendments of pleadings

- (1) The Master May grant the amendment of any pleading and the Court may at the hearing of a case grant an amendment of any pleadings, in such manner and on such terms as may be just and reasonable, for the purpose of determining the real question in controversy between the parties.
- (2) An application for an amendment under paragraph (1) shall be made by way of motion.
- (3) Where a pleading is amended by order of the Master or the Court, the pleading shall be redrawn in its amended form.
- (4) The Master or the Court shall deal with the issue of costs, as he thinks fit.
- (5) The Master or the Court may, in all cases, set aside frivolous or vexatious pleadings amended in pretended compliance with an order to amend.

Part III - Different actions or parties

18. Joinder of actions

- (1) Subject to paragraph (2), different causes of action of whatever nature by and against the same parties and in the same rights may be joined in the same suit.
- (2) The Master or the Court may order separate records to be, made and separate trials to be held, if it expedient to hold the trial of the different causes of action together.

19. Addition and substitution of parties

- (1) Any misjoinder or non-joinder of parties shall not defeat any cause of action and the Court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.
- (2) The Master or the Court may, at any stage of the proceedings, on the application of any party and on such terms as may appear to the Master or to the Court to be just, order the names of a party who-
 - (a) Has been improperly joined be struck out;
 - (b) ought to have been joined, or whose presence before the Court may be necessary in order to adjudicate upon and settle all questions involved in the case be added.

- (3) Every party whose name is added pursuant to paragraph (2) shall be served a notice in such manner as may be ordered by the Master or the Court.
- (4) The proceedings shall be deemed to have been initiated against the new party on the date of the service of the notice.
- (5) Any application to add or strike out or substitute any party may be made to the Master, at any time before the trial, with notice to the other party, or to the Court at the trial of the action.

20. Action initiated in the name of a wrong party

Where -

- (a) an action has been initiated in the name of the wrong person as one of the parties
- (b) it is doubtful whether an action has been initiated in the name of the right party.

the Master or the Court may on being satisfied that -

- (i) the action has been so initiated through a bona fide mistake; and
- (ii) it is necessary for the determination of the real matter in dispute,

order any other person to be substituted or added as a party upon such terms as may be just and reasonable.

21. Suggestion of record

- (1) Where the interest or liability of any party to an action is assigned or transmitted to, or devolved on, some other person, the Master or the Court may, on a motion by any party or that other person, order that the other person be made a party to the suit.
- (2) Notice of the motion shall be served on all the parties to the case.
- (3) The applicant shall within 4 weeks of the order serve a copy of the order made under paragraph (1) and a copy of the plaint with summons on every other person who is, or has become, a party to the suit.
- (4) Where an order is made pursuant to paragraph (1), the Master or the Court may allow the pleadings to be amended in such manner, as he or it thinks fit.

Part IV - Case in shape

22. Proceedings by way of affidavit

These rules shall apply to any proceedings initiated before the Court by way of motion or before a Judge by way of proceipe as if -

- (a) a reference to the plaintiff was construed as a reference to the applicant;

- (b) a reference to the defendant was construed as a reference to the respondent;
- (c) the affidavits exchanged between the parties constituted the pleadings in the case.

23. Case readiness for trial

- (1) Where the Master is satisfied that all incidents of pleadings in a case before the Court have been dealt with and that the case is ready to be heard on its merits, he shall order that the case be placed on the list of cases awaiting trial, except where, owing to urgency, the Chief Justice considers that the case must be immediately fixed for hearing.
- (2) Where the judge is satisfied that all incidents of exchanges of affidavits have been dealt with and a case is ready to be argued before him on the merits, he shall fix the case to be heard on the merits on such date as he thinks fit.

24. Error in proceedings

- (1) Where a case is fixed for trial, the Master or the Court may at any time, and on such terms as to costs or otherwise as he or it thinks fit, amend any defect or error in any proceedings.
- (2) Any such amendment shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

Part V - Evidence

25. Summons to witness

Any party to a case may apply to the Master for the issue of a summons to witnesses, with or without a clause requiring the production of books, deeds, papers and writings in their possession or control, and any number of witnesses may be included in the summons.

26. List of witnesses

- (1) Where a party wishes to examine a witness, he shall serve on every other party a list of those witnesses including their occupation and addresses at least one day prior to his application for a summons.
- (2) An application for a summons to issue to secure the attendance of a witness and if necessary, the production of a document or other article shall, unless the Master or the Court otherwise orders, on good cause shown, be made not later than 8 days before the date fixed for the trial.

27. Additional Witnesses in rebuttal

- (1) Where any party wishes to examine any witness to rebut any fact to be proved by another party, he may apply to the Master for the issue of a summons.

- (2) The party shall give notice of the names of his witnesses, occupation and address to every other party at least one day before the date fixed for the trial.

28. Additional documentary evidence

Where any party intends to adduce any documentary evidence, in addition to those specified in rules 3 and 11, he shall not, later than 4 weeks before the hearing, unless agreed otherwise by the parties, served on the other party's attorney a notice signed by his attorney, describing the documents and stating, where the documents may be examined.

29. Admissibility of documentary evidence

- (1) Every notice of documentary evidence shall contain an invitation to every other party calling upon him to agree in writing that he admits such evidence to be what it appears to be, namely that a document which is stated to -
 - (a) be an original was written, signed or executed as it purports to have been;
 - (b) be a copy is a true copy; and
 - (c) have been served, sent or delivered,
- (2) Where the other party does not signify his agreement within a reasonable time, the Court may order that the costs of proving a document, which is sufficiently proved at the trial, be paid by that party, whatever may be the result of the case.

30. Evidence given at trial

- (1) No party shall at the trial of a case, of any demand or cause of action adduce any evidence other than that which relates to the facts as averred in the pleadings.
- (2) All evidence shall in each case be kept by the Master in the custody of the Court.

31. Enquiry as to genuineness of deed

An enquiry as to the genuineness of a deed, whether it is a deed under private signatures or an authentic deed, shall be made in open Court by way of plaint with summons.

Part VI - Trial

32. Brief

- (1) The attorney for the Plaintiff shall apply to the Registry for a certified copy of the pleadings and all entries on record in the case.
- (2) The attorney shall prepare and file in the Registry not later than 14 days before the hearing, a brief of the record, according to the

certified copy in as many copies as needed and forward a copy thereof to every other party.

- (3) Except where the judge otherwise orders, the applicant's attorney shall, in a case to be heard by the judge in chambers, prepare and file with the judge's secretary, not later than 8 days before the hearing, a brief of the record and forward a copy to every other party.

33. Non appearance of Plaintiff

- (1) Subject to paragraph (2), where on the returnable date of any plaint or motion, or at any continuation or adjournment of the case, the plaintiff or applicant does not appear or is not represented, the case shall be struck out.
- (2) Where the plaintiff does not appear, but the defendant or his representative appears and admits the cause of action and pay the fees payable in the first instance by the plaintiff, the Court may, if it thinks fit, give judgment as if the plaintiff has appeared.

34. Non-suit or dismissal

- (1) Where, at the hearing of the case by the Court, the plaintiff appears, but does not make proof of his claim to the satisfaction of the Court, the Court may -
 - (a) non suit the plaintiff, dismiss the claim, or give judgment for the defendant on the counterclaim, if any; and
 - (b) award to the defendant, by way of costs and satisfaction for his trouble and annoyance such sum as the Court thinks fit.
- (2) The defendant may recover any sum referred to in paragraph (1) (b) from the plaintiff as any debt or damage ordered to be paid by the Court.

35. Setting aside Motion

Where, at the hearing of a motion of the Court, the applicant appears but does not prove his case to the satisfaction of the Court, the Court may set aside the motion with or without costs.

36. Examination on personal answers

- (1) Where a party intends to call another party to give his unsworn personal answers, he shall apply ex-parte to the Master for an order summoning to do so.
- (2) Where the party to be examined on personal answers is a corporate body, only a person who can legally represent the body may be summoned, and a list of questions to be put to the body shall be served upon it.
- (3) The Master shall on good cause shown, order the other party to appear before the Court for his examination on personal answers.

- (4) The order and in the case of a corporate body, the list of questions shall be served upon the other party at least 5 days before the date fixed for the examination on personal answers.
- (5) Where the other party who has been duly summoned does not appear, his attendance may be enforced in the same way as in the case of a witness.
- (6) Notwithstanding paragraph (1), any party may at the hearing of a case, where the other party is present, move the Court to call the other party to be examined on his personal answers.
- (7) The party giving his personal answers shall not be required to be sworn or to take an oath when examined as a witness and Counsel may put any question which the Court considers proper and relevant to the matter in issue between the parties.
- (8) The party giving his personal answers shall not, while under examination, communicate with his Counsel or attorney.
- (9) After the examination on personal answers, the Court may proceed to hear the case.

37. Interpleader

- (1) Where a person claims that any goods or chattels, or the proceeds thereof that have been seized and or sold in execution of a judgment, are his property, he may lodge an opposition into the hands of the usher carrying out the execution, requesting him not to proceed with the sale of the property or with the payment of the proceeds of such sale to the execution creditor.
- (2) The notice of opposition shall set out the grounds on which it is made.
- (3) The usher shall refer the notice to the Master.
- (4) The claimant shall pay the costs of the proceedings relating to his opposition.
- (5) The summons shall issue not later than 3 days after the claimant has deposited the costs.
- (6) Where the claimant has paid the necessary costs the Master shall issue a summons to the execution creditor, to the claimant, and the judgment debtor calling upon them to appear before the Court on a day fixed in the summons.
- (7) The Court shall adjudicate upon the claim, and may make such order including an order for the costs of the proceedings, as it thinks fit.
- (8) The Court shall enforce any order made under paragraph (7) like any order made in any suit.

38. Third party procedure

- (1) Where in any action before Court or in Chambers, a defendant or a respondent, as the case may be, intends -
 - (a) to claim against a person not already party any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
 - (b) to require that any question or issue relating to or connected with the original subject matter of the action should be determined not only between the plaintiff and the defendant or between the applicant or respondent but also as between either or both of them and a person not already a party to the action,

he may, in the same way as the original action was entered, enter an action setting out the nature of the claim made against him and, as the case may be, the nature and grounds of the claim made by him or the question or issue required to be determined.

- (2) The defendant or the respondent shall lodge the third party procedure prior to the filing of the plea.
- (3) Where a third party procedure is served on the person against whom it is issued, such procedure shall be consolidated with the original action, the third party shall as from the time of service be a party to the action with the same rights in respect of his defence against any claim made against him in the third party procedure.
- (4) Pleadings shall thereafter be exchanged between the parties and the third party.
- (5) Any person not a party to an action before a Court or in Chambers may intervene in the action Provided he has obtained leave to do so from a Judge on good cause shown.
- (6) Any party to an action as well as any third party joined in the action may claim relief against any other party.

39. Payment into Court

- (1) A defendant may offer to pay into Court such sum of money in full satisfaction for the claim of the plaintiff, together with the costs incurred by the plaintiff up to the time of the payment.
- (2) Notice of the offer shall be given to the plaintiff personally.
- (3) The money shall either be paid in Court by cash or office cheque or deposited to a special account as may be directed by the Judge or Court.
- (4) The Plaintiff may elect to proceed with his case if he does not agree with the amount tendered by the defendant.
- (5) Where the plaintiff does not obtain judgment for an amount more than that paid into Court, the Court shall order the plaintiff to pay to the defendant the costs incurred by him after the payment.

Part VII - Judgments

40. Cross-judgments

Subject to the rights of third parties, where there are cross-judgments for sums of money between the parties, execution shall be taken out by that party only who has obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the balance shall be entered as well as satisfaction on the judgment for the smaller sum, and where both sums are equal, satisfaction shall be entered on both judgments.

41. Copies of judgments and other documents

The Master shall, upon payment of a specified fee issue to any party a certified copy of the judgment or any other document in a case that may be required.

42. Writ to issue

- (1) Where a party has obtained judgment in his favour, he may apply to the Master, after 21 days from the date of the judgment, for a writ of execution in such form as the Master may specify.
- (2) The writ shall be executed by an usher of the Court without any other formality.
- (3) The fees and expenses of the execution shall be levied over and above the sum recovered by the judgment.
- (4) Notwithstanding paragraph (1), a Judge or the Court may order the writ of execution to issue at an earlier period or to be stayed for such time as he or it thinks fit.

43. Execution to levy

- (1) Where the Court has given a judgment or made an order for the payment of money, the Master shall, at the request of the party who has obtained the judgment or order, issue under the seal of the Court a warrant of execution in such form as he may specify.
- (2) Where the judgment was given or order made on default, or without appearance, the warrant of execution shall be issued to an usher who shall not be the same who served the plaintiff.
- (3) The levy in the case of a default judgment or order shall be made within 6 months from the date of the judgment or order, failing which the judgment or order shall cease to have effect.

44. Clerical mistakes

Clerical mistakes in pleadings, orders or judgments owing to any accidental slip or omission, may at any time be corrected by the Court or by the Master on a motion made to that effect in presence of all parties.

Part VIII - Miscellaneous

45. New trial

- (1) The Court may grant an application for a new trial whether judgment has been given in the presence or in the absence of any other party where it is satisfied that-
 - (a) fraud, violence, or error has been committed;
 - (b) new evidence, which was not available or which was not within the knowledge of the party at the time of the hearing, has come to light; or
 - (c) it is necessary in the opinion of the Court to do so for the ends of justice.
- (2) An application for a new trial shall be made by way of motion and shall contain a prayer for the stay of execution of the judgment.
- (3) Notice of the motion shall be served upon all other parties not later than 7 days before the returnable date.
- (4) Where the Court grants the application, it shall -
 - (a) set aside any judgment given, and the execution thereon upon such terms and conditions as it thinks fit for the payment of costs and the furnishing of security; and
 - (b) order the original case to be reinstated and heard anew by the Court.
- (5) (a) The Master may, on the application of any party, order that amended pleadings be filed in the case before it is heard anew.
 - (c) The new trial shall proceed as if it were the original trial.

46. Notice of preliminary objection

Where, on an appeal, the respondent or other party intends to raise a preliminary objection, he shall not later than 3 days before the hearing serve on the appellant a notice setting out the objection.

47. Meaning of Judge

Any reference in these Rules to a judge shall, unless the context otherwise indicates, means a Judge in Chambers.

48. Reference to Court by a judge

Where pursuant to section 71(2) of the Courts Act, a judge refers the parties to the competent court, any party may make an application to the Court by way of motion.

49. References to Ministère Public

- (1) Where the Court has referred a case to the Ministère Public, the Master shall transmit all records and any other related document submitted by the parties to the Ministère Public.
- (2) The Ministère Public shall deliver its conclusions within such time as the Court may determine.

50. Record and documents to be handed to State Attorney

- (1) Where the State Attorney requires any record or document from the Registry, he shall submit an application to the Master.
- (2) Where the application is granted, no fee shall be payable in respect of the record or document.

51. Abridgement or extension of time

The Master, Judge or Court may, at any time, make an order on good cause shown for shortening the periods for appearances, pleadings, hearings and all proceedings, and for granting time to any party to proceed in the suit.

52. Review of Master's decision

- (1) Any party who is dissatisfied with a decision of the Master in the exercise of his powers under these rules, may within 21 days of such decision apply in writing to the Chief Justice for a review of the decision before a Judge.
- (2) The Chief Justice shall refer the matter to the Judge who may amend, affirm or set aside the decision of the Master.

53. Safekeeping of records

- (1) The record of all Court cases shall consist of all pleadings, evidence and documents filed and the judgment to be endorsed thereon with such entries by the Master as may be necessary.
- (2) The record referred to in paragraph (1) shall be kept in the order of its number at the Registry.
- (3) The record of all Chambers cases shall be kept in such manner as the Master may direct.
- (4) For the purpose of this rule, record includes all means by which a record of the Court is kept.

54. Office copies of evidence

The Master or the Court may, on sufficient ground shown to his or its satisfaction, direct the Registrar to make out and deliver an office copy of any evidence to an applicant on payment of the-specified fee.

Part IX - Court business

54. Sittings of the Court

Sittings of the Court may be held at any time, whether in term or vacation, at the discretion of the Court.

56. Terms of business

- (1) There shall be in every year 3 terms of approximately 3 months' duration each for the despatch of business in the Court.
- (2) The date on which any term begins and ends shall be fixed by the Chief Justice and notified in the Gazette.

57. Vacation sittings

The Court may sit in vacation at the discretion of the Chief Justice for the determination of part-heard cases or of such other matters as may in the opinion of the Chief Justice or a Judge require prompt despatch.

58. Business at Chambers

Unless otherwise ordered, business at Chambers, including hearing shall take place -

- (a) in term time, at 9.30 a.m.;
- (b) in vacation, on Mondays, Wednesdays and Fridays at 10.00 a.m.

59. Continuation of cases

The Court may direct that any case or matter pending before it shall be mentioned before the Master to be fixed for continuation.

60. General Cause List

The Master shall before the commencement of each term, prepare a General Cause List of cases pending before the Supreme Court, under the heading of the various sections and divisions thereof, and cause the list to be posted up at some conspicuous place in the Court House.

61. Weekly Cause Lists

A list of cases to be heard before the Supreme Court during any ensuing week shall be prepared and posted up by the Master at such time before the beginning of the week as the Chief Justice shall direct.

Amended by [\[Act No. 15 of 2000\]](#)

FOURTH SCHEDULE
(section 198)

1. These rules may be cited as the Legal Fees and Costs Rules 2000.
2. In these rules -
 - (a) "folio" means the space covered by 90 words;

- (b) "taxing officer" means -
- (i) in respect of the Supreme Court, the Admiralty Court the Bankruptcy Court, the Master's Court and the Judge in Chambers, the Master;
 - (ii) in respect of any other court, the clerk of the court designated by the Presiding Magistrate or Magistrate, as the case may be.
3. There shall be paid into the Consolidated Fund, by the attorney of the party concerned or, where no attorney is employed, by the party, the fees specified in Part A of the Schedule
- (a) in respect of every matter specified in paragraphs I and III; and
 - (b) in respect of every matter specified in paragraph II where the claim is worth more than 5,000 rupees.
4. (a) Subject to paragraphs (b) and (c), no person shall be entitled to any costs, other than disbursements incurred pursuant to rule 3, except in accordance with Part B of the Schedule.
- (b) The taxing officer shall, unless the parties concerned otherwise agree, determine the amount allowable pursuant to paragraph (a) where-
- (i) it is expressed as a variable; or
 - (ii) the monetary value of the subject matter is not determined.
- (c) An attorney who acts as mandator ad negotia shall, in addition to his costs, be entitled-
- (i) to such fair and reasonable remuneration as may have been agreed with his client; or
 - (ii) in the absence of such agreement, to such fair and reasonable remuneration as may be determined by the taxing officer.
5. There shall be paid to the other party to the case such adjournment costs or wasted costs as may be ordered by the Magistrate, Master, Judge in Chambers or Court in accordance with Part C of the Schedule.

SCHEDULE
(rules 3,4 and 5)

PART A
(rule 3)

FEES

1. **Supreme Court, Admiralty Court, Bankruptcy Court, Master's Court and Judge in Chambers**
- (a) Division-in-kind
Distribution of immovable property

Petition to the Bankruptcy Court	1300 rupees
Sale of immovable property	
Plaint with summons	
(b) Adoption	
Any other incidental application to a sale of immovable property	
Application for outbidding	
Bankruptcy notice	650 rupees
Divorce or Judicial separation	
Judicial review	
Master's Bill (payable by the adjudicates)	
(c) Acceptance, deposit or renunciation in relation to a succession	
Any other process initiated (e.g. proceipe appeal, motion, rule, attachment, writ, summons, plaint, seizure or execution) otherwise than at Assizes	350 rupees
(d) Filing a defence (by whatever name called) or otherwise putting in an appearance	250 rupees
(e) Usher's fees	
(i) every original of an inventory in excess of 25,000 rupees	1300 rupees
(ii) every original or an inventory up to 25,000 rupees, and every other memorandum	650 rupees
(iii) every service	150 rupees
II Any other Court	
(a) Every memorandum	350 rupees
(b) Any process initiated (e.g. plaint, information, summons, notice of appeal)	250 rupees
(c) Every service	100 rupees
(d) Filing a plea (by whatever name called) or otherwise putting an appearance except in criminal proceedings	100 rupees
III. General (All Courts)	
(a) Interpreter's fee	
for attendance daily	100 rupees
for explanation or translation for each folio	15 rupees
(b) Entry on roll of law practitioners	350 rupees
(c) Deposit, posting or registration of commission, diploma, certificate, authorisation or other deed	150 rupees

Reference to "Ministère Public"

- (d) Affixing seals, legalisation, visa, signing judgment 100 rupees
- (e) Drawing up, a copy or transcript or extract, for_ 40 rupees
each folio
- (f) Search, for each hour 15 rupees
- (g) On money, (including assets or debts received,
deposited, collected or managed 15 rupees
On the amount of a taxed bill of costs
- (h) Every other extra-judicial act 150 rupees

PART B
(rule 4)

1. Supreme Court, Admiralty Court, Bankruptcy Court, Master's Court and Judge in Chambers

Counsel's fee

- (a) For an extra judicial act 650 to 4000 rupees
- (b) where the value of the subject matter does
not exceed 500,000 rupees-
 - (i) in undefended proceedings 1500 rupees
 - (ii) in defend proceedings 3000 to 5000 rupees
- (c) Where the value of the subject matter
exceeds 500,000 rupees -
 - (i) in undefended proceedings 2500 rupees
 - (ii) in defended proceedings 4000 to 7000 rupees

(The fee specified in paragraph (b) and(c) is allowable before the Bankruptcy Court, the Master's Court and the Judge in Chambers where the Court or Judge so certifies)

Attorney's fee

The fee payable shall be the same as for Counsel

Expert witness Fee

In the case of professional services such as those of a medical practitioner, surveyor, valuer, accountant, liquidator, trustee, or receiver 400 to 3000 rupees

II. Any other court

Counsel's fee

- | | | |
|-----|--|---------------------|
| (a) | For an extrajudicial act | 400 to 1300 rupees |
| (b) | When the subject matter does not exceed
50,000 rupees - | |
| | (i) in undefended proceedings | 800 rupees |
| | (ii) in defended proceedings | 1500 rupees |
| (c) | when the value of the subject matter exceeds
50,000 rupees but does not exceed 500,000 rupees | |
| | (i) in undefended proceedings | 800 to 1500 rupees |
| | (ii) in defended proceedings | 2000 to 4000 rupees |

Attorney's fee

The fee payable shall be the same as for Counsel

Expert Witness Fee

In the case of professional services, such as those of a medical practitioner, surveyor, valuer or accountant 150 to 1500 rupees

PART C
(rule 5)

COSTS

I Supreme Court, Admiralty Courts, Bankruptcy Court,
Master's Court and Judge in Chambers

- | | | |
|-----|-------------------|--------------------------------|
| (a) | Adjournment costs | not exceeding
5,000 rupees |
| (b) | Wasted costs | not exceeding
15,000 rupees |

II Any Other court

- | | | |
|-----|-------------------|-------------------------------|
| (a) | Adjournment costs | not exceeding
2,000 rupees |
| (b) | Wasted costs | not exceeding
5,000 rupees |

Amended by [\[Act No. 15 of 2000\]](#)