

LAWS OF BRUNEI

REVISED EDITION 1984

CHAPTER 77

RELIGIOUS COUNCIL AND KADIS  
COURTS

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Saving of prerogative
4. Saving of civil and religious liberties

PART II

MAJLIS

Constitution

5. Constitution of Majlis
6. Majlis to be a corporation

7. Right to sue
8. Contracts and property
9. Power to administer estates
10. Further powers and duties
11. Vesting of property
12. Devolution of powers
13. Membership
14. Appointment of Religious Adviser
15. Determination of appointment
16. Cancellation of appointment
17. Temporary appointments
18. Appointments to be notified

Proceedings

19. Strangers at meetings
20. Chairman
21. Quorum
22. Use of seal
23. Conduct of business
24. Summoning meetings
25. Powers of Officers
26. Duties and Powers of Secretary
27. Minutes
28. Order of business and voting
29. Certified copies of resolutions
30. Appearances by the Majlis

31. Casual absences
32. Acting in emergency
33. Delegation of powers
34. Secrecy
35. Members are public servants
36. Channels of communication
37. Majlis may prescribe own procedure

Authority in Religious Matters

38. Authority of Majlis
39. Laws to be observed

Mufti, Legal Committee and Judicial Committee

40. Appointment of Mufti
41. Legal Committee
42. Rulings (*Fatwa*)
43. Authorities to be followed
44. Judicial Committee

PART III

RELIGIOUS COURTS

Jurisdiction

45. Appointments
46. Constitution of Religious Courts
47. Jurisdiction of Courts of Chief Kadi, Deputy Chief Kadi and Kadis

- 48. Extent of jurisdiction
- 49. Appeals
- 50. Probate and administration matters

Procedure (General)

- 51. Seal
- 52. Language
- 53. Records
- 54. Advocates and Solicitors
- 55. Representation by Agent
- 56. Service
- 57. Evidence
- 58. Summons to give evidence or produce documents
- 59. Adjournment
- 60. Time
- 61. Courts to be open

Procedure in Criminal Proceedings

- 62. Sanction of Majlis
- 63. Information
- 64. Summons and warrant
- 65. Arrest without warrant
- 66. Saving of powers
- 67. Bail and remand
- 68. Prosecutor
- 69. Charge
- 70. Hearing

71. Sentence of imprisonment
72. Sentences of fine
73. Cautions and binding over
74. Clemency
75. Appeal
76. Disposal of property
77. Irregularities
78. Matters not provided for
79. Maintenance

#### Procedure in Civil Proceedings

80. Plaint
81. Joinder and consolidation
82. Summons and service
83. Persons deceased or under disability
84. Defence
85. Interlocutory proceedings
86. Withdrawal and settlement
87. Trial or hearing
88. Judgments
89. Costs
90. Execution
91. Evidence *de bene esse*
92. Contempt of Court
93. Poor persons
94. Appeals

- 95. Irregularities
- 96. Matters not provided for

PART IV

FINANCIAL

Charitable Trusts

- 97. Mohammedan Fund
- 98. General Endowment Fund
- 99. Escheat
- 100. *Wakaf* and *nazar*
- 101. Vesting
- 102. Restrictions on creation of charitable trusts
- 103. Income of *wakaf* and *nazar*
- 104. Change of investments and borrowing powers
- 105. Capital of *wakaf* and *nazar am*
- 106. Construction of instruments

Accounts

- 107. Annual Report
- 108. Audit
- 109. *Wakaf* and *nazar* property
- 110. Estimates
- 111. Expenses of the Majlis
- 112. Bankers
- 113. Financial Statements

*Zakat and Fitrah*

114. Powers of Majlis
115. Assessment Lists
116. Liability for *zakat*
117. Liability for *fitrah*
118. Payment of *zakat*
119. Payment of *fitrah*
120. Receipts and accounts
121. Disposal of balance

## Collection for Charities

122. Charitable collections

## PART V

## MOSQUES

123. Majlis to be trustee
124. Restriction on new mosques
125. Repairs
126. Closure or demolition
127. Boundaries of *mukim*
128. Register of *pegawai masjid*
129. Appointment of Imam
130. Appointment of other *pegawai masjid*
131. Removal of *pegawai masjid*
132. Powers and duties
133. Attendance at mosque

PART VI

MARRIAGE AND DIVORCE

- 134. Application
- 135. Appointment of Registrars
- 136. Betrothal
- 137. Authority to solemnise marriages
- 138. Void marriages
- 139. Consent required
- 140. Marriage of *janda*
- 141. Place of marriage
- 142. *Mas kahwin* and *Berian*
- 143. Registration of marriages
- 144. Divorce by talak
- 145. Divorce at wife's request
- 146. Divorce under stipulation
- 147. Dissolution of marriage
- 148. Gift to divorced wife
- 149. Arbitration
- 150. Resumption of conjugal relationship
- 151. Presumption of death
- 152. Method and effect of registration
- 153. Inspection and copies
- 154. Appeals
- 155. Rectification of registers
- 156. Fees

PART VII

MAINTENANCE OF DEPENDANTS

- 157. Application
- 158. Wives
- 159. Lawful minor children
- 160. Infirm and diseased persons
- 161. Illegitimate children
- 162. Rescission and variation of orders
- 163. Enforcement of orders

PART VIII

CONVERTS

- 164. Register of converts
- 165. Control of conversions
- 166. No registration of conversion of children
- 167. Conversion
- 168. Conversion to be reported to the Majlis

PART IX

RENUNCIATION OF ISLAMIC RELIGION

- 169. Renunciation of Islamic Religion

PART X

OFFENCES

170. Application
171. Attendance at mosque
172. Intoxicating liquor
173. Food in Ramadan
174. Presumption
175. Desertion of wife
176. Disobedience of wife
177. *Khalwat*
178. Illicit intercourse
179. Unlawful solemnisation of marriage
180. Failure to report
181. Unlawful conversions
182. Wilful neglect of statutory duty
183. Breach of secrecy
184. Unlawful mosques
185. Religious teaching
186. False doctrine
187. *Fatwa*
188. Religious books
189. Misuse of the Quran
190. Contempts of religious authorities
191. Contempts of religion
192. Non-payment of *Zakat* or *Fitrah*
193. Incitement to neglect religious duty

- 194. Attempts and abetment
- 195. Abetment sections 171 and 172
- 196. Abetment by non-Muslim

PART XI

GENERAL

- 197. Supervision of officers
- 198. Appearance of the moon
- 199. Provident Fund
- 200. Protection of Majlis, its Members and employees
- 201. Validation of judgments, sentences and orders
- 202. Pending matters
- 203. Rules
- 204. Amendment of Schedules
- 205. His Majesty may issue consequential instructions

SCHEDULES

---



## RELIGIOUS COUNCIL AND KADIS COURTS ACT

**An Act to consolidate the law relating to the Religious Council and the Kadis Courts, the constitution and organisation of religious authorities and the regulation of religious affairs**

20 of 1955  
21 of 1956  
4 of 1957  
1 of 1960  
12 of 1961  
4 of 1967  
6 of 1972  
S.28/69  
22 of 1972

*Commencement: 1st February 1956*

S 1/52 waf 1-1 08  
S 3/90 waf 1-10 90

### PART I

#### PRELIMINARY

1. This Act may be cited as the Religious Council and Kadis Courts Act. Short title

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

“*anak dara*” means a female who has never been married or had sexual intercourse;

“*anak mukim*” means the persons permanently or habitually resident in any *mukim masjid*;

“Chief Kadi” means the Chief Kadi appointed under section 45 and where the context so admits includes the Deputy Chief Kadi similarly appointed;

“Court” means a religious Court, that is the Court of a Kadi or of the Chief Kadi;

“*fitrah*” means the amount of rice payable under Muslim law annually by every Muslim at the end of the month of Ramadan to be used for religious or charitable purposes recognised by Muslim law;

“General Endowment Fund” means the General Endowment Fund established under section 98;

“Government” means the Government of Brunei;

“*habuan*” means the proportion of any property or fund retainable under Muslim law by any person by way of commission or remuneration for services performed;

“*idah*” means the period within which a divorced woman or a widow is forbidden by Muslim law to remarry;

“*illicit intercourse*” means sexual intercourse not amounting to rape between any male and any female who is not his wife or whom he is forbidden by Muslim law to marry;

“Imam” means any Imam appointed under this Act;

“Senior Inspector and Inspector of Religious Affairs” means any officer duly appointed by the Majlis to hold that office;

“*janda*” means a widow or a female who is not either an anak dara or a married woman;

“Judicial Committee” means the Judicial Committee of the majlis appointed under this Act;

“Kadi” means a Kadi appointed under this Act and includes the Chief Kadi and the Deputy Chief Kadi;

“ketua” means a ketua of a kampong who is in possession of a Tauliah issued by His Majesty the Sultan and Yang Di-Pertuan for the purposes of this Act;

“Legal Committee” means the Legal Committee of the Majlis appointed under this Act;

“Majlis” means Majlis Ugama Islam constituted under section 5;

“married woman” means a female who has been married and whose marriage is still in force;

“*mas kahwin*” means the obligatory marriage-payment due under Muslim law by the husband to the wife at the time the marriage is solemnised, whether paid in cash or in kind, or payable as a debt with or without security;

“minor” means a person who has not attained the age of 18 years;

“mosque” means a building erected or used for the purpose of holding the prayers, services and other ceremonies connected with the Islamic religion, and includes a *surau*;

“Mufti” means the Mufti Kerajaan of Brunei, appointed under section 40;

“*mukim*” and “*mukim masjid*” mean the area prescribed by the Majlis in accordance with this Act within which a mosque is situated;

“*nazar*” means an expressed vow to do any act or to dedicate property for any purpose allowed by Muslim law;

“*nazar am*” means a *nazar* intended wholly or in part for the benefit of the Muslim community generally or part thereof, as opposed to an individual or individuals;

“*pegawai masjid*” includes the Dato Imam, Si Raja Khatib, Tuan Iman, Udana Khatib, all Khatib, all mudim, all Imam, all Bilal and all mosque officials appointed under section 130;

“*berian*” means the optional marriage settlement made by the husband on the wife at the time of the marriage in cash or in kind;

“penghulu” means a penghulu of a mukim who is in possession of a Tauliah issued by His Majesty for the purposes of this Act;

“President” means the President of the Majlis appointed under Section 13;

“property” includes all estates, interests, easements and rights, whether equitable or legal, in, to or out of property, and things in action;

“Prosecutor of the Kadi’s Court” means an officer appointed under the provisions of section 68;

“Registrar” means a Registrar of Muslim Marriages and Divorces appointed under section 135;

“Religious Adviser” means the other person duly appointed by His Majesty to hold that office;

“rujok” means a declaration made to a Kadi by an ex husband expressing his intention to resume conjugal relations with his ex wife;

“Secretary” means the Secretary to the Majlis appointed under section 14;

“signified” means signified under the hand of the Secretary to the Majlis;

“Sultan in Religious Council” means the Sultan acting after consultation with the Religious Council but not necessarily in accordance with the advice of such Council nor necessarily in such Council assembled;

“Vice-President” means the Vice-President of the Majlis appointed under section 13;

“*wakaf am*” means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognised by Muslim law, and the property so dedicated;

“*wakaf khas*” means a dedication in perpetuity of the capital of property for religious or charitable purposes recognised by Muslim law, and the property so dedicated, the income of the property being paid to persons or for purposes prescribed in the *wakaf*;

“*zakat*” means the tithe of the crop payable annually under Muslim law in respect of padi land, subject to the exemptions prescribed by this Act;

3. Nothing in this Act contained shall derogate from or affect the prerogative rights and powers of His Majesty as the Head of the religion of Brunei. Saving of prerogative

4. Nothing in this Act contained shall derogate from or affect the rights and powers of the Civil Courts. Saving of civil and religious liberties

## PART II

### MAJLIS

#### Constitution

5. There shall be a Majlis Ugama Islam to be called in English “The Religious Council”. Constitution of Majlis

6. The Majlis shall be a body corporate under the name of “Majlis Ugama Islam” having perpetual succession and a corporate seal, and the said seal may from time to time be broken, changed, altered and made anew as to the Majlis seems fit, and, until a seal is provided under this section, a stamp bearing the inscription “Majlis Ugama Islam” may be used as the corporate seal. Majlis to be a Corporation

LAWS OF BRUNEI

18

CAP. 77 *Religious Council and Kadis Courts*

---

- Right to sue      7. The Majlis may sue and be sued in its corporate name.
- Contracts and property      8. The Majlis may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and subject to the provisions of any written law affecting the same may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Majlis upon such terms as to the Majlis seems fit and in accordance with Muslim law.
- Power to administer estates      9. The Majlis shall have power to act as an executor of a will or as an administrator of the estate of a deceased person or as a trustee of any trust.
- Further powers, duties      10. The Majlis shall have such further powers and carry out such duties as may be assigned to it.
- Vesting of property      11. All property, movable and immovable, of whatever description, which, immediately before the commencement of this Act, was vested in the Bandar Seri Begawan Mosque for its religious purposes shall, on the commencement of this Act and without any conveyance, assignment or transfer whatever, vest in the Majlis for the like title, estate or interest and on the like tenure as the same was vested or held immediately before the commencement of this Act.
- Devolution of powers      12. All rights, powers, duties and liabilities which were, immediately before the commencement of this Act vested in or imposed on *Pehin Laksamana Haji Taha* shall, on the commencement of this Act, be vested in or imposed on the Majlis, save in so far as may be repugnant to the terms of this Act.
- Membership      13. (1) The Members of the Majlis shall be a President, a Vice-President and not less than 6 other Members, all of

whom shall be appointed by His Majesty for such period as he may deem fit.

(2) Unless the contrary appears in the instrument of appointment, every such appointment shall be deemed to have been made for a period of 3 years from the date thereof.

(3) No person shall be appointed a Member of the Majlis unless he is a male over the age of 21 years, professing the Islamic religion.

14. His Majesty may appoint —

Appointment  
of Religious  
Adviser and  
of Secretary

(a) any Member of the Majlis to be the Religious Adviser; and

(b) any person whether a Member of the Majlis or not to be Secretary of the Majlis.

15. The appointment of any Member of, or the Secretary to, the Majlis shall determine —

Determina-  
tion of  
appointment

(a) upon his death;

(b) if he shall, by writing addressed to His Majesty through the Secretary resign such appointment; or

(c) if he shall be absent from Brunei, without written permission from the President on behalf of His Majesty, or, in the case of the President, without written permission from His Majesty, for a period exceeding 3 months.

16. His Majesty may cancel the appointment of the Religious Adviser of any Member of, or the Secretary to, the Majlis —

Cancellation  
of appoint-  
ment

(a) if his conduct, whether in connection with the duties of such appointment or otherwise, is in the opinion of His Majesty such to bring discredit upon the Majlis;

(b) if for any reason he becomes unable properly to carry out the duties of his appointment; or

(c) if he shall, without due cause to be approved by the President, absent himself from 3 successive meetings of the Majlis.

Temporary appointments

17. In the event of the temporary absence or incapacity of any Member of, or the Secretary to, the Majlis, His Majesty may appoint a person to act temporarily on his behalf, Such temporary appointment shall determine on the substantive holder giving notice to the President of resumption of the duties of his appointment.

Appointments to be notified

18. Notice of all appointments under this Part shall be published in the *Gazette*.

#### Proceedings

Strangers at meetings

19. The President may invite to any meeting of the Majlis any person who is not a Member of the Majlis if the business before the meeting renders the presence of such person desirable. Any person so invited shall be entitled to take part in the discussion, but not to vote.

Chairman

20. The President shall preside at all the meetings of the Majlis or in his absence the Vice-President shall preside or, if he also is absent, His Majesty may appoint any other Member to act as Chairman.

Quorum

21. No business, save that of adjournment, shall be transacted and no resolution or action of the Majlis shall be valid, unless at least one-third of the Members, including the President or the Vice-President, or a person appointed under section 20 to act as Chairman, shall be present.

**22.** (1) The corporate seal of the Majlis shall not be used Use of seal except in pursuance of a resolution of the Majlis.

(2) Any instrument to be executed under the seal of the Majlis be sealed in the presence of the Secretary and 2 other Members of the Majlis who shall all sign as witnesses. Such signing shall be sufficient evidence that the said seal was duly and properly affixed and is the lawful seal of the Majlis.

(3) The following documents shall be executed under the corporate seal of the Majlis —

(a) documents requiring registration in any Land Office;

(b) letters of authority to the *pegawai masjid* of any mosque;

(c) documents authorising any person to act for any particular purpose or purposes on behalf of the Majlis; and

(d) such other documents or classes of documents as His Majesty may from time to time direct.

**23.** (1) Save as by this Act expressly provided, all business of the Majlis shall be conducted in a meeting thereof Conduct of business regularly convened and by resolution of the majority of those present and entitled to vote.

(2) A resolution in writing signed by all Members of the Majlis shall, unless in any special case or class of cases His Majesty shall otherwise direct, have the same effect as a resolution duly passed under subsection (1).

**24.** (1) All meetings of the Majlis shall be summoned by Summoning meetings the Secretary.

(2) The President or the Vice-President may at any time direct the Secretary so to summon a meeting.

(3) Any 4 Members of the Majlis may at any time in writing require the Secretary to summon a meeting of the Majlis, but shall upon doing so inform the Secretary of the purpose for which they desire the meeting to be so summoned.

(4) At least 3 days notice in writing shall be given of any meeting:

Provided that in emergency the President may direct that notice be dispersed with.

(5) Any such notice may be served in such manner as the President may direct:

Provided that no notice of meetings shall be necessary in the case of any Member for the time being out of Brunei.

Powers of  
Officers

**25.** (1) The President shall have general control of all deliberations and proceedings of the Majlis and shall be responsible therefore to His Majesty.

(2) The Vice-President shall in the absence of the President exercise all the powers of the President and shall at all other times carry out such duties as may be allotted to him by the President.

Duties and  
Powers of  
Secretary

**26.** The Secretary shall, under the direction of the President, have charge of all correspondence and documents of the Majlis, including all books of account thereof and all title deeds and securities, and shall be generally responsible for the proper collection of, accounting for and disposal of all funds of the Majlis, and shall in all other respects carry out such duties as may be imposed upon him by this Act or allotted to him by direction of the President.

**27.** (1) The Secretary shall keep minutes of all meetings of the Majlis and at every meeting the minutes of the previous meeting shall be read and confirmed, subject to any amendment which may be required.

Minutes

(2) Such minutes shall be entered in the minute book of the Majlis and shall include a full verbatim record of every resolution of the Majlis.

(3) As soon as possible after every meeting of the Majlis a copy of the draft minutes shall be sent to His Majesty. If on confirmation such draft minutes are amended, His Majesty shall forthwith be informed of the amendments made.

**28.** (1) The Chairman shall determine the order of business at any meeting.

Order of business and voting

(2) The Chairman may decide in what order members may address the meeting and may at any time require any member to cease to address the meeting.

(3) The Chairman shall be entitled to vote and if upon any resolution there is equality of votes the Chairman shall have a casting vote.

**29.** A copy of any resolution certified by the Secretary to be a true copy of such resolution shall be sufficient evidence thereof and all Courts (including Courts other than Religious Courts) shall take notice of the signature of the Secretary.

Certified copies of resolutions

**30.** The Majlis may appear in any Court (including Courts other than Religious Courts) or office of Government by its President, Vice-President or Secretary or by any person appointed for the purpose either generally or in any particular case under the seal of the Majlis.

Appearances by Majlis

Casual  
absences

**31.** (1) The President, Vice-President or Secretary shall, if he expects to be absent on leave or for other reasons for more than 14 days, apply for leave from His Majesty, who may give such directions as he deems fit.

(2) Any other Member of the Majlis shall similarly apply to the President, who may grant leave or submit the matter to His Majesty for his directions.

Acting in  
emergency

**32.** In any case of emergency the President or in his absence the Vice-President may do or direct to be done on behalf of the Majlis any act or thing which might lawfully be done by resolution of the Majlis:

Provided that in any such case a meeting of the Majlis shall be called within one week thereafter for the purpose of ratifying and confirming the action taken and, if the Majlis shall decline to ratify and confirm the same, His Majesty may give such directions thereon as he may deem fit.

Delegation  
of powers

**33.** (1) The Majlis may delegate to the President, Vice-President or Secretary or to any committee of the Majlis any part of its duties and powers, not being judicial or quasi-judicial powers, as it may deem fit.

For the purposes of this section the powers conferred on the Majlis by sections 42 and 43 shall be deemed to be quasi-judicial powers.

(2) It shall be the duty of every committee of the Majlis and of every other person or body to whom any powers of the Majlis may be delegated to inform the Majlis of all acts and things done by it or him as such committee or in pursuance of such delegation.

Secrecy

**34.** The proceedings of the Majlis shall be secret and no Member or servant thereof shall disclose or divulge to any person other than His Majesty or the Religious Adviser or any Member of the Majlis, any matter which has arisen at any meeting, unless he is expressly authorised to do so:

Provided that the provisions of this section shall not apply to proceedings and matters which have been submitted to and have received the approval of His Majesty.

35. The Members and Secretary of the Majlis shall be deemed to be public servants as defined by the Penal Code. Members are public servants

36. All communications from the Majlis to His Majesty shall be forwarded through the Secretary. Channels of Communication

37. The Majlis may, subject to the provisions of this Act, determine all questions relating to its own procedure and practice. Majlis may prescribe own procedure

#### Authority in Religious Matters

38. The Majlis shall, on behalf of and under the authority of His Majesty as Head of the Religion of Brunei, aid and advise His Majesty on all matters relating to the religion of Brunei, and shall in all such matters be the chief authority in Brunei, save in so far as may be otherwise provided by this Act. Authority of Majlis

39. The Majlis shall take notice of and act upon all written laws in force in Brunei, and the provisions of the Hukum Syarak'. Laws to be observed

#### Mufti, Legal Committee and Judicial Committee

40. (1) His Majesty may by notification signified in the *Gazette* appoint any suitable person to be the Mufti Kerajaan for Brunei and may at any time revoke any such appointment. Appointment of Mufti

Provided that in case of any vacancy in the appointment of Mufti the powers and duties conferred on the Mufti by this Act shall be exercised by the Religious Adviser.

(2) The Mufti shall be *ex officio* a Member of the Majlis and shall not be subject to the provisions of subsection (2) of section 13 or section 15 or 16.

Legal  
Committee

**41.** (1) There shall be a Legal Committee of the Majlis, consisting of the Mufti, not less than 2 other Members of the Majlis, and not less than 6 other fit and proper persons who may be members of the Majlis or not.

(2) The members of the Legal Committee, other than the Mufti, shall be appointed by His Majesty for such period as he may deem fit. His Majesty may at any time revoke any such appointment. Notice of every such appointment shall be published in the *Gazette*.

(3) The Mufti shall be Chairman of the Legal Committee. In his absence, His Majesty may appoint a Chairman.

(4) The Chairman and 4 other members of the Legal Committee shall be a quorum.

(5) Subject to any written law, the Legal Committee shall have power to regulate its own procedure.

Cap. 22

(6) The members of the Legal Committee shall be deemed to be public servants as defined by the Penal Code.

Rulings  
(Fatwas)

**42.** (1) Any person may, by letter addressed to the Secretary, request the Majlis to issue a *fatwa* or ruling on any point of Muslim law or doctrine. On receiving any such request the Secretary shall forthwith submit the same to the Chairman of the Legal Committee.

(2) The Legal Committee shall consider every such request and shall, unless in its opinion the question referred is frivolous or for other good reason ought not to be answered, prepare a draft ruling thereon. If such draft ruling is unanimously approved by the Legal Committee or

those members thereof present and entitled to vote, the Chairman shall on behalf and in the name of the Majlis forthwith issue a ruling in accordance therewith. If in any such case the Legal Committee is not unanimous, the question shall be referred to the Majlis, which shall in like manner issue its ruling in accordance with the opinion of the majority of its Members:

Provided that on special grounds any such question may be referred by the Majlis to His Majesty for his determination, and any such question shall be so referred to His Majesty if the Mufti so requests and in any case where His Majesty makes a determination the Majlis shall issue a ruling in accordance therewith.

(3) The Majlis may at any time of its own motion make and publish a ruling on any such question as aforesaid.

(4) All fatwas or rulings on any point of Muslim law or doctrine issued by the Majlis shall be published in the *Gazette*.

43. (1) In making and issuing any ruling in manner hereinbefore provided the Majlis and the Legal Committee shall ordinarily follow the orthodox tenets of the Shafeite sect:

Authorities  
to be  
followed

Provided that, if it is considered that the following of such orthodox tenets will be opposed to the public interest, the Majlis or the Legal Committee may, unless His Majesty shall otherwise direct, follow the less orthodox tenets of the Shafeite sect:

Provided further that, if it is considered that the following of either the orthodox or the less orthodox tenets of the Shafeite sect will be opposed to the public interest, the Majlis or the Legal Committee may, with the special sanction of His Majesty, follow the tenets of any of the 3 remaining sects as may be considered appropriate, but in any such

ruling the provisions and principles to be followed shall be set out in full detail and with any necessary explanation.

(2) Any ruling given by the Majlis, whether directly or through the Legal Committee, in accordance with the foregoing provisions shall, if the Majlis so determine or if His Majesty so directs, be published in the *Gazette* and shall thereupon be binding on all Muslims of the Shafeite sect resident in Brunei, other than Muslims, not being of Malay race, who are subject to a personal law other than that obtaining in Brunei.

Judicial  
Committee

**44.** (1) There shall be a Judicial Committee of the Majlis, consisting of the Mufti, 2 other regular members and any number of additional members.

(2) The members of the Judicial Committee, other than the Mufti, shall be appointed by His Majesty and such appointment shall specify whether they are regular or additional members. His Majesty may at any time revoke any such appointment. Notice of every such appointment shall be published in the *Gazette*. No Kadi shall be a member of the Judicial Committee.

(3) The Mufti shall be Chairman of the Judicial Committee: In his absence, His Majesty may appoint a Chairman.

(4) The Judicial Committee shall in all cases act by its Chairman and 2 other members, who shall be the 2 regular members if they are available to act, or, in the absence of one or both of the regular members, such one or two, as the case may be, of the additional members as the Chairman may designate for the purpose.

(5) Subject to any written law, the Judicial Committee shall have power to regulate its own procedure and practice.

(6) The members of the Judicial Committee shall be deemed to be public servants as defined by the Penal Code. Cap. 22

(7) If in any Court other than the Religious Court any question of Muslim law or doctrine falls for decision, and such Court requests the opinion of the Majlis on such question, the question shall be referred to the Judicial Committee which shall for and on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members, and certify such opinion to the requesting Courts.

(8) The Judicial Committee shall perform such further duties and shall have such further rights and powers as may be imposed or conferred on it by any written law.

(9) The provisions of subsections (1) and (2) of section 43 shall apply, with such modifications as may be necessary, to all proceedings of the Judicial Committee.

Provided that no reference shall be made to His Majesty as to the principles of law to be applied, but the Judicial Committee shall determine any such question in its own discretion.

### PART III

## RELIGIOUS COURTS

### Jurisdiction

**45.** (1) His Majesty may appoint any suitable person to be Chief Kadi and to be the Deputy Chief Kadi for Brunei and may similarly appoint any suitable persons to be Kadis for such areas as he may prescribe, and may at any time revoke any such appointment. All such appointments shall be notified in the *Gazette*.

Appoint-  
ments

(2) His Majesty may from time to time grant or revoke letters of appointment to any Chief Kadi or Kadi and may by the terms of any such letter restrict the exercise of any powers which would otherwise be conferred on such Chief Kadi, Deputy Chief Kadi or Kadi by this Act or by any other written law.

(3) Save as aforesaid, the jurisdiction, authority and powers of any Chief Kadi, Deputy Chief Kadi or Kadi shall be such as are conferred by this Act or by any other written law.

Constitution  
of Religious  
Courts

**46.** (1) His Majesty may by notification signified in the *Gazette* constitute a Court of the Chief Kadi for Brunei at Bandar Seri Begawan.

(2) His Majesty may by notification signified in the *Gazette* constitute Courts of Kadis at such places as he may deem fit, and may prescribe the local limits of jurisdiction of such Courts.

Jurisdiction  
of Courts of  
Chief Kadi,  
Deputy Chief  
Kadi and  
Kadis

**47.** (1) The Court of the Chief Kadi shall have jurisdiction throughout Brunei and shall be presided over by the Chief Kadi or the Deputy Chief Kadi.

(2) A Court of a Kadi shall have jurisdiction in respect of any civil or criminal matter of the nature hereinafter specified arising within the local limits of jurisdiction prescribed, for it under section 46, or, if no local limits are so prescribed, within Brunei, and shall be presided over by the Kadi appointed thereto.

Extent of  
jurisdiction

**48.** (1) The Court of the Chief Kadi shall —

(a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under this Act, and may impose any punishment therefor provided:

~~Provided that in trying any offence contrary to subsection (3) or (4) of section 177 the Chief Kathi shall sit with 2 assessors chosen by him from a panel of assessors approved by His Majesty:~~

deleted by  
S 1/88  
wef 1-1-88

~~Provided further that the Chief Kathi shall in any such case record the opinions of the assessors separately but need not be bound by such opinions; and~~

(b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties profess the Islamic religion and which relate to —

- (i) betrothal, marriage, divorce, nullity of marriage or judicial separation;
- (ii) any disposition of, or claim to, property arising out of any of the matters set out in sub-paragraph (i);
- (iii) maintenance of dependants, legitimacy, guardianship or custody of infants;
- (iv) division of, or claims to, *sapencarian* property;
- (v) determination of the persons entitled to share in the estate of a deceased person who professed the Islamic religion, or of the shares to which such persons are respectively entitled;
- (vi) wills or death-bed gifts of a deceased person who professed the Islamic religion;
- (vii) gifts *inter vivos* or settlements made without consideration in money or money's worth, by a person professing the Islamic religion;
- (viii) *wakaf* or *nazar*; or
- (ix) other matters in respect of which jurisdiction is conferred by any written law:

Provided that it shall not ordinarily try any offence or hear or determine any action or proceeding in respect of which any Court of a Kadi has jurisdiction.

As (1A) ... Added by S. 31/90 w.e.f. 1-10-1990

(2) The Court of a Kadi shall —

(a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under this Act for which the maximum punishment provided by law does not exceed imprisonment for one month or a fine of \$1,000 or both, and may impose any punishment therefor provided; and

(b) in its civil jurisdiction, hear and determine all such actions and proceedings as the Court of the Chief Kadi is authorised to hear and determine, in which the amount or value of the subject-matter does not exceed \$5,000, or is not capable of estimation in terms of money.

(3) No decision of the Court of the Chief Kadi or a Kadi shall affect any rights of property of any non-Muslim.

Appeals

**49.** (1) An appeal shall lie to His Majesty in Religious Council from any decision of the Court of the Chief Kadi or a Court of a Kadi —

(a) in its criminal jurisdiction, by a person convicted and sentenced to imprisonment or to a fine of not less than \$200 and such appeal may be against conviction or sentence or both;

(b) in its civil jurisdiction —

(i) by any person aggrieved by the decision, if the amount in issue on the appeal is not less than \$1,000;

(ii) in all cases involving any decision as to personal status, by any person aggrieved by the decision; and

- (iii) in all cases relating to maintenance of dependants, by any person aggrieved by the decision:

Provided that no such appeal shall lie against a decision made by consent;

- (c) in any other case, if His Majesty in Religious Council shall give leave to appeal:

Provided that nothing in this section shall authorise any appeal against any opinion or advice contained in any written statement made under the provisions of section 50.

(2) His Majesty in Religious Council may direct generally or in any particular appeal or class of appeals that an appeal from the Court of the Chief Kadis or of a Kadis shall be heard by the Judicial Committee, and in any such case the Judicial Committee shall hear the appeal and shall advise His Majesty in writing as to the manner in which the same should be determined. In case of disagreement, each member shall give his own opinion separately.

(3) His Majesty in Religious Council may, where an appeal has been heard in manner provided in subsection (2), determine such appeal in accordance with the advice given, without further hearing or consideration:

Provided that if such advice is not unanimous, or if His Majesty in Religious Council is disposed to determine the appeal otherwise than in accordance with such advice, the parties shall ordinarily be heard thereon if they so desire.

(4) On any appeal His Majesty in Religious Council may —

- (a) in a criminal matter, dismiss the appeal, quash or vary the conviction, quash, vary or reduce the sentence, order a retrial or make such

other order as the justice of the case may require; and

(b) in a civil matter, confirm, reverse or vary the decision of the trial Court, exercise any such powers as the trial Court could have exercised, make such order as the trial Court ought to have made or order a retrial.

(5) Whenever under any provision of this Act any appeal shall lie, whether to His Majesty in Religious Council, the Majlis, the Legal Committee, the Judicial Committee or any other person or authority, such appeal shall be brought by giving or lodging the appropriate notice or petition, or in such other manner as may be prescribed, but in any event within 14 days after the occurrence of the act, omission, judgment, order or decision appealed from, or, in the event that the appellant was not at the time of such occurrence aware thereof and could not by the exercise of reasonable diligence have been so aware, within 14 days after such act, omission, judgment, order or decision shall have come to the appellant's knowledge:

Provided that His Majesty in Religious Council or other person or authority to whom the appeal may be brought may on special grounds extend the time for appealing, notwithstanding that such time may have expired.

Probate and  
Administration  
matters  
Cap. 11

**50.** (1) Where the Probate Officer has referred any matter to the Court of the Chief Kadi under the provisions of section 71 of the Probate and Administration Act, that Court shall, subject to the provisions of this section, consider such matter and make and transmit to the Probate Officer a written statement containing answers to the matters referred to it by such Officer.

(2) The Court of the Chief Kadi may before making such statement hear any person concerned on any point of law and may hear, or direct the Court of a Kadi to hear on its behalf, such evidence as it considers proper.

(3) The Court of the Chief Kadi may, and shall, in any case or class of cases where the Majlis so directs, or in any case where any interested party so requests, before making such written statement refer the matter to the Judicial Committee for consideration and shall make the written statement in accordance with the answers given by that Committee.

(4) A written statement certified by the Court of the Chief Kadi as having been made in accordance with the provisions of this section shall be deemed to contain the opinion or advice, as the case may be, of the Majlis.

*55CA, ... Added by S 31/90 (wp) 1-10-1990*

#### Procedure (General)

**51.** (1) The Court of the Chief Kadi and every Court of a Kadi shall have and use such seal or stamp as His Majesty shall approve. Seal

(2) Process of every such Court shall issue under the seal of the Court and the signature of the presiding officer thereof.

**52.** (1) The language of the Court shall be Malay. Language

(2) All documents and written proceedings may be written or typewritten in either Jawi or Romanised Malay.

**53.** Every Court shall keep and maintain full and proper records of all proceedings therein and full and proper accounts of all financial transactions of the Court and shall account for all monies received in manner provided by General Orders or in such other manner as His Majesty may direct. Records

**54.** (1) Notwithstanding anything contained in any written law, no advocate or solicitor shall have the right to appear in any Religious Court on behalf of a party to any proceedings if such appearance would be contrary to the provisions of Muslim law. Advocates and Solicitors

(2) Any advocate or solicitor so appearing may be required to plead in the language of the Court.

Representa-  
tion by agent

**55.** Every party to any proceeding shall appear in person in criminal proceedings and in person or by advocate or solicitor in civil proceedings, unless in any case His Majesty shall authorise in writing appearance by any other agent.

Service

**56.** (1) Process of the Court shall be served by an officer of the Court or by any other person expressly authorised by the Court to serve the same, and may be served at any place within Brunei and at any time.

(2) In criminal proceedings service shall be personal.

(3) In civil proceedings service shall be personal, unless for special reasons the Court shall order substituted service. Substituted service shall be effected in such manner as the Court may order and shall then be as effective as personal service.

(4) Personal service shall be effected by handing to the person to be served the original or a sealed and signed copy of the document to be served. If the person to be served refuses to accept a document it may be brought to his notice and left near him.

(5) A person who has served any documents or proceeding shall forthwith file in Court a memorandum showing the place, time and method of service.

(6) Service shall be proved where necessary by oral evidence.

Evidence

**57.** (1) The Court shall observe all provisions of Muslim law relating to the number, status or quality of witnesses or evidence required to prove any fact. Save as aforesaid, the Court shall have regard to the law of evidence for the time being applicable to the Supreme and Magistrates' Courts of

Brunei, and shall be guided by the principles thereof, but shall not be obliged to apply the same strictly.

(2) The Court is authorised to administer oaths and affirmations. Evidence shall ordinarily be given on oath in a form binding upon Muslims, but the Court may on special grounds dispense with an oath and take evidence on affirmation. An affirmation shall be in the form:

“I ..... (name) solemnly affirm that my evidence shall be the truth, the whole truth and nothing but the truth.” Whether on oath or on affirmation a witness shall be bound to state the truth.

(3) If in the opinion of the Court any witness has wilfully given false evidence in any proceedings, the Court shall report the matter to the Public Prosecutor.

**58.** (1) Subject to the provisions of any written law, the Court may issue a summons to any person to give evidence or to produce any document in his possession or power. Every such summons shall be served personally and any person so served, whether a Muslim or not, shall be legally bound to comply therewith.

Summons to  
give evidence  
or produce  
documents

(2) The Court may, before issuing such summons, order the payment of the reasonable travelling and subsistence expenses of any witness who resides more than 5 miles from the Court-house.

**59.** The Court may for sufficient reason adjourn any proceeding from time to time and, with the permission of His Majesty, from place to place. Save as aforesaid, proceedings in the Court of a Kadi shall be had in the Court-house of that Court, and proceedings in the Court of the Chief Kadi shall be had in the Court-house of that Court or in the Court-house of any Court of a Kadi.

Adjournment

**Time**            **60.** The Court may fix and may at any time extend or abridge, the time for doing any act or thing, and in default of compliance with any order so made may proceed as if the party in default had not appeared.

**Courts to be open**        **61.** Every trial or hearing in Court shall unless the Chief Kadi otherwise directs be held in public.

**Procedure in Criminal Proceedings**

**Sanction of Majlis**    **62.** No prosecution for any offence against section 182, 183, 185, 186, 187 or 190 shall be instituted save in pursuance of a resolution of the Majlis sanctioning such prosecution, and a certified copy of such resolution shall be produced to the Court before any summons or warrant is issued. Such certified copy shall form part of the record at the trial.

**Information**        **63.** (1) An information with a view to prosecution shall be made in writing or orally to the presiding officer of the Court. If made orally, it shall be reduced to writing by him. In either event he shall require the informant to swear or affirm to the truth of such information.

(2) The Court may refuse to take any action on such information if not satisfied that there is reason to believe that an offence has been committed.

**Summons and warrants**    **64.** (1) On receiving information of the commission of an offence within its jurisdiction to try, the Court may issue a summons to the accused person to appear before it at a stated time and place.

(2) The summons shall state the general nature of the offence charged and the section under which it is punishable.

(3) If the accused has failed to obey a summons duly served on him, or if the offence is one punishable by impris-

onment and there is good ground to believe that a summons will be ineffective, either by reason that the accused cannot be found or that he is likely to disobey such summons, the Court may issue a warrant addressed to the Commissioner of Police and all other police officers and to every Imam and Penghulu in Brunei requiring them to arrest the accused and produce him before the Court. The warrant shall contain the particulars set out in subsection (2). The accused shall be arrested and produced accordingly.

**65.** Any police officer and, if no police officer is known to be available, any Penghulu or any Imam or any “pegawai masjid” authorised in writing in that behalf by His Majesty or any Inspector of Religious Affairs may arrest without warrant —

Arrest without warrant

(a) any person who has committed or attempted to commit in his presence any offence against this Act involving a breach of the peace;

(b) any person who has committed in his presence any offence against this Act and who refuses or fails to give on request his full and true name and address; or

(c) any person against whom a warrant issued under this Act is extant, although such warrant is not in his possession,

and shall thereupon produce such person or cause him to be produced before the Court.

**66.** Nothing in the preceding sections contained shall restrict or affect the powers of arrest or search conferred on any person by the Criminal Procedure Code or any other written law for the time being in force relating to criminal procedure of the civil courts.

Saving of powers

Cap. 7

Bail and  
remand

**67.** (1) The Court may grant bail to any accused person and such bail may be taken in cash or by bond with or without sureties.

(2) The Court may on issuing a warrant of arrest authorise the police to grant bail on such terms as the Court may prescribe.

(3) Unless bail shall be granted, any person lawfully arrested under this Act shall be detained in prison pending trial.

(4) The trial of any accused person detained in prison shall take place at the earliest possible time and in priority to all other work of the Court, even though specially fixed for hearing.

Prosecutor

**68.** The prosecution shall be conducted —

(a) by any person appointed in writing by His Majesty to prosecute;

(b) by any person appointed by the Majlis to prosecute;

(c) by the Public Prosecutor;

(d) by a Police Officer;

(e) by the Imam or Penghulu of the mukim within which the offence was committed;

(f) by the Penghulu of the daerah within which the offence was committed; or

(g) by the complainant:

Provided that none of such persons shall be entitled to prosecute if any person mentioned before him in the preceding list is available and willing to do so.

**69.** (1) The charge shall be framed by the prosecutor or <sup>Charge</sup> by the Court and shall contain sufficient particulars of the offence alleged.

(2) More offences than one may be charged in different counts and tried together if arising out of the same transaction.

(3) More persons than one may be charged and tried together for the same or different offences if committed in the course of the same transaction.

(4) The charge may be amended or altered at any time before verdict, but the accused shall be given full opportunity to cross-examine or give or call evidence to meet the new charge.

(5) A person charged with an offence may be convicted of an attempt to commit that offence.

**70.** (1) Any necessary sanction to prosecute shall be <sup>Hearing</sup> proved.

(2) The accused shall be charged and if he pleads guilty he may be sentenced on such plea.

(3) If the accused claims trial or refuses to plead, the prosecutor shall outline the facts to be proved and the relevant law and shall then call his witnesses.

(4) Each witness —

(a) shall be examined by the party calling him;

(b) be cross-examined thereafter by the party opposing him and such cross-examination may be directed to credibility;

(c) may thereafter be then re-examined on matters arising out of cross-examination by the party calling him;

(d) have put to him at any time any question by the Court; and

(e) may have any further questions put to him or be recalled at any time, by leave of the Court.

(5) After hearing the witnesses for the prosecution the Court shall either dismiss the case or call on the accused for his defence.

(6) If called on for his defence, the accused may address the Court and may then either give evidence or make a statement without being sworn or affirmed, in which case he shall not be liable to be cross-examined, or may stand silent:

Provided that if the accused gives evidence, he may be cross-examined, but not as to character or as to other offences not charged.

(7) The accused may then call his witnesses.

(8) The accused may sum up on the case.

(9) The prosecutor may reply generally.

(10) The Court shall then either convict or acquit the accused.

(11) If the accused is convicted, the Court may be informed of previous offences and shall have regard to any plea for leniency.

(12) The Court shall then pass sentence according to law.

(13) At any stage of the hearing before verdict the prosecutor may withdraw and the case shall then be dismissed:

Provided that, if the complainant be the prosecutor, and if he does not act in any of the special capacities set out in items (a) to (f) inclusive of section 68, he shall not so withdraw without the leave of the Court.

(14) The Court shall at all times satisfy itself that the accused understands the nature and effect of the proceedings and has a proper opportunity to defend himself.

(15) All evidence shall be given in the presence of the accused and shall, if in a language not understood by him, be interpreted to him.

(16) The Court shall record the evidence in writing in narrative form and shall also record its verdict and sentence, if any.

71. (1) A Court passing a sentence of imprisonment shall send the prisoner in the custody of a police officer or one of the Court's officers to the prison and deliver him to the officer in charge of the prison together with a warrant for his confinement and he shall be confined accordingly.

Sentence of imprisonment

(2) If the prisoner has been in prison pending trial, the period so spent shall be treated as part of the period to be served under the sentence.

(3) The Court may in its discretion grant bail pending an appeal, but, if such appeal be not prosecuted with due diligence, the Court may order re-arrest and the sentence shall be carried out.

(4) A sentence of imprisonment may be imposed in default of payment of a fine imposed under this Act, but no such sentence of imprisonment shall exceed one half of the term of imprisonment, if any, provided for the offence, or 7 days, if the offence is punishable only by fine.

Sentences  
of fine

**72.** (1) A Court passing a sentence of a fine may give time to pay, or allow payment by instalments.

(2) Fines may be recovered in like manner as in hereinafter provided for the execution of judgments in civil proceedings.

Cautions and  
binding over

**73.** (1) In lieu of convicting any person the Court may caution and discharge him, and in lieu of sentencing any person convicted the Court may bind him over to be of good behaviour for a period not exceeding one year and may accept a bond in any sum with or without sureties or deposit of money.

(2) On a breach of the terms of any such bond being proved, the Court may order it to be enforced as if the amount due thereon were a fine or, if a deposit of money has been made, may order the money so deposited or any part thereof to be forfeited.

(3) An appeal shall lie from any order made under this section.

Clemency

**74.** (1) His Majesty may commute, suspend or remit any sentence or part thereof.

(2) Nothing herein contained shall affect the right of His Majesty to exercise his prerogative of mercy.

Appeal

**75.** (1) An appeal to His Majesty in Religious Council shall be brought by filing, in the Court which passed the judgment appealed from, a petition of appeal addressed to His Majesty, setting forth particulars of the judgment com-

plained of, whether the appeal is against conviction or sentence or both, and the grounds of appeal, and by paying the prescribed fee, if any. Such petition shall be filed not more than 14 days after the judgment was given.

(2) On receiving such a petition, the Court shall prepare and forward in quadruplicate to the Secretary for transmission to His Majesty or, if so directed by him, to the Judicial Committee, a record containing a copy of the petition, a copy of the charge and of the sanction to prosecute, if any, a copy of the Court's note of the Proceedings, copies of any relevant exhibits and a copy of the Court's judgment or order and grounds of judgment. Each copy of the record shall be certified as correct by the presiding officer of the Court and sealed. The appellant shall be entitled to receive a copy of the record on payment of the prescribed fee, if any, and the Court shall, without payment, send a copy thereof to the prosecutor, who shall appear as respondent to the appeal.

**76.** The Court may make orders for the disposal of property brought before it in the course of criminal proceedings regarding which an offence has been committed.

Disposal of property

**77.** Irregularities of procedure shall not render the proceedings unlawful or void, unless shown to have resulted in substantial injustice or hardship to the accused.

Irregularities

**78.** In matters of practice and procedure in criminal proceedings, not expressly provided for in this Act or any rules made thereunder, the Court shall have regard to the avoidance of injustice and the convenient dispatch of business and may in criminal proceedings have regard to the practice and procedure obtaining in the civil courts.

Matters not provided for

**79.** Proceedings under this Act relating to the maintenance of dependants shall be deemed to be civil proceedings.

Maintenance

Procedure in Civil Proceedings

**Plaint**            **80.** (1) All civil proceedings in the Court of the Chief Kadis or of a Kadis shall be brought by filing a plaint, or by making oral complaint to the presiding officer of the Court, and in either case paying the prescribed fee for a plaint. In case of oral complaint the Court shall draft a plaint for the plaintiff, which shall be signed and filed by him.

(2) The plaint shall contain the names, addresses and descriptions of the parties, a concise statement of the cause of action, without argument or unnecessary detail, and a statement of the relief claimed or judgment prayed.

**Joinder and consolidation**    **81.** (1) More persons than one may be joined as plaintiffs or defendants, and more causes of action than one may be raised in the same proceedings, but the Court may order separate trials in its discretion.

(2) The Court may in its discretion try 2 or more proceedings together if they relate to the same issues of fact or law.

**Summons and service**        **82.** (1) In addition to the original plaint, the plaintiff shall hand to the Court a copy thereof for each defendant.

(2) The Court shall issue a summons to each defendant and shall cause the same to be served on him with a copy of the plaint. The summons shall direct the defendant to appear to answer the claim at a stated place, date and time, and shall warn him that, in case of his non-appearance, the Court may proceed to allow the claim in his absence.

**Persons deceased or under disability**    **83.** (1) No person except a lawfully appointed administrator or an executor who has proved the will shall represent or act on behalf of the estate of a deceased person:

Provided that a beneficiary may claim his share of the estate of a deceased person against any person unlawfully in possession of any assets of the deceased.

(2) If any party to any proceedings is a minor, or a person of unsound mind, the Court may appoint any fit and proper person, having no interest adverse to him, to represent him in such proceedings. The lawful or natural guardian of a minor, or the committee of a person of unsound mind, if any, shall ordinarily be so appointed, if willing to act.

**84.** (1) Any defendant may file a written defence, and shall in such event hand to the Court a copy thereof for each plaintiff, which the Court shall cause to be served. Defence

(2) If a defendant has not, at the time of his first appearance, filed a defence and does not desire to do so, but intends to defend the action, the Court shall ascertain orally the grounds of his defence, and he shall not thereafter raise other grounds of defence without leave of the Court.

(3) If the defendant desires to file a defence, the Court shall fix a time within which he shall do so, which shall ordinarily be not less than 7 days prior to the trial or hearing.

(4) If the defendant wishes to raise matters by way of counterclaim, the Court may either permit him to do so, or direct him to file separate proceedings.

**85.** The Court may on application of any party make *interim* orders for the purpose of preserving any property in issue, or safeguarding the rights of any party, pending trial, or facilitating the trial or hearing of the proceedings, and may permit amendment of any proceedings or correction of any error, on such terms as may be just. Any such application may be made orally, but any party affected thereby shall be given the opportunity to be heard thereon. Interlocutory proceedings

Withdrawal  
and settle-  
ment

**86.** (1) The plaintiff may withdraw any proceedings at any time before judgment, but shall be liable to pay the costs thereof, and shall not bring any other proceedings thereafter on the same cause of action without leave of the Court.

(2) The parties to any proceedings may compromise and settle the same at any time: the Court shall, if so requested by any party, record the terms of any such settlement:

Provided that no withdrawal or settlement shall be made by the personal representative of a deceased person's estate or by a representative appointed under subsection (2) of section 83 without the leave of the Court, which shall have due regard to the interests of the beneficiaries or persons represented.

Trial or  
hearing

**87.** (1) If, at the time appointed for the hearing, the plaintiff does not appear, the proceedings may be struck out: if the plaintiff appears, but the defendant does not appear, the plaintiff may prove his case and the Court may give judgment:

Provided that —

(a) in any such case the Court may in its discretion order an adjournment; and

(b) the Court may deal with a counterclaim although the claim is struck out.

(2) If the defendant appears and admits the plaintiff's claim the Court may give judgment without hearing evidence.

(3) If the defendant desires to defend, the party against whom judgment would be given on the pleadings and admissions made, if no evidence were taken, shall have the right to begin.

(4) Each party may address the Court and may then give evidence and call his witnesses, who shall be examined and may be cross-examined, re-examined, questioned by the Court and recalled in like manner as provided in section 70 for criminal proceedings. After the conclusion of the evidence each party may sum up his case, but so that the party who began shall have the last word.

(5) The Court may call any evidence which it considers necessary:

Provided that no party shall be obliged to give evidence against his will.

(6) Thereafter the Court shall give judgment in open Court, either at once or at a later time of which notice shall be given to the parties.

**88.** (1) Every judgment of the Court shall after delivery Judgments be drawn up in writing, dated, signed by the presiding officer of the Court, and sealed, and shall be retained with the record.

(2) Any party shall be entitled on payment of the prescribed fee to obtain a certified copy of the judgment.

(3) A judgment may declare the rights of the parties between themselves, or may order a party to do any act or thing including the payment of money, or both.

**89.** The Court may in its discretion order any party to pay Costs any costs of any proceedings, including travelling and subsistence expenses of parties and witnesses, and shall itself assess the amount of any costs so ordered to be paid.

**90.** (1) If any person bound by any judgment or order of Execution a Court fails to comply with the same within such time as the Court considers reasonable, the Court may, on the application of any person entitled to benefit under such judgment

or order, or of its own motion, send a certified copy of such judgment or order to any Magistrate's Court having jurisdiction in the place where the Court which gave or made the judgment or order is situate, together with a request addressed to the magistrate that such judgment or order may be executed, and it shall thereupon be lawful for such Magistrate's Court to execute such judgment or order and to exercise in connection therewith all ancillary powers, including powers of arrest and commitment and issue of a judgment-debtor summons, in like manner as it could have done if the judgment or order had been given or made by itself:

Provided that, if the amount payable under the judgment or order or the value of the subject-matter thereof exceeds \$5,000, the foregoing provisions shall be read as if the words "High Court" and "Judge" were substituted for "Magistrate's Court" and "magistrate" respectively.

(2) The Court of the Chief Kadi shall have in respect of the execution of its own judgments and orders all such powers and duties as are conferred and imposed on magistrates in respect of the execution of judgments and orders of Magistrates' Courts, by the Subordinate Courts Act.

Cap. 6

(3) The Court of a Kadi may, in lieu of proceeding under subsection (1), in the like circumstances and in like manner request the Chief Kadi to execute the judgment or order of the Court of a Kadi and thereupon the Court of the Chief Kadi may execute the same and may exercise all such powers in respect thereof as are conferred by subsection (1) on a Magistrate's Court.

Evidence *de bene esse*

**91.** The Court may, if it appears likely that any intended witness in any proceedings will not be able to give evidence at the trial or hearing, record the evidence of such witness in writing and such evidence may be used as evidence at the trial or hearing:

Provided that any opposite party shall have been given due opportunity to attend and cross-examine.

**92.** (1) If any person shall be guilty of any misconduct in Court of such a nature as to interfere with the proper conduct of the Court's business, the Court may cause him to be arrested by any police officer or officer of the Court and detained until the Court rises, when he shall be released without prejudice to any further proceedings. Contempt of Court

(2) If any person shall be arrested under subsection (1), or shall be guilty of any other contempt of the lawful authority of the Court, the Court shall report the matter to the Public Prosecutor or to the Commissioner of Police.

**93.** His Majesty, or any person to whom His Majesty may depute such powers, may in writing grant leave to any person to sue, defend or appeal in any proceedings as a poor person, and in such event the Court fees normally payable in respect of the proceedings in question shall not be payable by such person, but shall be waived. Poor persons

**94.** (1) An appeal to His Majesty in Religious Council shall be brought by filing, in the Court which gave or made the judgment or order appealed from, a notice of appeal addressed to the Court, and by paying the prescribed fee. Such notice shall be filed not more than 14 days after the judgment or order was given or made, and a copy thereof shall be served as soon as possible on each respondent. Appeals

(2) The presiding officer of the Court shall thereupon prepare and sign the grounds of his judgment, and shall supply to the appellant, on payment of the prescribed fees, a copy of such grounds, a copy of his note of the proceedings and copies of any other documents which the appellant has stated that he requires to enable him to prepare the record.

(3) When the documents referred to in subsection (2) are ready, the Court shall give notice thereof to the

appellant, and within 21 days after receipt of such notice the appellant shall file in the Court sufficient copies of a record of appeal.

(4) Four copies of the said record shall be forwarded by the Court to the Secretary for transmission to His Majesty or the Judicial Committee, and a copy shall be served on each respondent to the appeal.

(5) The record of appeal shall consist of a petition addressed to His Majesty stating the grounds of the appellant's objection to the judgment or order appealed from, a copy of the plaint, a copy of any written defence, copies of any interlocutory orders, a copy of the Court's note of the proceedings, copies of all exhibits and documentary evidence, a copy of the judgment or order, a copy of the grounds of judgment, a copy of the notice of appeal and an index.

(6) If the record is irregular, or is filed out of time, or if any respondent has not been served, the Court shall inform the Secretary of such facts.

(7) A respondent to an appeal may give notice to the Court and the other parties thereto that he intends to contend that the judgment or order appealed from should be varied, and such notice shall operate as a cross-appeal.

(8) The Court may in its discretion grant a stay of execution of any judgment or order pending appeal.

Irregularities **95.** No appeal shall be allowed, or retrial ordered on grounds of irregularity of procedure, or wrongful reception or rejection of evidence unless a failure of justice has been occasioned thereby.

Matters not provided for **96.** In matters of practice and procedure in civil proceedings, not expressly provided for in this Act or any rules made thereunder, the Court may adopt such procedure as

may seem proper for the avoidance of injustice and the disposal of the matters in issue between the parties, and may in particular, but without prejudice to the generality of the foregoing, adopt the practice and procedure for the time being in force in the Magistrates' Courts in civil proceedings.

## PART IV

### FINANCIAL

#### Charitable Trusts

97. The fund known as the Muhammadan Religious Fund and all investments and assets thereof shall, on the coming into force of this Act, forthwith vest in the Majlis in the manner and for the purposes hereinafter set out.

Muhamma-  
dan Fund

98. All property, investments and funds, including the fund heretofore constituting the Muhammadan Religious Fund, which are vested from time to time in the Majlis for the purposes of this Act, other than property held, by virtue of the terms of this Act or of any trust, *wakaf* or *nazar* affecting the same, for a specific purpose or subject to specific express trusts, together with the income thereof, shall form the General Endowment Fund of the Majlis and shall be held by the Majlis in trust for such charitable purposes for the support and promotion of the Islamic religion, or for the benefit of Muslims in Brunei in accordance with Muslim law, as to the Majlis may from time to time seem proper:

General  
Endowment  
Fund

Provided that His Majesty may give to the Majlis directions, not inconsistent with Muslim law or with the provisions of this Act, as to the expenditure of any part of the General Endowment Fund or the income thereof and may, in like manner, veto any proposed expenditure thereof.

Escheat

**99.** Where after the commencement of this Act, any Muslim dies in such circumstances that, under the provisions of Muslim law, his property would prior to the commencement of this Act have vested in, or been payable to, the said fund known as the Muhammadan Religious Fund, the property of such person shall, in pursuance of such provisions of Muslim law, vest in and be payable to His Majesty and shall form part of the General Endowment Fund.

*Wakaf and nazar am*

**100.** Notwithstanding any provision to the contrary contained in any instrument or declaration creating, governing or affecting the same, the Majlis shall be the sole trustee of all *wakaf*, whether *wakaf am*, or *wakaf khas*, of all *nazar am*, and of all trusts of every description creating any charitable trust for the support and promotion of the Islamic religion or for the benefit of Muslims in accordance with Muslim law, to the extent of any property affected thereby and situate in Brunei and, where the settler or other person creating the trust, *wakaf* or *nazar am* was domiciled in Brunei, to the extent of all property affected thereby wherever situate.

Vesting

Cap. 40

**101.** (1) All property subject to the provisions of section 100 shall, if situate in Brunei, and, if the same shall consist of land, upon registration under the Land Code vest in the Majlis, without any conveyance, assignment or transfer whatever, for the purposes of the trust, *wakaf* or *nazar am* affecting the same.

(2) The Majlis shall take all necessary steps to vest in itself for the like purposes any such property situate elsewhere than in Brunei.

Restrictions on creation of charitable trusts

**102.** (1) Whether or not made by way of will or death-bed gift, no *wakaf* or *nazar* made after the commencement of this Act and involving more than one-third of the property of the person making the same shall be valid in respect of the excess beyond such one-third, unless expressly sanctioned and validated by His Majesty in writing.

(2) Every *wakaf khas* or *nazar* made after the commencement of this Act shall be null and void unless —

(a) His Majesty shall have expressly sanctioned and validated the same in writing; or

(b) it was made during a serious illness from which the maker subsequently died and was made in writing by an instrument executed by him and witnessed by one of the *pegawai masjid* of the *mukim masjid*, and by either the *penghulu* of the *daerah* or the *ketua* of the *kampong*, in which the maker resided.

(3) This section shall not operate to render valid any will, death-bed gift, *wakaf* or *nazar* which is invalid under the provisions of Muslim law.

**103.** (1) The income of a *wakaf khas*, if received by the Majlis, shall be applied by it in accordance with the lawful provisions of such *wakaf khas*. Income of *wakaf* and *nazar*

(2) The income of every other *wakaf* and of every *nazar am* shall be paid to and form part of the General Endowment Fund.

**104.** (1) The Majlis shall not, without the approval in writing of His Majesty, sell, transfer or dispose of, or charge, mortgage or encumber, any immovable property vested in it for the purposes of this Act, whether or not forming part of the General Endowment Fund: Change of investments and borrowing powers

Provided that it shall be lawful for any such immovable property to be compulsorily acquired or reserved by Government for a public purpose in manner provided by any written law.

(2) Save as aforesaid, any investments, assets and funds vested in the Majlis may be sold, realised or disposed

of, and they and the proceeds thereof may be invested from time to time in any investments authorised by any written law for the time being in force for the investment of trust funds, or in or upon title to any immovable property situate within Brunei.

(3) The Majlis shall have power to lease any immovable property vested in it upon such terms as seem proper and are not inconsistent with any trusts affecting the same.

(4) The Majlis shall have power to borrow monies whether without security or upon the security of any of the assets of the General Endowment Fund in such manner and to such extent as His Majesty may in writing authorise. Any monies so borrowed shall form part of the General Endowment Fund.

Capital of  
*Wakaf* and  
*nazar am*

**105.** (1) Subject to the provisions of subsections (2) and (3), the capital property and assets affected by any lawful *wakaf* or *nazar am* shall not form part of the General Endowment Fund, but shall be applied in pursuance of such *wakaf* or *nazar am* and held as segregated funds.

(2) If from lapse of time or change of circumstances it is no longer possible beneficially to carry out the exact provisions of any *wakaf* or *nazar am*, the Majlis shall prepare a scheme for the application of the property and assets affected thereby in a manner as closely as may be analogous to that required by the terms of such *wakaf* or *nazar am* and shall apply the same accordingly:

Provided that the Majlis may, with the approval in writing of His Majesty, direct that such property and assets shall be added to and form part of the General Endowment Fund.

(3) If the terms of any *wakaf* or *nazar am* are such that no method of application of the capital property and assets affected thereby is specified, or it is uncertain in what manner the same should be applied, the Majlis may direct

that such capital property and assets shall be added to and form part of the General Endowment Fund.

(4) All instruments creating, evidencing or affecting any *wakaf* or *nazar am*, together with any documents of title or other securities relating thereto, shall be held and retained by the Majlis.

**106.** If in the opinion of the Majlis the meaning or effect of any instrument or declaration creating or affecting any *wakaf* or *nazar* is obscure or uncertain, the Majlis may refer the same to the Legal Committee for its opinion as to the meaning or effect thereof, and shall act on any opinion so given by the Committee or a majority thereof, unless His Majesty shall otherwise direct.

Construction  
of instrument

#### Accounts

**107.** The Majlis shall cause full and true accounts of the General Endowment Fund to be kept and shall as soon as possible after the 31st day of December of every year issue and publish in the *Gazette* a report on the activities of the Majlis during the preceding year, together with a balance sheet of the General Endowment Fund as at the 31st day of December, an income and expenditure account of the said Fund for the year and a list of the properties and investments of the said Fund showing their cost price, if bought, and estimated value as at the 31st day of December.

Annual  
Report

**108.** The said annual balance sheet, income and expenditure account and list of investments shall prior to the issue thereof be audited and certified as correct by the Auditor General or one of his officers duly authorised in that behalf. A copy of the auditor's certificate shall be annexed to all copies of the report and accounts as issued.

Audit

**109.** Not less than once in every 3 years the Majlis shall prepare, issue and publish in the *Gazette* a list of all properties, investments and assets vested in the Majlis subject to

*Wakaf*  
and *nazar*  
property

any trust, *wakaf* or *nazar*, and not forming part of the General Endowment Fund. Such list shall be audited in manner set out in section 108.

Estimates

**110.** (1) The Majlis shall prepare and submit to His Majesty not later than the 31st day of October in each year estimates of all income and expenditure of the Majlis, including therein estimates of all property receivable and disposable in kind, in respect of the ensuing year.

(2) His Majesty may approve such estimates or may direct that the same be amended and thereupon such approved or amended estimates, as the case may be, shall be published in the *Gazette*.

(3) The Majlis may at any time submit to His Majesty supplementary estimates of expenditure in respect of the current year, or, at any time prior to the 31st March in any year, in respect of the preceding year, and the same may be approved or amended, and shall be published, in like manner.

(4) No monies shall be expended, or property disposed of in kind, save in accordance with such estimates as aforesaid and upon a voucher signed by the President or Vice-President.

Expenses of  
the Majlis

**111.** All costs, charges and expenses of administering the property and assets vested in the Majlis, including the cost of maintenance and repair of any immovable property, the salaries and allowances of all servants of the Majlis, and the fees and allowances payable to any officer or Member of the Majlis in respect of his services as such shall be paid out of the property and assets of the General Endowment Fund.

Bankers

**112.** (1) The Majlis shall appoint bankers and may operate such account or accounts as to it may seem proper.

(2) Payments by the Majlis of amounts exceeding \$50 shall be made by cheque.

(3) All monies received by or for the Majlis shall be paid into a bank account of the Majlis in the manner provided in State Financial Regulations.

(4) Cheques drawn on any bank account of the Majlis shall be signed by the President or Vice-President and by the Secretary.

**113.** (1) At least once in every month there shall be laid on the table a financial statement showing details of all receipts and expenditure from the time of the preceding financial statement up to a date not more than 7 days prior to the meeting. Financial Statements

(2) Every such financial statement shall be considered and approved at the meeting at which it is submitted and, if not unanimously approved, shall be submitted to His Majesty, together with any comments which any Member may wish to take thereon.

#### *Zakat and Fitrah*

**114.** The Majlis shall have the power, and shall be under the duty, to collect on behalf of His Majesty, and to dispose of as His Majesty may, subject to the provisions of this Act direct, all *zakat* and *fitrah* payable in Brunei in accordance with Muslim law, and shall do so to the extent and in the manner provided in this Act. Powers of Majlis

**115.** (1) The Majlis shall prepare annually assessment lists in respect of each *mukim masjid* in Brunei, showing the names of all persons therein liable to pay *zakat* and *fitrah* respectively and the amounts which they are so liable to pay. Assessment Lists

(2) The Majlis shall be directly responsible for the preparation of the assessment lists in respect of such areas as the Majlis may determine.

(3) In all other areas, the Imam shall, as agent for and on behalf of the Majlis, prepare the assessment lists in respect of each *mukim masjid* and shall submit copies thereof to the Majlis, which may alter or amend the same.

(4) Any person may make an objection to the Majlis against the inclusion of his name in any assessment list or against the amount or quantity in respect of which he is assessed and the Majlis shall consider every such objection and shall make such decision thereon as it considers just.

(5) An appeal from any such decision shall lie to His Majesty in Religious Council, if the subject-matter is of a value not less than \$1,000.

Provided that any such appeal may be referred by His Majesty to the Judicial Committee for its opinion and, if so referred, shall be determined as if it were a civil appeal from the Court of a Kadi.

Liability to  
pay *zakat*

**116.** *Zakat* shall be payable by every Muslim who rears any animals, or cultivates any crops, or carries on any enterprise, from which *Zakat* shall be payable at the rate and in such manner as may be determined by the Majlis from time to time in accordance with Muslim law.

Liability for  
*fitrah*

**117.** (1) *Fitrah* shall be payable by all Muslim householders in Brunei and shall be at the rate of and in such manner as may be determined by the Majlis from time to time in accordance with Muslim law:

Provided that, where a household consists of an odd number of members, payment shall be made as if it consisted of the next higher even number of members.

(2) Payment of *fitrah* may be excused on grounds of poverty and the Imam may with the approval of the other *pegawai masjid* omit from the assessment list prepared by him the name of any person considered too poor to pay

*fitrah*, but in any such case he shall inform the Majlis of the facts and the Majlis may reverse such decision.

**118.** (1) The Majlis or the Imam or Amil as the case may be, shall complete the *zakat* assessment list by entering the amounts produced and the amounts payable as soon as the harvest is complete. Payment of *zakat*

(2) Where any person produces padi in more than one *mukim masjid* his name shall be entered in every assessment list concerned and he shall be assessed on the total production.

Payment shall, in any such case, be made directly to the Majlis.

(3) On completion of the assessment lists, and notwithstanding any appeal pending, the producer shall forthwith pay the *zakat* to the Majlis or, in cases to which subsection (2) does not apply to the Imam.

(4) *Zakat* shall be paid in padi but the person paying may be permitted to repurchase such padi at such price per gantang as the Majlis may, by notification signified in the *Gazette*, from time to time fix.

**119.** (1) *Fitrah* assessment lists shall be completed not later than the 15th day of Syaabah in each year and the *fitrah* shall be paid to the Majlis or to the Imam not later than the 1st day of Shawal next ensuing. Payment of *fitrah*

(2) The Majlis may from time to time by notification signified in the *Gazette* fix rates at which rice may be sold by any *pegawai masjid* to persons liable to pay *fitrah*. Such rates shall be not lower than the current minimum market price for the cheapest grade of rice.

**120.** (1) The Majlis or the Imam or Amil, as the case may be, shall issue a receipt as in Form A or in Form B (as Receipts and Accounts

appropriate) in the First Schedule for every payment of *Zakat* or *Fitrah*, whether in cash or in kind.

(2) Every Imam or Amil shall account to the Majlis for all *zakat* and *fitrah* received by him and shall hold, store, and dispose of the same or of any proceeds of sale thereof in such manner as the Majlis may direct.

(3) The Majlis shall cause assessment lists, receipts, accounts and other documents kept by any Imam or Amil and relating to *zakat* or *fitrah* to be examined and audited and may for such purpose appoint and remunerate Inspectors.

Disposal of  
balance

**121.** After complying with all directions of His Majesty as to disposal of any *zakat* and *fitrah*, the Majlis shall, if any portion thereof be undisposed of, sell and realise such part thereof as may not consist of money and it and the proceeds of any sale thereof shall be added to and form part of the General Endowment Fund.

#### Collection for Charities

Charitable  
collections

Cap. 9

**122.** (1) Notwithstanding the provisions of the Subscriptions Control Act, the Majlis may collect, or may grant licences to any person or body of persons, authorising him or them to collect, monies or funds for any charitable purpose for the support and promotion of the Islamic religion or for the benefit of Muslims in accordance with Muslim law, and may by any such licence impose such terms as it may think fit.

(2) It shall be deemed to be a term of every such licence that the grantee thereof and every other person authorised thereby to collect monies or funds shall —

(a) issue in respect of every sum so collected a serially numbered receipt in Form C in the First Schedule;

(b) keep true and full accounts of all sums so collected and of the disposal thereof with all proper vouchers;

(c) produce on demand the counterfoils of such receipts and all such accounts and vouchers for inspection and audit by the Majlis;

(d) apply and dispose of all sums so collected in accordance with the terms of such licence, or, if no method of disposal thereof be thereby expressly authorised, pay and account for the same to the majlis.

(3) Monies collected in pursuance of this section may be applied for a specific purpose if the Majlis shall so direct, but shall, in default of any such direction, be added to and form part of the General Endowment Fund.

(4) No person shall make or take part in any collection of money for any such purpose as aforesaid unless with the express authority of the Majlis or by virtue and in pursuance of such a licence as aforesaid.

## PART V

### MOSQUES

**123.** Notwithstanding any provision to the contrary in any written instrument, the Majlis shall be the sole trustee of all mosques in Brunei and every mosque, together with any immovable property on which it stands or appurtenant thereto and used for the purposes thereof, other than State land or land reserved for a public purpose, shall upon registration under the Land Code, and without any conveyance, assignment or transfer whatever vest in the Majlis for the purposes of this Act.

Majlis to be trustee

Cap. 40

Restriction  
on new  
mosques

**124.** (1) No person shall erect any mosque or dedicate or otherwise apply any existing building, as or for the purposes of a mosque, without the permission in writing of the Majlis.

(2) Such permission shall in no case be given unless the site of the proposed new mosque has been, or will prior to the erection of dedication thereof be, made a *wakaf*.

Repairs

**125.** (1) It shall be the duty of the Majlis to repair from time to time as may be necessary and keep in a proper state of repair all mosques in Brunei. The Majlis may raise and apply, or authorise the raising and application of, special funds for the purpose of such repairs, or may defray the necessary cost of the same from the General Endowment Fund.

(2) It shall be the duty of the Imam promptly to inform the Majlis of any want of repair, and to effect or supervise any repairs as agent for and on behalf of the Majlis.

(3) No material alteration to the structure of any mosque shall be made without the permission in writing of the Majlis.

Closure of  
demolition

**126.** The Majlis may for sufficient reason close or demolish any mosque and may, where any mosque has been demolished and it is not intended to build another mosque on the same site and it is in the opinion of the Majlis no longer possible to use such site for other religious purposes, sell and dispose of such site, but the proceeds of any such sale shall be earmarked for the erection, maintenance or repair of mosques, and no other purposes.

Boundaries  
of mukim

**127.** The Majlis shall have the power at any time to determine the boundaries of any *mukim masjid* and to amend or alter such boundaries. Any dispute as to the boundaries of a *mukim masjid* shall ordinarily be referred to the Judicial Committee for its opinion.

**128.** The Majlis shall maintain a register showing the *pegawai masjid* of every mosque in Brunei, and it shall be the duty of every *pegawai masjid* promptly to inform the Majlis of any vacancy or change in the particulars relating to his mosque.

Register of  
*pegawai masjid*

**129.** (1) His Majesty may appoint any fit and proper person to be Imam of any mosque.

Appointment  
of Imam

(2) Every person appointed to be an Imam shall receive a Tauliah under the seal of His Majesty.

**130.** (1) No vacancy in the office of Khatib of any mosque shall be filled unless in any case His Majesty shall so direct.

Appointment  
of other *pegawai masjid*

(2) In the event of any vacancy or impending vacancy in the office of Bilal of any mosque, it shall be the duty of the Imam of the mosque, after consultation with the *Pegawai Pejabat Ugama* to make recommendations to the Majlis whether the vacancy should be filled and, if so, who should be appointed to fill it.

(3) The Legal Committee shall examine the qualifications of any person so recommended and shall report to the Majlis thereon.

(4) The Majlis may on behalf of His Majesty appoint any fit and proper person to be a Bilal of any mosque, and shall issue a Tauliah under its seal to any person so appointed.

**131.** (1) Every *pegawai masjid* shall hold office during the pleasure of His Majesty and may be removed by His Majesty for such reasons as may seem good.

Removal of  
*pegawai masjid*

(2) It shall be the duty of the Majlis to bring to the notice of His Majesty any disgraceful conduct on the part of any *pegawai masjid*, whether in relation to his duties as such or otherwise, and to make recommendations.

Powers and duties

**132.** The *pegawai masjid* of any mosque shall have such powers and duties as may be set out in their respective Tauliahs, and in addition —

(a) shall be responsible for the proper conduct and good order of the mosque;

(b) shall be responsible for the good conduct of the *anak mukim* of the mosque in matters relating to the Islamic religion; and

(c) shall give due and prompt information to the Majlis of all matters arising in their *mukim* and requiring the attention of the Majlis.

Attendance at mosque

**133.** The *anak mukim* of any mukim shall ordinarily attend the mosque in that *mukim*, but the Imam of that mosque may for good reason grant permission to any person to attend another mosque and, if the Imam shall have refused such permission, the Judicial Committee may grant it in the name and on behalf of the Majlis.

## PART VI

### MARRIAGE AND DIVORCE

Application

**134.** The provisions of this Part shall apply only to marriages, both parties to which profess the Islamic religion, and which are solemnised in accordance with Muslim law.

Appointment of Registrars

**135.** (1) His Majesty may by notice signified in the *Gazette* appoint any fit and proper persons to be Registrars of Muslim Marriages and Divorces in any place.

(2) The Chief Kadis and every Kadis shall be *ex officio* Registrars of Muslim Marriages and Divorces for the whole of the areas in which they respectively have jurisdiction in criminal and civil matters.

(3) The Imam of every mosque shall be *ex officio* a Registrar of Muslim Marriages and Divorces for the mukim of his mosque.

(4) Registrars of Muslim Marriages and Divorces shall have such rights and powers and perform such duties as may be conferred or imposed upon them by this Act or any rules made thereunder.

(5) Registrars of Muslim Marriages and Divorces shall be deemed to be public servants within the meaning of the Penal Code.

Cap. 22

**136.** If any person shall, either orally, or in writing, and either personally or through an intermediary, have entered into a contract of betrothal in accordance with Muslim law, and shall subsequently refuse without lawful reason to marry the other party to such contract, such other party being willing to perform the same, the party in default shall be liable, if a male, to pay as damages the amount of the *mas-kahwin* which would have been payable together with other monies expended in good faith in preparation for the marriage, or, if a female, to return the betrothal gifts, if any, or the value thereof and to pay as damages the amount of such other monies as aforesaid, and the same may be recovered by action in the Court.

Betrothal

**137.** (1) A marriage may be solemnised by any person holding a Tauliah from His Majesty authorising him to solemnise marriages.

Authority to solemnise marriages

(2) A marriage may be solemnised by any other person permitted under Muslim law to solemnise such marriage, if the marriage takes place in the presence and with the permission of a Registrar.

(3) No person shall solemnise any marriage save in pursuance of subsection (1) or (2):

Provided that a marriage solemnised in breach of the provisions of this subsection, but in accordance with the provisions of Muslim law, shall be valid and shall be registered under the provisions of this Act.

Void  
marriages

**138.** A marriage shall be void and shall not be registered under the provisions of this Act unless all conditions necessary for the validity thereof, in accordance with the tenets of the sect to which each of the parties to the marriage belongs, are satisfied.

Consent  
required

**139.** A marriage shall be void and shall not be registered under the provisions of this Act unless both parties to the marriage have consented thereto, and either —

(a) the *wali* of the bride has consented thereto in accordance with Muslim law; or

(b) the Kadi having jurisdiction in the place where the bride resides or any person generally or specially authorised thereto by him has, after due enquiry in the presence of all parties concerned, granted his consent thereto as *wali raja*.

Provided that such consent may only be given wherever there is no *wali* available to act, or where the *wali* has refused his consent without sufficient reason.

Marriage  
of janda

**140.** Where the bride is a *janda* —

(a) she shall not be married to any person, other than the husband from whom she was last divorced, at any time prior to the expiration of the period of *idah*, which shall be calculated in accordance with Muslim law;

(b) she shall not be married unless she shall previously have produced —

(i) a certificate of the death of her late husband;

- (ii) a certificate of divorce lawfully issued under the law for the time being in force;
- (iii) a certified copy of the entry relating to such divorce, in the appropriate register of divorces; or
- (iv) a certificate, which may upon her application be granted after due enquiry by the Court of a Kadi having jurisdiction in the place where she resides, to the effect that she is a janda;

(c) if the bride was divorced before the marriage had been consummated, she shall not be married to any person other than her previous husband during the period of *idah* which would otherwise have been applicable, unless with the permission of the Kadi having jurisdiction in the place where she resides; and

(d) if the divorce was by 3 *talak*, she shall not be remarried to her previous husband, unless prior to such marriage she shall have been lawfully married to some other person and such marriage shall have been consummated and later lawfully dissolved.

**141.** (1) Every marriage shall be solemnised in a *mukim masjid* in which one or both of the parties to the marriage ordinarily resides: Place of marriage

Provided that a Kadi or a Registrar having jurisdiction in such *mukim* may give permission for any such marriage to be solemnised elsewhere.

(2) Every marriage shall be registered and the fees in respect thereof shall be payable in the place where the marriage was solemnised.

*Mas kahwin  
and Berian*

**142.** (1) The *mas kahwin* shall ordinarily be paid by the husband or his representative to the wife or her representative in the presence of the person solemnising the marriage and at least 2 other witnesses.

(2) The Registrar shall in respect of every marriage to be registered by him ascertain and record —

(a) the amount of the *mas kahwin*;

(b) the amount of any *Berian*;

(c) the amount of any part of the *mas kahwin* or *Berian* or both which was promised but not paid at the time of the solemnisation of the marriage; and

(d) particulars of any security given for the payment of any *mas kahwin* or *Berian*.

Registration  
of marriage

**143.** (1) Within 7 days after the solemnisation of any marriage it shall be the duty of the parties to the marriage and of the *wali* of the wife, if any, and of the person who solemnised the same to report to the Registrar of the *mukim* in which the marriage was solemnised the fact of such marriage and all necessary particulars concerning the same and to pay the fees specified in the Second Schedule, and the Registrar shall forthwith register such marriage.

(2) It shall be the duty of the Registrar before registering any marriage to make enquiry and to satisfy himself that all requirements of Muslim law and of this Act concerning the same have been satisfied and that the same was valid and registerable.

(3) A Registrar shall have power to administer oaths and affirmations and may examine any person on oath or affirmation concerning any matter submitted to him for registration.

(4) Upon registering any marriage and upon payment to him of the fees specified in the Second Schedule, the Registrar shall issue marriage certificates in the form specified in the Second Schedule to both parties to the marriage.

(5) The Registrar shall also, upon payment of the fees specified in the Third Schedule, prepare a *surat talak* in the form specified in that schedule obtain the signature of the parties thereto, sign the same and deliver one copy to each of the parties to the marriage.

(6) It shall be the duty of the Registrar to report to the Kadi the circumstances of any case in which it may appear to him that any alleged marriage was void, or that any registrable marriage was solemnised in contravention of the provisions of this Act.

**144.** (1) A husband may divorce his wife in accordance with Muslim law with one, two or three *talak*. Divorce  
by *talak*

(2) Within 7 days after any divorce the husband shall report the fact of such divorce and all necessary particulars concerning the same and shall pay the fees specified in the Fourth Schedule to the Registrar of the mukim in which the divorce took place, and the Registrar shall forthwith register such divorce.

(3) The provisions of subsections (2), (3) and (4) of section 143 shall, with such modifications as may be necessary, apply to the registration of divorces and the issue of certificates of divorce.

**145.** (1) A married woman may apply to a Kadi for a divorce in accordance with Muslim law. Divorce at  
wife's request

(2) In any such case the Kadi shall summon the husband before him and enquire whether he consents to be divorced, and if the husband so consents the Kadi shall on

payment of the fees specified in the Third Schedule cause the husband to pronounce a divorce, register such divorce and issue certificates thereof to the parties to the marriage.

(3) If the husband does not agree to be divorced by consent, but the parties agree to a divorce by redemption, or *cherai tebus talak*, the Kadi may assess the amount of payment to be made by the wife in accordance with the status and means of the parties and shall thereupon on payment of the fees specified in the Third Schedule cause the husband to pronounce a divorce by redemption and register and issue certificates of the same in manner aforesaid.

(4) If the husband does not agree to divorce by redemption, the Kadi may appoint *Hakam* as provided in section 149.

Divorce  
under  
stipulation

**146.** (1) A married woman may, if entitled in accordance with Muslim law to a divorce in pursuance of the terms of a *surat taklik* made upon marriage, apply to a Kadi to declare that such divorce has taken place.

(2) The Kadi shall examine the instrument and make such inquiry as appears necessary into the validity of the divorce and shall, if satisfied that the same is valid in accordance with Muslim law, confirm the divorce, and upon payment of the fees specified in the Third Schedule, register and issue certificate of the same in the manner aforesaid.

Dissolution  
of marriage

**147.** (1) A married woman may apply by suit in the Court of a Kadi for a decree of dissolution of marriage, or *fasakh*, in accordance with Muslim law.

(2) In any such case the Court shall if possible serve the husband, or, if satisfied by evidence on oath or affirmation that the husband is not in Brunei or cannot be found, shall serve notice of the proceedings on the nearest male relative of the husband resident in Brunei, or, if no such person be known, shall cause notice to be posted on the husband's last known place of residence in Brunei.

(3) No decree shall be pronounced save in accordance with the provisions of Muslim law and in pursuance of the evidence of the married woman and at least 2 witnesses given on oath or affirmation.

(4) Upon pronouncing a decree of dissolution of marriage the Kadi shall register the same as a divorce and shall issue a certificate thereof in the form specified in the Third Schedule to the wife.

**148.** A woman who has been divorced by her husband may apply to a Kadi for a consolatory gift, or *mattaah*, and the Kadi may after hearing the parties order payment of such sum as may be just and in accordance with Muslim law. Gift to divorced wife

**149.** (1) If satisfied that there are constant quarrels between the parties to a marriage, a Kadi may appoint in accordance with Muslim law 2 arbitrators, or *Hakam*, to act for the husband and the wife respectively, and in making such appointment the Kadi shall, where possible, give preference to close relatives of the parties having knowledge of the circumstances of the case. Arbitration

(2) The Kadi may give directions to the *Hakam* as to the conduct of the arbitration and they shall conduct it in accordance with such directions and according to Muslim law.

(3) If the arbitrators are unable to agree, or if the Kadi is not satisfied with their conduct of the arbitration, he may remove them and appoint other *Hakam* in their place.

(4) The *Hakam* shall endeavour to obtain from their respective principals full authority, and may, if their authority extends so far, decree a divorce, and shall in such event report the same to the Kadi for registration.

(5) If the *Hakam* are of opinion that the parties should be divorced but are unable for any reason to decree a

divorce, the Kadi shall appoint other *Hakam* and shall confer on them authority to effect a divorce and shall, if they do so, register and issue certificates of the same in manner aforesaid.

Resumption  
of conjugal  
relationship

**150.** (1) In this section “revocable divorce” means a divorce by one or two *talak* not followed by such a lapse of time as to render it irrevocable, and “recohabit” means resume conjugal relations within the period before the divorce has become irrevocable.

(2) If after a revocable divorce recohabitation takes place by mutual consent, the parties shall within 7 days report the fact of such recohabitation and all relevant particulars to the Registrar of the *mukim* in which they reside.

(3) The Registrar shall on receiving such report make such enquiry as may be necessary and, if satisfied that recohabitation has taken place in accordance with Muslim law, shall, upon payment of the fees specified in the Fourth Schedule register such recohabitation by endorsement upon the counterfoil of the certificate of the divorce, if such divorce was registered by him, and shall require the parties to deliver to him the relevant certificates of divorce and shall issue to them certificates of recohabitation in the form specified in the Fourth Schedule. Any one who fails to report the fact of such recohabitation to such Registrar shall be guilty of an offence: Penalty, a fine of \$1,000 or imprisonment for one month.

(4) If the divorce was not registered by that Registrar, he shall record on the certificate of divorce the number and particulars of the certificates of recohabitation and shall forward the certificates of divorce to the Registrar by whom the same were issued, and such other Registrar shall thereupon register the recohabitation by endorsement in like manner.

(5) If a revocable divorce has taken place without the knowledge of the wife, the husband shall not require or request the wife to rehabit with him without disclosing to her the fact of such divorce.

(6) If after a revocable divorce the husband has pronounced a *rujok* —

(a) if the wife has consented to the *rujok*, she may on the application of the husband be ordered by a Kadi to resume conjugal relations, unless she shall show good cause in accordance with Muslim law to the contrary, in which case the Kadi shall appoint Hakam as provided in section 149; and

(b) if the wife has not consented to the *rujok*, she shall not be ordered by the Kadi to resume conjugal relations, but on her application the Kadi may require her husband to divorce her and on his refusal shall appoint *Hakam* as provided in section 149.

**151.** (1) If the husband of any married woman has died, or is believed to have died, or has not been heard of over a prolonged period, in such circumstances that he ought, for the purpose of enabling his wife to remarry, to be presumed in accordance with Muslim law to be dead, but a death certificate under the Births and Deaths Registration Act, cannot be obtained, a Kadi may, on the application of the wife and after such enquiry as may be proper, issue in accordance with Muslim law a certificate of presumption of death of the husband, and thereafter the wife shall be at liberty to remarry in accordance with the provisions of this Act, and such certificate shall be deemed to be a certificate of the death of the husband within the meaning of subparagraph (i) of paragraph (b) of section 140.

Presumption  
of death

Cap. 79

(2) In the circumstances aforesaid, a woman shall not be entitled to remarry in the absence of a certificate issued under subsection (1), notwithstanding that the High Court may have given leave to presume the death of the husband.

(3) A certificate issued under subsection (1) shall be registered as if it effected a divorce.

Method and  
effect of  
Registration

**152.** (1) Registration of any matter required to be registered under this part of the Act shall be deemed to be effected by the completion of the counterfoil of a certificate to be issued by the Registrar in respect of such matter.

(2) In addition to registration under subsection (1), every Kadi shall maintain bound registers of marriages and divorces in the forms contained in the Fifth and Sixth Schedules respectively containing particulars of all matters registered as aforesaid by all Registrars within the area of his jurisdiction, including matters so registered by himself.

(3) Every Registrar other than a Kadi shall, at least once in every calendar month, and in addition at any time when the amount payable by him to Government in respect of fees received under this Part exceeds \$50, deliver to the Kadi of his district all certificate books used by him as Registrar, and pay to the Kadi, or otherwise lawfully account for, all sums due to Government in respect of fees as aforesaid:

Provided that in case of difficulty of transport the Majlis may permit the Registrar to deliver such books and monies to the Penghulu of his daerah and the Penghulu shall in such event deliver the same to the Kadi.

(4) The Kadi, after recording all relevant particulars in his registers, shall return the current certificate books to the Registrar, but shall retain the counterfoils of completed books and preserve the same for 5 years after the last entry was made therein.

(5) Any certificate issued under this Part, and any entry in the register of a Kadi made thereunder, shall be sufficient evidence of the truth of the matters stated therein, unless proved to be erroneous.

(6) After the expiration of 5 years from the time it was made, an entry in the Register of a Kadi made under this part of this Act shall be conclusive proof of the matters stated therein, and no evidence to the contrary shall be received.

**153.** (1) All registers, counterfoils of certificates and other documents held by any Registrar in pursuance of this part of this Act shall be public documents for the purpose of any law applicable in Brunei relating to evidence and shall be open to inspection by any person on payment of fee specified in the Seventh Schedule. Inspection  
and copies

(2) The Registrar shall on payment of the fee specified in the Seventh Schedule furnish to any person a certified copy of any entry in a register, or counterfoil, certificate or other document as aforesaid and a receipt for such fee shall be mentioned on such certified copy.

(3) The certificate on any certified copy and the receipt for the fee in respect thereof shall be in the form in the Seventh Schedule.

**154.** (1) Any person aggrieved by any order, act, refusal or omission of a Registrar may within 14 days from the date thereof appeal — Appeals

(a) if the Registrar by the Chief Kadi or a Kadi, to the Judicial Committee; or

(b) in other cases, to the Kadi of the district in which the Registrar acts as such.

(2) From any decision of a Kadi given on such an appeal a further appeal shall lie to the Judicial Committee.

(3) The appellate authority may order the authority appealed from to do or refrain from any act which ought in the circumstances to have been done or omitted and may make such order as justice may require, including an order for rectification of any register of marriages or divorces.

(4) The decision of the Judicial Committee shall be final, unless in any case His Majesty shall for special reasons otherwise direct.

Rectification  
of registers

**155.** (1) If it shall appear that any entry in any register has been made, or any certificate issued, under this Part in error, and that such error ought to be corrected, a Registrar or any person affected by, but not responsible for, such error may apply to the Judicial Committee for rectification of such register or certificate.

(2) The Judicial Committee may, after such enquiry as seems proper, order rectification accordingly:

Provided that no such order shall be made more than 5 years after the entry was made, or certificate issued, as the case may be.

(3) Any person may be ordered to surrender any document to the Registrar for correction in consequence of any such order.

Fees

**156.** All fees collected under this Part shall be disposed of as His Majesty may by rule direct.

## PART VII

## MAINTENANCE OF DEPENDANTS

**157.** (1) Chapter XXXIII of the Criminal Procedure Code shall not apply in Brunei in the case of any claim for maintenance made by a Muslim against a Muslim. Application

(2) This Part shall apply only to claims made by a Muslim against a Muslim.

**158.** (1) A married woman may by application in the Court of a Kadi obtain an order against her husband for the payment from time to time of any such sums in respect of her maintenance as she may be entitled to in accordance with Muslim law. Wives

(2) A woman who has been divorced may by application in the Court of a Kadi obtain an order against her former husband for the payment in respect of the period of *idah*, if the divorce was by one or two *talak*, or in any case in respect of the period of her pregnancy by the former husband, of any such sums in respect of her maintenance as she may be entitled to in accordance with Muslim law.

(3) A woman who has been divorced and who is not entitled to an Order for maintenance under subsection (2) may apply to the Court of the Chief Kadi and that Court may, if it is satisfied that it is just and proper so to do in view of all the circumstances of the case, make an order against the former husband for the payment by him of such sums for such period as the Court considers fit:

Provided that no such order shall require the former husband to pay to his former wife any amount in excess of \$1,500 per month.

Lawful minor children

**159.** (1) A minor may by application in the Court of a Kadi, to be made either personally or through a representative as provided in section 83, obtain an order against his lawful father or any other person liable in accordance with Muslim law to support him for the payment from time to time of any such sums in respect of his maintenance as he may be entitled to in accordance with Muslim law.

(2) It shall be a sufficient defence to any such application that the applicant has sufficient means to support himself.

Infirm and diseased persons

**160.** (1) Any person who is incapacitated by infirmity or disease from supporting himself may by application in the Court of a Kadi obtain an order against any person liable in accordance with Muslim law to support him for the payment from time to time of any such sums in respect of his maintenance as may be proper:

Provided that no person shall be entitled to any such order if he is in receipt of any pension or allowance granted under the provision of the Old Age and Disability Pensions Act.

Cap. 18

(2) Lack of means in the respondent shall be a sufficient defence to any such application.

Illegitimate children

**161.** (1) If any person neglects or refuses to maintain an illegitimate child of his which is unable to maintain itself, the Court of a Kadi, upon due proof thereof, may order such person to make such monthly allowance as to the Court seems reasonable:

Provided that if the claim be made against the putative father, it shall be brought in the Magistrate's Court, which may order him to make such monthly allowance not exceeding \$500 as to the Court seems reasonable.

(2) Such allowance shall be payable from the date of such neglect or default or from such later date as may be specified in the order.

**162.** Any order made under this Part may be rescinded or varied upon the application of any person interested thereunder and upon proof of change of material circumstances.

Rescission  
and variation  
of orders

**163.** Without prejudice to the right of any person interested under any order made under this Part to enforce the same by proceedings by way of execution in a Magistrates' Court or in the Court of the Chief Kadi in pursuance of section 90, the Court which made the order may, notwithstanding any provision in this Act limiting its criminal jurisdiction or powers of punishment, in case of wilful failure to comply therewith, sentence the person in default to a term of imprisonment which may extend, if the order provides for monthly payments, to one week for each month's allowance or part thereof remaining unpaid, but not exceeding in all one month.

Enforcement  
of orders

## PART VIII

### CONVERTS

**164.** The Majlis shall maintain a register of the names of all persons converted to the Islamic religion within Brunei, together with such particulars in respect of their conversion as may be prescribed by rule.

Register of  
converts

**165.** No person shall be registered as a convert to the Islamic religion otherwise than in accordance with the provisions of this Act or any rules made thereunder.

Control of  
conversions

**166.** No person under the age of 14 years and 7 months shall be registered as a convert to the Islamic religion.

No registra-  
tion of  
conversion of  
children

Conversion

**167.** (1) If any person wishes to be admitted to the Islamic religion, he shall repeat the Confession of Faith, or *Dua Kalimah Syahadat*, before any Muslim and shall thereafter appear before the Kadi of the district in which he ordinarily resides.

(2) The Kadi shall make enquiry as to the age of such person and as to his desire to be admitted to the Islamic religion and shall, if satisfied that he is more than 14 years and 7 months of age and desires to be so admitted, send him to the custody of the Majlis.

(3) Such person shall, notwithstanding any right to his custody vested in any other person or body, be and remain in the custody of the Majlis for the period of 3 months and the Majlis shall defray out of the General Endowment Fund the expenses of sending him to its custody and also the cost of his board, lodging, instruction and incidental expenses during the said period of 3 months.

(4) At the expiration of the said period of 3 months the convert shall cease to be in the custody of the Majlis, and the Majlis shall, if the convert so requests, defray the cost of his return to the custody of his lawful guardian.

(5) If the Kadi is of opinion that the applicant is under the age of 14 years and 7 months, he shall cause him to be returned to his lawful guardian and he shall be deemed not to have been converted to the Islamic religion.

(6) The Kadi shall report all action taken by him under the provisions of this section to the Religious Adviser.

(7) In every such report the Kadi shall state whether in his opinion the convert made the Confession of Faith willingly or against his will.

(8) Nothing in this section contained shall operate to permit any minor to be taken from the custody of his natural or lawful guardian without the consent of such natural or guardian.

**168.** Any person effecting a conversion shall forthwith report the same to the Majlis with all necessary particulars.

Conversion to be reported the Majlis

## PART IX

### RENUNCIATION OF ISLAMIC RELIGION

**169.** Any person of the Islamic Religion who renounces his religion shall forthwith report the fact in writing to the Secretary.

Renunciation of Islamic Religion

## PART X

### OFFENCES

**170.** (1) Save as otherwise in this Act expressly provided, this Part shall apply only to persons professing the Islamic religion.

Application

(2) Save as otherwise in this Act expressly provided, no prosecution for any offence against this Act shall be had in any Court other than the Court of the Chief Kadi or a Court of a Kadi.

**171.** Any male of the age of 15 years or over who fails to attend prayers on Friday at a mosque in accordance with the provisions of section 133 shall, subject as hereinafter provided, be guilty of an offence: Penalty, a fine of \$100 or in the case of a second offence, a fine of \$200 or in the case of a third or subsequent offences, a fine of \$500.

Attendance at mosque

Provided that no offence shall be committed by any such person if —

(a) his attendance is prevented by rain;

(b) his place of residence is more than 3 miles by the nearest route from a mosque; or

(c) he has been excused attendance by any *pegawai masjid* of the *mukim* in which he ordinarily resides or then is, on grounds of sickness or absence from his ordinary place of residence.

Intoxicating  
liquor

**172.** Whoever shall in any shop or other public place purchase or sell or consume any intoxicating liquor or other drink prohibited by Muslim law shall be guilty of an offence: Penalty, a fine of \$500, or, in the case of a second a fine of \$750 or in the case of a third or subsequent offence a fine of \$1,000.

Food in  
Ramadan

**173.** Whoever being a person other than a person exempted by Muslim law, shall during the hours of daylight in the month of Ramadan consume in public or sell to a person professing the Islamic religion for consumption by any other person other than a person so exempted during such hours, any food, drink or tobacco shall be guilty of an offence: Penalty, a fine of \$500, or, in the case of a second fine of \$750 or in the case of a third or subsequent offence a fine of \$1,000.

Presumption

**174.** Where any person has in contravention of the provisions of section 172 or 173 sold any article in his capacity as employee of another person, his employer shall be presumed to have abetted such offence and to have caused its commission by such abetment unless he proves that such offence was committed without his authority, knowledge or consent and that he had taken all reasonable steps to prevent its commission.

**175.** (1) Whoever, having ceased to cohabit with his wife in the manner required by Muslim law and having been ordered by the Court to resume cohabitation with her, wilfully fails or neglects to comply with such order shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000. Desertion  
of wife

(2) Whoever ill-treats his wife shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000.

**176.** Any woman who shall wilfully disobey any order lawfully given by her husband in accordance with Muslim law shall be guilty of an offence: Penalty, a fine of \$100 or, in the case of a second or subsequent offence, imprisonment for 7 days or a fine of \$500: Disobedience  
of wife

Provided that it shall be a sufficient defence to any prosecution under this section that the husband has been guilty on more than one occasion during the preceding year of abusing or ill-treating the accused.

**177.** (1) Any male Muslim who is found in retirement with and in suspicious proximity to any woman, whether or not professing the Islamic religion other than his wife, or a woman whom by reason of consanguinity, affinity or fosterage he is forbidden by Muslim law to marry, shall be guilty of *Khalwat*: Penalty, imprisonment for one month or a fine of \$1,000, or, in the case of a second or subsequent offence, imprisonment for 2 months or a fine of \$2,000. Khalwat

(2) Any female Muslim who abets an offence punishable under subsection (1) shall be guilty of an offence: Penalty, imprisonment for 14 days or a fine of \$500, or, in the case of a second or subsequent offence by her of a like nature imprisonment for one month or a fine of \$1,000.

(3) Any female Muslim who is found in retirement with and in suspicious proximity to any man who does not profess the Islamic religion shall be punishable in like manner as if for an offence against subsection (2).

Illicit  
intercourse

**178.** (1) Any man who, having lawfully divorced his wife, resumes cohabitation with her without having pronounced a lawful *rujuk* shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000, or, if his wife was not at the time of such resumption of cohabitation aware of the occurrence of the divorce, imprisonment for 2 months or a fine of \$2,000.

(2) Any woman who abets an offence punishable under subsection (1) shall be guilty of an offence: Penalty, imprisonment for 7 days or a fine of \$200,

(3) Any person who has sexual intercourse with any person whom he or she is, and who he or she knows or has reason to believe that he or she is, forbidden by Muslim law to marry, shall be guilty of an offence: Penalty, in the case of —

(a) a male person, imprisonment for 5 years;  
and

(b) a female person, imprisonment for one year.

(4) Save in the cases referred to in subsections (1), (2) and (3), whoever shall be guilty of illicit intercourse, whether or not the other party to such illicit intercourse professes the Islamic religion, shall be guilty of an offence: Penalty, imprisonment for 6 months or a fine of \$5,000.

Unlawful  
solemnisation  
of marriage

**179.** Whoever solemnises or purports to solemnise in accordance with Muslim law any marriage between persons both professing the Islamic religion in contravention of the

provisions of Part VI, or knowingly purports to solemnise any such marriage which is void under the provisions of such Part, shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000.

**180.** (1) Whoever, being under a duty to report to a Registrar any marriage or divorce, wilfully neglects or fails to do so shall be guilty of an offence: Penalty, a fine of \$200. Failure to report

(2) Whoever, being under a duty to report, or having reported, to a Registrar any marriage or divorce, and having been required by such Registrar to furnish any information or to execute or sign any document lawfully necessary for the purpose of effecting registration thereof, wilfully neglects or fails to comply with such requirement shall be guilty of an offence: Penalty, a fine of \$200.

(3) Whoever makes to any Registrar orally or in writing any wilfully false statement or declaration relating to any matter required under the provisions of this Act to be recorded or registered by such Registrar shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000.

(4) Whoever fails to report his renunciation of the Islamic religion in accordance with the provisions of section 168A shall be guilty of an offence: Penalty, a fine of \$1,000 on conviction by a Magistrate's Court.

**181.** Whoever in contravention of the provisions of Part VIII, converts or purports to convert to the Islamic religion any person, or, having lawfully converted any person to the Islamic religion, wilfully neglects or fails to report such conversion to the Majlis, shall be guilty of an offence: Penalty, imprisonment for one month or fine of \$1,000. Unlawful conversions

**182.** Whoever, being charged by this Act with the duty of registering any matter or proceeding, or of making, preparing, keeping or maintaining any assessment list, re- Wilful neglect statutory duty

port, book of account, estimate, register, counterfoil book, minute book, or subscription list, or of issuing any certificate, receipt or certified copy, refuses or wilfully neglects or fails to perform such duty, or wilfully performs the same in an unlawful or improper manner, shall be guilty of an offence: Penalty, imprisonment for 3 months or a fine of \$2,000.

Breach of  
secrecy

**183.** Whoever, in breach of the provisions of section 34, improperly discloses or divulges any matter, which it was his duty to keep secret, to any person not lawfully entitled to be informed thereof shall be guilty of an offence; Penalty, imprisonment for 3 months or a fine of \$2,000.

Unlawful  
mosques

**184.** Whoever, in contravention of the provisions of section 124, erects any mosque, or dedicates or otherwise applies any existing building as or for the purposes of a mosque, without the permission in writing of the Majlis shall be guilty of an offence: Penalty, a fine of \$10,000, and the Court may, subject to any rights of any third party, order the person convicted to demolish the building.

Religious  
teaching

**185.** Whoever, save in his own residence and in the presence only of members of his own household, teaches or professes to teach any doctrine of the Islamic religion without the written permission in that behalf of the Majlis shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000.

False  
doctrine

**186.** Whoever shall teach or publicly expound any doctrine or perform any ceremony or act relating to the Islamic religion in any manner contrary to Muslim law shall be guilty of an offence: Penalty, imprisonment for 3 months or a fine of \$2,000.

*Fatwa*

**187.** If any person, other than the Mufti or a person acting under powers conferred by this Act, issues or purports to issue any *fatwa* or ruling on any question of Islamic doctrine of Muslim law or Brunei Custom he shall be guilty of an

offence: Penalty, imprisonment for 3 months or a fine of \$2,000.

**188.** Whoever shall print, publish, sell or import into Brunei for sale any book or document giving or purporting to give instruction or rulings on any matter of Islamic doctrine or Muslim law or Brunei Custom shall, if such book or document contains any matter contrary to Muslim law or doctrine or to any lawfully issued *fatwa*, be guilty of an offence: Penalty, imprisonment for 6 months or a fine of \$4,000 and such book or document shall be forfeited.

Religious books

**189.** Whoever in any theatrical performance or in any place of public entertainment or amusement uses any passage from the Quran or any words having a sacred implication to persons professing the Islamic religion or derides or copies in a derisive manner any act or ceremony relating to the Islamic religion shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$8,000.

Misuse of the Quran

**190.** Whoever shall be guilty of any contempt of the lawful authority of His Majesty in his capacity as the Head of the religion of Brunei, or of the Majlis or any Committee or Member or officer thereof, or of any Court or the presiding officer thereof, or of any *pegawai masjid*, shall be guilty of an offence: Penalty, imprisonment for one month or a fine of \$1,000.

Contempts of religious authorities

**191.** Whoever by words spoken or written or by visible representations insults or brings into contempt or attempts to insult or bring into contempt the Islamic religion or the tenets of any sect thereof or the teaching of any lawfully authorised religious teacher or any *fatwa* lawfully issued by the Mufti or under the provisions of this Act shall be guilty of an offence: Penalty, imprisonment for 6 months or a fine of \$4,000.

Contempts of religion

**192.** (1) Whoever, having been lawfully assessed as liable to pay any *zakat* or *fitrah* and having failed to procure, by

Non-payment of *zakat* or *fitrah*

appeal or otherwise, the cancellation or modification of such assessment, shall refuse or wilfully fail to pay the same, shall be guilty of an offence: Penalty, imprisonment for 14 days or a fine of \$1,000.

(2) A conviction under this section shall not operate to extinguish the debt.

(3) Any *zakat* or *fitrah* due by any person or the value of the same may be recovered as if the rice or padi in question had been ordered to be delivered to the Majlis by a lawful order of a Court or as if the value thereof were recoverable as a fine imposed under the provisions of this Act.

(4) Subject to any appeal lawfully brought, the Court shall in no case enquire into the propriety of any assessment to *zakat* or *fitrah*.

Incitement to  
neglect reli-  
gious duty

**193.** Whoever incites or persuades any person professing the Islamic religion to refrain from attending any mosque or from attending Islamic Religious instruction or from paying any *zakat* or *fitrah* or from doing or paying whatever he is liable to do or pay under this Act shall be guilty of an offence: Penalty, imprisonment for 6 months or a fine of \$4,000.

Attempts and  
abatement

**194.** Whoever attempts to commit, or abets the commission of, any offence against this Act shall be punishable with the same punishment as if he had committed such offence.

Abetment,  
sections 172  
and 173

**195.** Whoever, not being of the Islamic religion, knowingly sells any article to a person professing the Islamic religion, and thereby abets an offence of purchasing or consuming the same in contravention of the provisions of section 172 or 173, shall be guilty of an offence cognisable by a Magistrate's Court: Penalty, a fine of \$500 or in the case of a second or subsequent offence, a fine of \$1,000.

**196.** Any person not professing the Islamic religion who abets any person who to his knowledge professes the Islamic religion in the commission of any offence against this Act, other than an offence against section 172 thereof, shall be guilty of an offence cognisable by a Magistrate's Court and shall be punishable in accordance with the provisions of Chapter V of the Penal Code.

Abetment by  
non-Muslim

Cap. 22

## PART X

### GENERAL

**197.** In the exercise of all powers and the performance of all duties, other than judicial powers and duties, conferred or imposed by this Act, the Chief Kadi shall be subject to the general directions and control of the Mufti and all Kadis shall in like manner be subject to the general directions and control of the Chief Kadi.

Supervision  
of officers

**198.** (1) It shall be the duty of the Chief Kadi at or about the beginning and end of each lunar month to make the enquiry as to the dates on which the respective new moons are likely to be seen, and also to make due enquiry as to the dates on which they shall be seen in fact and to certify every such event and date under his hand.

Appearance  
of the moon

(2) Upon giving his certificate as aforesaid, the Chief Kadi shall forthwith report to the Mufti, who shall transmit the information in question to His Majesty.

(3) It shall be an irrebuttable presumption of law that the new moon in question was first seen on the date so certified by the Chief Kadi.

**199.** (1) The Majlis shall have power to institute and administer a provident fund for the benefit of any or all of the employees of the Majlis.

Provident  
Fund

(2) The Majlis shall itself be the sole trustee of any such provident fund, and shall hold all monies, investments and assets appertaining thereto as a segregated fund.

(3) The Majlis may appoint a Managing Committee to administer any such provident fund and such Managing Committee may include persons not members of the Majlis and persons who are beneficiaries of the fund.

(4) The Majlis may invest any monies or assets of any such provident fund in any of the investments by this Act, authorised for the investment of monies and assets constituting the General Endowment Fund, and shall have the like powers in respect of change of investment, employment of bankers and similar matters as relate to the General Endowment Fund.

(5) The Majlis may contribute to any such provident fund out of monies and assets constituting the General Endowment Fund.

(6) The Majlis may, with the approval in writing of His Majesty, make rules to regulate —

(a) the institution, organisation, administration and management of the provident fund;

(b) the proceedings of the Managing Committee;

(c) the proceedings of meetings of contributors to the provident fund;

(d) the eligibility of contributors to the provident fund;

(e) the amount of contributions and the terms upon which they will be received, and paid out;

(f) the absorption of other provident funds or similar institutions;

(g) the alteration or amendment of the rules governing the provident fund; and

(h) the winding-up of the provident fund.

(7) The Majlis may discontinue and wind up any such provident fund.

(8) The expenses of managing and administering any such provident fund shall be borne by the fund.

**200.** (1) No Member of the Majlis shall be liable for any loss arising from or contingent upon any investment made in accordance with the provisions of this Act, or any failure to collect or get in any monies or assets of the Majlis, unless such loss has been occasioned by his wilful negligence or fraud.

Protection of  
Majlis, its  
Members and  
employees

(2) Any Member of the Majlis, and any servant, agent or person acting under the authority of the Majlis shall be indemnified by the Majlis against any action or proceeding for or in respect of any act, matter or thing *bona fide* done or omitted to be done by him in the exercise or supposed exercise of any of the rights or powers of the Majlis or the Members thereof.

**201.** Any sentence passed, judgment given, order made or act done before the coming into force of this Act by the Courts of Chief Kadi or of a Kadi, including any order made in reference to any such sentence, judgment, order or act by the appellate authority, shall be deemed to be and always to have been valid and within the jurisdiction of such Courts or appellate authority.

Validation of  
judgments,  
sentences and  
orders

**202.** The provisions of this Act shall apply, so far as may be, to all matters pending in the Courts of the Chief Kadi or of a Kadi when this Act comes into force.

Pending  
matters

Rules

**203.** His Majesty in Religious Council may, by notification signified in the *Gazette*, make rules for carrying out the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, such rules may provide for —

(a) the procedure of the Majlis, the form and method of execution of instruments by the Majlis, and the appointment of subordinate officers of the Majlis;

(b) the fees to be paid in respect of any act or thing done under or in pursuance of this Act, and the method of collecting and disposing of the same;

(c) the powers and duties of the Legal and Judicial Committees, and the practice and procedure in respect of all matters within their respective jurisdictions;

(d) the appointment of Committees of the Majlis and their powers, duties and procedure;

(e) the practice and procedure of the Courts of the Chief Kadi and of Kadis and in any such rule it shall be lawful for His Majesty to declare that any of the provisions of sections 51 to 96 inclusive shall cease to have effect;

(f) the forms, registers, books of account, reports, accounts, estimates and other documents to be used in respect of any act or thing done under or in pursuance of this Act;

(g) the collection, expenditure and disposal of any property, investments and funds due to or vested from time to time in the Majlis;

(h) the employment of bankers, and the bank accounts to be opened and operated, by the Majlis;

(i) the conduct of any charitable collection, and the disposal of the proceeds thereof;

(j) the conduct of any mosque and all matters relating thereto;

(k) the powers and duties of any *pegawai masjid*;

(l) the determination and publication of *mukim* boundaries;

(m) the powers and duties of Registrars of Muslim Marriages and Divorces;

(n) the care and instruction of juvenile converts by the Majlis, and the method of registering converts; and

(o) the conduct of religious seminaries and schools.

**204.** His Majesty in Religious Council may by Order signified in the *Gazette* amend any of the Schedules to this Act.

Amendment  
of Schedules

**205.** Where any matter is referred under this Act to His Majesty, whether in Religious Council or not, for his determination or directions, His Majesty may, subject to the express provisions of this Act, issue such consequential instructions in writing under his hand as he may consider necessary for the proper carrying out of such determination or directions.

His Majesty  
may issue  
consequential  
instructions



**FORM B**

(Section 120 (1))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Zakat and Fitrah Rules Form J Rule 10 <b>OFFICIAL RECEIPT FOR            FITRAH</b> No.: Received One Fitrah Date:	Zakat and Fitrah Rules Form J Rule 10 <b>OFFICIAL RECEIPT FOR            FITRAH</b> No.: Received One Fitrah Date:
--	--

**FORM C**

(Section 122 (2))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Receipt for charitable donations  
 Penerimaan bagi derma-derma

Received from  
 Diterima daripada .....

the sum of ..... dollars  
 sebanyak ..... ringgit

for charitable donations  
 derma untuk

Dated  
 Tarikh .....

Authorised Collector  
 for Secretary of the Majlis  
 Pemunggut yang di-benarkan  
 bagi Setiausaha Majlis

**LAWS OF BRUNEI**

98

**CAP. 77** *Religious Council and Kadis Courts*

---

**SECOND SCHEDULE**

(Section 143 (1) & (4))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Certificate of Marriage and Particulars of Marriage Fees  
Surat keterangan Nikah dan hal bayaran Nikah

To be issued in duplicate  
Dikeluarkan dua salinan

---

Registry No. Bilangan Registri
Husband's Name and Nationality Nama suami dan Bangsa
Wife's Name and Nationality Nama isteri dan Bangsa
Wali or Wakil Wali atau Wakil
Witnesses Saksisaksi
Mahar Berian
Where marriage solemnised Tempat nikah
Fee \$1.00 Bayaran \$1.00

---

Kadi

**THIRD SCHEDULE**

(Section 143 (5), 144 (2), 145 (2) and (3), 146 (2) and 147 (4))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Certificate of Divorce and Particulars of Divorce fees  
Surat keterangan Talak dan hal bayaran talak

To be issued in duplicate  
Dikeluarkan dua salinan

---

Registry No.  
Bilangan Registri

---

Husband's Name and Nationality  
Nama suami dan Bangsa

---

Wife's Name and Nationality  
Nama isteri dan Bangsa

---

Nature of Divorce  
Taraf Talak

---

Residence of Parties  
Tempat kediaman suami dan isteri

---

Date of Divorce  
Tarikh talak

---

Fee \$1.00  
Bayaran \$1.00

---

Kadi

**LAWS OF BRUNEI**

100 **CAP. 77** *Religious Council and Kadis Courts*

---

**FOURTH SCHEDULE**

(Section 150 (3))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Recohabitation Certificate  
Surat Keterangan Rujuk

To be issued in duplicate  
Dikeluarkan dua salinan

---

Registry No.  
Bilangan Registri

---

Original Marriage Certificate No.  
Bilangan Surat Nikah Asal

---

Date  
Tarikh

---

Original Divorce Certificate No.  
Bilangan Surat Talak Awal

---

Date  
Tarikh

---

Husband's Name and Nationality  
Nama Suami dan Bangsa

---

Wife's Name and Nationality  
Nama Isteri dan Bangsa

---

Name of Witnesses  
Saksisaksi

---

Fee \$2.00  
Bayaran \$2.00

---

Kadi

**FIFTH SCHEDULE**

(Section 152 (2))

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Register of Marriage  
Daftar Nikah

Number
Husband's name and Nationality Nama Suami dan Bangsa
Wife's Name and Nationality Nama Isteri dan Bangsa
Name of Wali and Wakil Nama Wali atau Wakil
Name of Witnesses Nama Saksisaksi
Mahar (Barian)
Amount still due if any Baki Mahar jika ada
Where marriage solemnised Tempat nikah
Husband's age Umur suami
Wife's age Umur Isteri
Date Tarikh

Kadi

**LAWS OF BRUNEI**

102      **CAP. 77**      *Religious Council and Kadis Courts*

---

**SIXTH SCHEDULE**

**(Section 152 (2))**

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

**Register of Divorce  
Daftar Cerai**

Number
Husband's name and Nationality Nama Suami dan Bangsa
Wife's Name and Nationality Nama Isteri dan Bangsa
Nature of Divorce Taraf Talak
Name of Witnesses Nama Saksisaksi
Husband's age Umur suami
Wife's age Umur Isteri
Residence of Parties Tempat kediaman suami dan isteri
Date Tarikh

Remarks

Kadi

**SEVENTH SCHEDULE**

(Section 153)

**BRUNEI DARUSSALAM**

Religious Council and Kadis Courts Act, Cap. 77

Fees for inspection of Documents  
Bayaran kerana memeriksa surat surat

I hereby certify that the above is a true copy of  
Saya mengaku yang di atas ini ia lah salinan .....

and that the fee of \$1.00 has been  
..... yang benar dan bayaran \$1.00 telah

paid in respect thereof.  
di-bayar untuk ini.

Registrar  
Pendaftar

