

COURTS ACT

Cap 168 (Act 41 of 1945) – 7 March 1945

ARRANGEMENT OF SECTIONS

SECTION

- | | |
|--|---|
| PART I – PRELIMINARY | 24. Shorthand notes |
| 1. Short title | 25. – 30. – |
| 2. Interpretation | 31. Interpreters |
| PART II – THE SUPREME COURT | 32. Other officers of Court |
| Sub-Part I – Constitution of Supreme Court | 33. Officers under control of Chief Justice |
| 3. Constitution | Sub-Part IV – Sittings and Distribution of Business of Supreme Court |
| 4. – | 34. Civil jurisdiction of Supreme Court |
| 5. Vacancies | 35. Proceedings to be before one Judge |
| 6. – | 36. Quorum of 2 or more Judges |
| 7. Powers, precedence and office of Judges | 37. Difference of opinion between 2 Judges |
| 8. Seal | 38. Criminal business of Supreme Court |
| 9. Sittings | 39. Case before 3 or 5 Judges |
| 10. Place of sittings | 40. Criminal and civil sittings |
| 11. Adjournment of Court | 41. – |
| 12. Right of audience | 42. Trial by jury |
| 13. Supreme Court open at all times | 43. Penalty for non-attendance by jury |
| 14. Language to be used in Supreme Court | 44. Drawing of jurors to serve |
| Sub-Part II – Jurisdiction of Supreme Court | 45. Where number of jurors is insufficient |
| 15. Powers of Supreme Court | 46. Challenge of jurors |
| 16. Supreme Court – a Court of Equity | 47. Oath by jurors |
| 17. Jurisdiction and process | 48. Foreman to be elected by jury |
| 17A. Mediation | 49. Giving the accused in charge |
| 18. Disciplinary powers | 50. Presiding Judge to sum up case |
| 18A. Innocent publication and distribution | 51. Verdict |
| 18B. Proceedings in private | 52. Verdict to be given by a majority |
| 18C. Powers of Supreme Court in cases of contempt | 53. Sentence to be pronounced by Court |
| Sub-Part III – Officers of Supreme Court | 54. Communication by or with juror |
| 19. Master and Registrar | 55. Bribes offered to or accepted by juror |
| 20. Deputy to Master and Registrar | 56. Law of England to decide procedure |
| 21. Taxation by Chief Clerk | |
| 22. Delegation of other powers of Master and Registrar | |
| 23. Minutes of proceedings | |

SECTION

- | | |
|---|--|
| <p>57. Jurors to know English</p> <p>58. Illness of accused</p> <p>59. Absence of a juror</p> <p>60. When jury to be kept together</p> <p>61. Jurors to attend adjournments</p> <p>62. Bankruptcy Division of Supreme Court</p> <p>63. Judge of Bankruptcy Division</p> <p>64. Custody of records</p> <p>65. Registrar of Bankruptcy Division</p> <p>66. Registrar may tax costs</p> <p>67. Power to make rules</p> <p>68. Attendance of Ministère Public</p> <p>68A. Reference to Ministère Public optional</p> <p style="padding-left: 20px;">Sub-Part V – Appellate Jurisdiction of Supreme Court</p> <p>69. Appellate jurisdiction of Supreme Court</p> <p>70. Appeals to be heard before at least 2 Judges</p> <p>70A. Appeals to Judicial Committee in criminal matters</p> <p>70B. Frivolous appeals</p> <p style="padding-left: 20px;">Sub-Part VI – Jurisdiction in Chambers of Judges</p> <p>71. Matters disposed of by Judge in Chambers</p> <p>72. —</p> <p>73. Power to grant an injunction</p> <p>74. Rule or summons to show cause</p> <p>75. Record of Judge’s orders made in Chambers</p> <p>76. Judges may issue warrant or summons</p> <p>76A. Time for appeal</p> <p style="padding-left: 20px;">Sub-Part VII –</p> <p>77. – 79. —</p> <p style="padding-left: 20px;">PART III – INTERMEDIATE COURT AND DISTRICT COURTS</p> <p style="padding-left: 20px;">Sub-Part I – Constitution of Intermediate Court and District Court</p> <p>80. Establishment of Intermediate Court</p> | <p>81. President and Magistrates of Intermediate Court</p> <p>82. Sittings of Intermediate Court</p> <p>83. Seal of Intermediate Court</p> <p>84. Audience before Intermediate Court</p> <p>85. Proceedings before Intermediate Court</p> <p>86. Cases coming for mention</p> <p>87. Documents</p> <p>88. Minutes of trials</p> <p>89. Head Clerk</p> <p>90. Issue of process and other documents</p> <p>91. Custody of records</p> <p>92. Other duties of Head Clerk</p> <p>93. Establishment of District Courts</p> <p>94. District Magistrates</p> <p>95. Sittings of District Court</p> <p>96. Seal of District Court</p> <p>96A. Audience before District Court</p> <p>97. Jurisdiction of District Magistrates</p> <p>98. District Clerk</p> <p>99. Issue of process and other documents</p> <p>100. Custody of records</p> <p>101. Other duties of District Clerk</p> <p>102. Change of venue</p> <p>103. Errors as to venue</p> <p style="padding-left: 20px;">Sub-Part II – Jurisdiction of Intermediate and District Courts</p> <p>104. Civil jurisdiction</p> <p>104A. Small claims jurisdiction</p> <p>105. When jurisdiction not ousted</p> <p>106. Action by landlord</p> <p>107. Alimony</p> <p>108. Possessory actions</p> <p>109. Powers of Magistrate under Codes</p> <p>110. Security for costs</p> <p>111. Jurisdiction taken away in certain cases</p> |
|---|--|

SECTION

112. Criminal jurisdiction of Intermediate Court
113. Penalties
114. Criminal jurisdiction of District Courts
115. Preliminary inquiry by Magistrate
116. Matters excluded from summary jurisdiction
117. Referral of cases by DPP
118. Further powers of District Magistrates
- Sub-Part III – Miscellaneous**
119. Qualifications of Magistrates
120. Disqualification from holding other office
121. Control of Magistrates
122. Control of Intermediate and District Courts
123. Reports to Chief Justice
124. Replacement of Magistrates
125. Challenge
126. Reservation of questions of law
127. Contempt
128. Summonses to witnesses
129. Examination of witnesses
130. Evidence outside Court
131. Language to be used
132. Interpreters
133. Absence of Magistrate
134. —
135. Error and *certiorari* taken away
136. Transfer of proceedings
137. – 154. —
- PART IV – LAW IN FORCE AND TO BE APPLIED IN COURTS**
155. – 156. —
157. Extension of enactments to other islands
158. Power to legislate for other islands
159. Penalties for contravention of regulations
160. Regulations to be laid before Assembly

PART V – EVIDENCE

Sub-Part I – General Provisions as to Evidence

161. Interpretation
- 161A. Persons may be excluded from proceedings
- 161B. Live video and television link
- 161C. Summons to judicial officer
162. English law of evidence to be followed
163. No exclusion because of relationship or interest
164. Saving as to accused person and spouse
165. Questions tending to incriminate
166. Proof of occupation of immovable property
167. Examination on *faits et articles*
168. Insufficiency of notices not to exclude evidence
169. State need not file list of witnesses
170. Copies of public documents admissible
171. Custodians of public documents
172. Privilege not affected
173. Statements of witnesses
174. *De bene esse* proceedings
175. Translation of evidence
176. Translation where not necessary in civil cases
177. Recording evidence given before Supreme Court
- 177A. Objection to form of evidence
178. Inspection of property
179. Penalty for non-attendance of witness
180. —
181. Certificates of certain officers as evidence
- 181A. Microfilms and other reproductions
- 181B. Admissibility of out-of-court statements
- 181C. Admissibility of certain records in civil proceedings

SECTION

- | | |
|--|--|
| 181D. Evidence in rebuttal | 191. Form of declaration |
| 181E. Admissibility of statements produced by computers in civil proceedings | 192. Solemn affirmation |
| 181F. Proof of statements contained in a document | 193. Validity of oath, affirmation or declaration |
| 182. Illness of juror | 194. Form of declaration in writing |
| 183. This Sub-Part extended to other islands | 195. Penalty for swearing false affidavit |
| Sub-Part II – Evidence in Criminal Cases | 196. Swearing with uplifted hands |
| 184. Competency of witnesses in criminal cases | PART VI – MISCELLANEOUS |
| 185. Evidence of person charged | 197. Reasons of judgment in criminal matters |
| 186. Right of reply | 197A. Interest of judgment debts in accident cases |
| 187. Evidence of husband and wife | 197B. Costs in exaggerated claims |
| 188. Application | 197C. Enquiry as to genuineness of deed |
| 188A. Admissibility of sound recording | 197D. Wasted costs order |
| 188B. Admissibility of written statements | 197E. Adjournment costs |
| 188C. Admissibility of out of Court statement in piracy cases where maker is unavailable | 197F. Vexatious proceedings |
| 189. Translation where not necessary in criminal cases | 198. Rules of Court |
| 189A. Evidence of formal character | 199. Rules Committee |
| Sub-Part III – Declarations instead of Oath | 200. Amendment of Schedules |
| 190. Declaration instead of oath | 201. Practice directions |

- FIRST SCHEDULE
SECOND SCHEDULE
THIRD SCHEDULE
FOURTH SCHEDULE
FIFTH SCHEDULE

COURTS ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Courts Act.

2. Interpretation

In this Act—

“District Magistrate” includes Senior District Magistrate;

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

[S. 2 amended by s. 23 (2) of Act 48 of 1991 w.e.f. 12 March 1992.]

PART II – THE SUPREME COURT

Sub-Part I – Constitution of Supreme Court

3. Constitution

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

(2) (a) Subject to paragraph (b), the retiring age of a Judge of the Supreme Court shall, for the purposes of section 78 (7) of the Constitution, be the age of 67 years.

(b) Any person holding office as a Judge on 24 July 2008 may elect to retire at the age of 62 years.

[S. 3 amended by s. 3 of Act 21 of 2008 w.e.f. 24 July 2008.]

4. —

5. Vacancies

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

6. —

7. Powers, precedence and office of Judges

(1) Subject to the other provisions of this Act, all Judges of the Supreme Court shall have equal power, authority and jurisdiction.

(2) The Puisne Judges shall take precedence after the Chief Justice and the Senior Puisne Judge, in such manner as the President, acting in accordance with the advice of the Judicial and Legal Service Commission, may determine.

(3) Except with the approval of the President, no Judge shall, with or without remuneration, undertake any other work or hold any other office.

[S. 7 amended by Act 48 of 1991.]

8. Seal

(1) The Supreme Court shall have a seal bearing on it the Arms of Mauritius with the words "Supreme Court, Mauritius".

(2) (a) The seal shall be kept by the Chief Justice.

(b) The Chief Justice may entrust the seal to such officers of the Court as he thinks fit.

[S. 8 amended by Act 29 of 1992.]

9. Sittings

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

10. Place of sittings

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

[S. 10 amended by Act 48 of 1991.]

11. Adjournment of Court

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

12. Right of audience

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

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

13. Supreme Court open at all times

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

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

[S. 13 amended by s. 2 (a) of Act 11 of 2007 w.e.f. 21 July 2007.]

14. Language to be used in Supreme Court

(1) The official language to be used in the Supreme Court of Mauritius shall be English.

(2) Where a person appearing before the Court satisfies the Court that he does not possess a competent knowledge of the English language, he may give his evidence or make any statement in the language with which he is best acquainted.

Sub-Part II – Jurisdiction of Supreme Court

15. Powers of Supreme Court

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

16. Supreme Court – a Court of Equity

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

17. Jurisdiction and process

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

17A. Mediation

(1) The Supreme Court shall have the power and jurisdiction to conduct mediation in any civil suit, action, cause and matter that may be brought and may be pending before the Supreme Court.

(2) The Chief Justice may, before or at any stage of any proceedings, refer any civil suit, action, cause or matter to a Judge for mediation with a view to disposing of that civil suit, action, cause or matter by agreement or narrowing down the issues therein.

(3) Where a civil suit, action, cause or matter is referred for mediation under subsection (2)–

- (a) the Judge to whom it is referred shall have such powers as may be prescribed for conducting mediation; and
- (b) the parties shall submit themselves to mediation and shall endeavour to dispose of the civil suit, action, cause or matter.

(4) Where a civil suit, action, cause or matter has not been disposed of through mediation, the Judge shall cause the case to be fixed for trial.

[S. 17A inserted by s. 6 (a) of Act 20 of 2009 w.e.f. 19 December 2009.]

18. Disciplinary powers

(1) Notwithstanding any other enactment, the Supreme Court shall have power and jurisdiction to hear and determine any complaint of a disciplinary nature in respect of the professional conduct of a law practitioner or a ministerial officer including a land surveyor.

(2) For the purposes of subsection (1), “complaint” includes a motion by a law officer, a written report by or on behalf of the Chief Justice, of the Master and Registrar, of the Bar Council or of any other body or authority exercising powers of supervision over the conduct of a person referred to in subsection (1).

(3) The Court may require the Ministère Public to intervene in any such matter in such manner as it thinks fit.

(4) A hearing under this section shall be governed by section 14 of the Law Practitioners Act.

[S. 18 amended by Act 29 of 1992 w.e.f. 25 July 1992.]

18A. Innocent publication and distribution

(1) A person shall not commit a contempt of Court on the ground that he has published any matter calculated to interfere with the course of justice in connection with any proceedings pending or imminent at the time of publication if at that time, having taken reasonable care, he did not know and had no reason to suspect that the proceedings were pending, or that such proceedings were imminent, as the case may be.

(2) A person shall not commit a contempt of Court on the ground that he had distributed a publication containing such matter as is mentioned in subsection (1) if at the time of distribution, having taken all reasonable care, he did not know that it contained any such matter and had no reason to suspect that it was likely to do so.

(3) The proof of any fact tending to establish a defence afforded by this section to any person in proceedings for contempt of Court shall lie upon that person.

18B. Proceedings in private

(1) The publication of information relating to proceedings before any Court sitting in private shall not of itself be contempt of Court except—

- (a) where the proceedings relate to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant;
- (b) where the Court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;
- (c) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;
- (d) where the Court, having power to do so, expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to subsection (1), the publication of the text of a summary of the whole or part of an order made by a Court sitting in private shall not of itself be contempt of Court except where the Court, having power to do so, expressly prohibits the publication.

(3) In this section, references to a Court include references to a Judge and to a tribunal and to any person exercising the functions of a Court, a Judge or a tribunal, and references to a Court sitting in private include references to a Court sitting in camera or in Chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of Court which would not be so punishable apart from this section.

18C. Powers of Supreme Court in cases of contempt

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

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

[S. 18C inserted by s. 4 of Act 15 of 1994 w.e.f. 1 July 1994.]

Sub-Part III – Officers of Supreme Court

19. Master and Registrar

(1) There shall be a Master and Registrar of the Supreme Court who shall be a barrister of not less than 5 years' standing at the Bar.

continued on page C54 – 9

(2) The duties of the Master shall include—

- (a) the conduct and hearing of all formal matters relating to cases, other than criminal matters, pending before the Supreme Court including the power to hold pre-trial conferences and the power to make orders or give directions for the just, expeditious and economical disposal of proceedings;
- (b) the taxation of costs, the conduct and management of judicial sales, probate of wills and incidental matters connected therewith;
- (c) the dealing with matters of audit, inquiry and accounts; and
- (d) all such matters as may be referred to him by the Chief Justice, Judge or Court.

[S. 19 amended by Act 15 of 2000.]

20. Deputy to Master and Registrar

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

[S. 20 amended by Act 29 of 1992.]

21. Taxation by Chief Clerk

(1) The Chief Justice may, in the case of the absence of the Master and Registrar, make an order directing and authorising the Chief Clerk of the Registry to tax costs during the absence of the Master and Registrar.

(2) The Chief Clerk of the Registry shall have, during the absence of the Master and Registrar, the same power of taxing costs as is vested in the Master and Registrar by this Act, and any taxation of costs by the Chief Clerk shall be deemed a taxation by the Master and Registrar.

[S. 21 amended by Act 29 of 1992.]

22. Delegation of other powers of Master and Registrar

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

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

[S. 22 amended by Act 29 of 1992; Act 15 of 1994; Act 4 of 1999.]

23. Minutes of proceedings

(1) In every case, civil or criminal, tried before the Supreme Court, or any division of it, minutes of proceedings shall be drawn up and shall be signed

by the Master and Registrar, or by any other officer of the Court acting on behalf of the Master and Registrar with the authority of the Chief Justice.

(2) These minutes, with the notes of evidence taken at the hearing or trial, as required by section 177, shall be preserved as records of the Court.

(3) The minutes and notes of evidence, or a copy thereof purporting to be signed and certified as a true copy by the Master and Registrar, or such other officer, shall at all times, without further proof, be admitted as evidence of such proceedings and of the statement made by the witnesses.

[S. 23 amended by Act 29 of 1992.]

24. Shorthand notes

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

[S. 24 amended by Act 29 of 1992.]

25. – 30. —

31. Interpreters

(1) All interpreters appointed by the Public Service Commission shall be deemed to be clerks attached to the Supreme Court.

(2) They shall be subject, as officers of the Court, to the control of the Chief Justice and they shall perform such duties, including clerical duties as the Chief Justice may direct.

32. Other officers of Court

(1) (a) The Supreme Court shall have such other officers as may be appointed by the Public Service Commission.

(b) The Chief Justice may transfer any clerk or interpreter of the Supreme Court to any Intermediate Court, District Court or Industrial Court, and any clerk or interpreter so transferred shall have the same powers and be subject to the same liabilities as an Intermediate Court, District Court or Industrial Court clerk or as an Intermediate Court, District Court or Industrial Court interpreter, as the case may be.

(2) (a) The Public Service Commission may appoint such number of persons as may be necessary to be shorthand writers of the Supreme Court.

(b) They shall be deemed to be clerks attached to the Court and shall perform such duties, including clerical duties, as the Chief Justice may direct.

33. Officers under control of Chief Justice

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

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

34. Civil jurisdiction of Supreme Court

(1) The Supreme Court shall be the principal Court of original civil jurisdiction and shall exercise general powers of supervision over all District and Industrial Courts and other special Courts established or which may be established in Mauritius.

(2) In the exercise of civil jurisdiction, the Supreme Court may hear and determine all civil matters whether sitting as a Court of Appeal or in exercise of its original jurisdiction, and it may sit publicly in more than one division at the same time for the despatch of civil business, each such division may be composed of one or more Judges as the nature of the suit or matter may require.

35. Proceedings to be before one Judge

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

36. Quorum of 2 or more Judges

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

37. Difference of opinion between 2 Judges

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

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

38. Criminal business of Supreme Court

(1) The Supreme Court shall be the principal Court of original criminal jurisdiction and shall exercise general powers of supervision over all Intermediate, District and Industrial Courts and any other special Courts that are or may be established in Mauritius.

(2) The Supreme Court shall, acting in the exercise of its original criminal jurisdiction, hold sittings for the despatch of criminal business.

[S. 38 amended by s. 2 (b) of Act 11 of 2007.]

39. Case before 3 or 5 Judges

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

40. Criminal and civil sittings

The Supreme Court may hold—

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

[S. 40 repealed and replaced by s. 2 (c) of Act 11 of 2007.]

41. —

[S. 41 repealed by s. 2 (d) of Act 11 of 2007.]

42. Trial by jury

(1) Subject to section 10 of the Criminal Procedure Act and to any other enactment relating to trials without a jury, criminal trials before the Supreme Court shall be held before a presiding Judge and a jury consisting of 9 persons who are qualified to serve as jurors.

(2) Subject to subsection (3) and to section 57, every citizen of Mauritius who—

- (a) has at any time resided in the Island of Mauritius for one year; and
- (b) is between the ages of 21 and 65,

shall be qualified to serve as a juror.

(3) (a) No person who has been convicted of a crime shall be qualified to act as a juror.

(b) No proceeding shall be open to objection or challenge on the ground that a person disqualified under paragraph (a) has acted as a juror.

(4) The Judges shall, by rules of Court, make provision for the preparation of a list of jurors and for the summoning of panels.

(5) (a) A Judge may, on the trial of any cause before him, excuse a person summoned as a juror from serving on the jury if he is satisfied that the person—

- (i) is not qualified to act as a juror;

- (ii) is not sufficiently conversant with the English language to act as a juror;
- (iii) ought to be excused from acting as a juror on account of any serious physical incapacity or any mental deficiency; or
- (iv) being a woman, ought to be excused from so serving for any medical reason or any other reason which the Judge may consider to be just and reasonable, having regard to the conditions of her family life.

(b) Where a person is excused from serving on a jury pursuant to paragraph (a), the name of the person shall be erased from the jury book for the current year and any longer time which the Judge may think proper.

[S. 42 amended by Act 29 of 1992.]

43. Penalty for non-attendance by jury

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

44. Drawing of jurors to serve

(1) At the sitting of the Court for the trial of any such issue, the name, condition and place of abode of each juror summoned as aforesaid shall be written on a separate piece of card, paper, parchment, or otherwise and put into a box.

(2) When such issue is called on to be tried, the Registrar or other officer of the Court shall, in open Court, draw therefrom, until the names of 9 persons appear who are not objected to or challenged, and after the trial, such names shall be returned to the box, to be kept with the other undrawn names, and so on as long as any issue shall remain to be tried.

[S. 44 amended by Act 29 of 1992.]

45. Where number of jurors is insufficient

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

46. Challenge of jurors

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

- (a) not more than 7 persons peremptorily; and
- (b) any other person on good cause shown.

[S. 46 amended by Act 29 of 1992.]

47. Oath by jurors

Every juror shall take the following oath which shall be administered to him by the presiding Judge—

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

[S. 47 amended by Act 29 of 1992.]

48. Foreman to be elected by jury

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

49. Giving the accused in charge

The jury having been sworn to give a true verdict according to the evidence upon the issues to be tried by them, and having elected a foreman, the proper officer of the Court shall inform them of the charge specified in the information, and of their duty as jurors upon the trial.

50. Presiding Judge to sum up case

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

51. Verdict

(1) The verdict of the jury shall be in ordinary cases “Guilty” or “Not Guilty”.

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

[S. 51 amended by Act 29 of 1992.]

52. Verdict to be given by a majority

(1) The verdict of the jury shall be given by a majority of 7.

(2) The verdict shall be delivered in open Court and shall be recorded by the Master and Registrar or other officer of the Court.

[S. 52 amended by Act 29 of 1992.]

53. Sentence to be pronounced by Court

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

[S. 53 amended by Act 29 of 1992.]

54. Communication by or with juror

(1) Any juror who is guilty of any extraneous communication pending the conference of the jury, shall be fined by the Court in a sum not exceeding 500 rupees.

(2) The same penalty shall apply to any person guilty of having, from outside, held any communication with any juror and to the officer in charge of the jury who has not prevented such communication.

55. Bribes offered to or accepted by juror

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

[S. 55 amended by s. 2 (e) of Act 11 of 2007.]

56. Law of England to decide procedure

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

57. Jurors to know English

(1) No person who has made an oath or affirmation that he is not sufficiently acquainted with the English language to serve as a juror shall be called upon to act as a juror in any criminal case, nor shall the name of that person be inserted by the Master and Registrar in the Jury Book compiled by him, so long as such person continues not to be sufficiently conversant with the English language to serve as a juror.

(2) A Judge in Chambers may, *ex officio*, direct the Master and Registrar to re-insert, and it shall also be competent for the Master and Registrar, *ex officio* to re-insert, in the Jury List of any year, the name of any person under subsection (1), who, there is reason to believe, has become sufficiently conversant with the English language to serve as a juror.

[S. 57 amended by Act 29 of 1992.]

58. Illness of accused

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

59. Absence of a juror

(1) Where in the course of a trial, at any time prior to the delivery of the verdict, any juror for any sufficient cause is prevented from attending through the trial, or from further attendance at the time, or where any juror absents himself, and his further attendance cannot be immediately enforced, the Court may postpone the trial till the juror can attend, within a reasonable time.

(2) Where the attendance of such juror cannot be procured within a reasonable time, the Court may direct that a juror shall be added, and the jury re-sworn, or that the jury shall be discharged and a new jury empanelled, and in either case the trial shall commence anew.

60. When jury to be kept together

(1) It shall not be necessary in any case to keep the jury together during any adjournment previous to the close of the Judge's summing up, but the Court may, if it appears to it to be advisable in the interests of justice in any trial, require the jury to be kept together during any adjournment.

(2) Where the jury has retired to consider its verdict, the Court may give such direction as it thinks fit with respect to their accommodation, custody and refreshment.

61. Jurors to attend adjournments

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

62. Bankruptcy Division of Supreme Court

(1) There shall be a division of the Supreme Court to be called the Bankruptcy Division of the Supreme Court having jurisdiction to deal with all matters of bankruptcy, insolvency or the winding up of companies.

(2) The jurisdiction of the Bankruptcy Division of the Supreme Court shall vest in and be exercised by the Master and Registrar concurrently with the Judges.

(3) The jurisdiction of the Master and Registrar when sitting as a Judge of the Bankruptcy Division shall not extend to the trial of criminal offences against the law of bankruptcy, insolvency or the winding up of companies.

(4) The Master and Registrar when acting in the Bankruptcy Division shall have all the powers and privileges of the Judges.

(5) Several sittings of the Bankruptcy Division may be held concurrently for the despatch of business.

[S. 62 amended by Act 29 of 1992.]

63. Judge of Bankruptcy Division

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

(2) Where in any enactment dealing with bankruptcy or insolvency the words "Bankruptcy Court" or "Court" are used, they shall mean the Bankruptcy Division of the Supreme Court.

64. Custody of records

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

65. Registrar of Bankruptcy Division

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

[S. 65 amended by Act 29 of 1992.]

66. Registrar may tax costs

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

67. Power to make rules

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

68. Attendance of Ministère Public

Where the Court or any Judge certifies by writing that the attendance in Court of any law officer, as representing the Ministère Public, is essential to the proper administration of justice in any case—

- (a) where the State or the public revenue is concerned;

- (b) where the civil status of any person, or the guardianship of any minor or interdicted person is concerned,

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

[S. 68 amended by Act 48 of 1991.]

68A. Reference to Ministère Public optional

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

Sub-Part V – Appellate Jurisdiction of Supreme Court

69. Appellate jurisdiction of Supreme Court

(1) Subject to any other enactment, the Supreme Court shall have full power and jurisdiction to hear and determine all appeals, whether civil or criminal, made to the Court from—

- (a) a Judge in the exercise of his original jurisdiction;
- (b) —
- (c) the Bankruptcy Division;
- (d) the Registrar;
- (e) the Intermediate Court;
- (f) the Industrial Court;
- (g) a Magistrate;
- (h) any other Court or body established under any other enactment.

(2) An appeal to the Supreme Court under any of the enactments set out in the First Schedule shall be dealt with in the same manner as an appeal from a Magistrate pursuant to the District and Intermediate Courts (Civil Jurisdiction) Act, but the appellant shall not be required to furnish security.

(3) (a) Every appellant shall, not less than 45 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by rules of Court, skeleton arguments and submissions on the grounds of appeal.

(b) Every other party to an appeal shall, not less than 30 days before the date of the hearing of the appeal, serve on the other parties to the appeal and lodge in the Registry, in such form and manner as may be prescribed by Rules of Court, skeleton arguments and submissions on the grounds of appeal.

(c) Where any appellant or party to an appeal does not comply with any of the provisions of paragraph (a) or (b), the Court may make—

- (i) such order as to costs as it thinks fit; or
- (ii) a wasted costs order.

(4) (a) Where, pursuant to any enactment, a person may appeal to the Supreme Court against a decision of a Court or body specified in subsection (1), the notice of appeal shall contain a warning to the party on whom it is served to the effect that he shall, if he wishes to resist the appeal, comply with paragraph (b).

(b) Every person who is served with a notice of appeal and who wishes to resist the appeal shall, not later than 2 months after the date of service, serve on the appellant and file in the Registry a notice of his intention so to do.

(c) Any person on whom notice of appeal is served and who fails to comply with paragraph (b) shall be deemed to have elected not to resist the appeal.

[S. 69 amended by Act 29 of 1992; Act 15 of 1994; Act 15 of 2000.]

70. Appeals to be heard before at least 2 Judges

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

70A. Appeals to Judicial Committee in criminal matters

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

[S. 70A amended by Act 29 of 1990; Act 48 of 1991.]

70B. Frivolous appeals

Notwithstanding any other enactment, where an appeal is made to the Supreme Court in a civil case and the Court is satisfied that the appeal is frivolous or is an abuse of its process, it may order that interest on the judgment debt be paid at 15 per cent or such other rate as may be prescribed by Rules of Court made by the Judges.

[S. 70B amended by Act 15 of 1994.]

Sub-Part VI – Jurisdiction in Chambers of Judges

71. Matters disposed of by Judge in Chambers

(1) Subject to subsection (2), applications for or concerned with or in respect to any matter specified in this section and any matter connected therewith may, subject to the discretion of the Judge in any particular case to refer them to the Court, be finally disposed of at Chambers by a Judge's order, which order shall be a sufficient authority to the Registrar to issue thereon a rule of Court *de plano*—

- (a) applications to be let into possession of the unadministered property and rights of a party deceased or absent ("*envoi en possession*");
- (b) applications for affirmative declaration;
- (c) applications for cancellation or reduction of mortgage inscription;
- (d) applications for removal of seizures;
- (e) applications for the validity or nullity of attachments;
- (f) applications for partitions of property;
- (g) —
- (h) applications for admission of a relinquishment of immovable property;
- (i) applications touching absent persons under article 115 of the Code Civil Mauricien;
- (j) —
- (k) applications for homologations of compromises ("*transactions*") under article 441 of the Code Civil Mauricien;
- (l) applications for nomination of surveyors, appraisers, skilled witnesses ("*experts*").

(2) In applications under subsection (1) (c), (d), (e) or (f), no order shall be made by a Judge in Chambers, where a party to the application objects.

72. —

73. Power to grant an injunction

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

74. Rule or summons to show cause

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

[S. 74 amended by Act 29 of 1992; Act 20 of 1993.]

75. Record of Judge's orders made in Chambers

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

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

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

[S. 75 amended by Act 3 of 1985.]

76. Judges may issue warrant or summons

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

76A. Time for appeal

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

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

[S. 76A amended by Act 29 of 1992; Act 15 of 1994.]

Sub-Part VII —

77. – 79. —

PART III – INTERMEDIATE COURT AND DISTRICT COURTS

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

80. Establishment of Intermediate Court

(1) There shall be an Intermediate Court which shall be a Court of record and which shall have civil and criminal jurisdiction in all districts in such cases and matters and to such extent as are provided in this Part.

(2) For the purposes of subsection (1), the civil jurisdiction of the Intermediate Court shall extend to Rodrigues.

[S. 80 amended by Act 4 of 1999.]

81. President and Magistrates of Intermediate Court

(1) The Intermediate Court shall consist of a President, to be known as the President of the Intermediate Court, and such number of Magistrates as may be established under the Civil Establishment Act, to be known as Magistrates of the Intermediate Court.

(2) Notwithstanding subsection (1), a temporary Magistrate of the Intermediate Court may be appointed when and as often as, in the opinion of the Chief Justice, his appointment is required.

(3) The Chief Justice may direct that any civil case lodged before the Intermediate Court be tried in Rodrigues.

(4) For the purposes of subsection (3), the Chief Justice may—

- (a) direct one or more Magistrates to try the case;
- (b) designate a clerk who shall have the same powers and duties in relation to the case as those of the Head Clerk of the Intermediate Court.

(5) Any Magistrate to whom a direction is given under subsection (4) shall have the same powers and jurisdiction as those conferred on a Magistrate of the Intermediate Court.

[S. 81 amended by Act 4 of 1999.]

82. Sittings of Intermediate Court

(1) The Intermediate Court shall hold its sittings at such place, on such days and at such time as the Chief Justice may direct.

(2) Where the Intermediate Court adjourns any proceedings before the Court, it may resume them at such place or time as it may determine.

83. Seal of Intermediate Court

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

84. Audience before Intermediate Court

In any proceeding before the Intermediate Court, any of the following persons may address the Court—

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

[S. 84 amended by Act 46 of 1988.]

85. Proceedings before Intermediate Court

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

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

(3) Except where the case is heard before one Magistrate, the decision of the Intermediate Court shall—

- (a) where the Court is composed of 2 Magistrates, be the unanimous decision of the Magistrates;
- (b) where the Court is composed of 3 Magistrates, be the unanimous decision or the decision of the majority of the Magistrates.

(4) Where the Intermediate Court is composed of 2 Magistrates and there is a difference of opinion between them, the trial shall be started anew before 3 Magistrates.

(5) Where a person is prosecuted for an offence of rape under section 249 (1) of the Criminal Code, the case shall be heard—

- (a) by 2 Magistrates; or
- (b) where the President of the Intermediate Court so directs, by more than 2 Magistrates.

[S. 85 amended by Act 4 of 1999; s. 2 (a) of Act 30 of 2003.]

86. Cases coming for mention

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

(2) Where a criminal case is adjourned under subsection (1), the Magistrate adjourning the case may remand any accused party or may take or enlarge bail for his appearance.

(3) Where in a civil matter the plaintiff or the defendant or both of them do not appear, one Magistrate may exercise any of the powers specified in section 15 or 16, as the case may be, of the District and Intermediate Courts (Civil Jurisdiction) Act.

[S. 86 amended by Act 46 of 1988; Act 4 of 1999.]

87. Documents

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

88. Minutes of trials

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

(2) The minute of every unanimous judgment shall be signed by all the Magistrates and, if the judgment is not unanimous, each Magistrate shall sign the minute of his judgment.

(3) The evidence and proceedings in any criminal or civil case before the Intermediate Court may be recorded by tape or other technological means.

[S. 88 amended by Act 28 of 1999.]

89. Head Clerk

The senior officer attached to the Intermediate Court shall be known as the Head Clerk but any other officer attached to the Court shall have the same powers as the Head Clerk and may perform any act which the law requires the Head Clerk to perform.

90. Issue of process and other documents

(1) The Head Clerk shall issue all warrants, summonses or any other process and shall register all orders and judgments.

(2) The Head Clerk shall keep such books for such purposes as the Chief Justice may direct.

91. Custody of records

(1) The Head Clerk shall have the custody of all records of the Intermediate Court.

(2) The Head Clerk shall cause notice of all claims, informations, warrants and summonses and of all orders, judgments and executions and of all proceedings to be entered in a book which shall be kept at the Intermediate Court.

(3) Any entry in a book kept under subsection (1), or a copy of the entry purporting to be signed and certified as a true copy by the Head Clerk, shall in any proceedings in any Court be admitted, without further proof as evidence of the entry and of the proceedings to which it refers and of the regularity of such proceedings.

92. Other duties of Head Clerk

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

93. Establishment of District Courts

(1) There shall be a Court in every district to be known as a District Court, which shall be a Court of record and which shall have civil and criminal jurisdiction in such causes and matters and to such extent as are provided in this Part.

(2) The Chief Justice may, by regulations, declare that any District Court shall sit in 2 or more divisions and may determine the name by which every division shall be known.

(3) The Chief Justice may, by Order, direct that a District Court shall have jurisdiction in respect of any part of another district.

[S. 93 amended by Act 20 of 1993.]

94. District Magistrates

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

95. Sittings of District Court

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

96. Seal of District Court

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

96A. Audience before District Court

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

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

[S. 96A amended by Act 4 of 1999.]

97. Jurisdiction of District Magistrates

(1) Every District Magistrate shall have jurisdiction in every district, but the Chief Justice may direct that a District Magistrate shall have special charge of a District Court or, as the case may be, of any of its divisions.

(2) The Chief Justice may assign the Island of Rodrigues or any other island forming part of the State of Mauritius to any Magistrate who shall have and exercise therein the same rights, duties, powers and jurisdiction as a District Magistrate in the Island of Mauritius and shall, in addition, perform such administrative or other duties as may, with the consent of the Chief Justice, be assigned to him.

(3) Any assignment or direction under this section shall be signified in writing to the Magistrate by the Master and Registrar.

(4) For the purposes of this section, Round Island, Flat Island and Gabriel Island shall be deemed to be part of the district of Rivière du Rempart.

[S. 97 amended by Act 20 of 1993.]

98. District Clerk

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

99. Issue of process and other documents

(1) The District Clerk shall issue all warrants, summonses or any other process and shall register all orders and judgments.

(2) The District Clerk shall keep such books for such purposes as the Chief Justice may direct.

100. Custody of records

(1) The District Clerk shall have the custody of all records of the District Court to which he is attached.

(2) The District Clerk shall cause notice of all claims, informations, warrants and summonses and of all orders, judgments and executions and of all other proceedings, to be entered in a book which shall be kept at the District Court.

(3) Any entry in a book kept under subsection (1), or a copy of it purporting to be signed and certified as a true copy by the District Clerk, shall, in any proceedings before any Court, be admitted, without further proof, as evidence of the entry and of the proceedings to which it refers and of the regularity of such proceedings.

101. Other duties of District Clerk

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

102. Change of venue

(1) (a) Any Judge may, upon the application by or on behalf of the Director of Public Prosecutions, any District Magistrate or any private party to any cause or matter, civil or criminal, pending before a District Court, order, if he is satisfied that the interests of justice so require, that the venue of the cause or matter be transferred from that District Court to any other District Court.

(b) No change of venue shall be authorised if the trial of any cause or matter has begun on the merits.

(2) Any Judge's order under subsection (1) shall be subject to such conditions as the Judge thinks fit to impose and shall be final and conclusive.

(3) Any District Magistrate shall, on receiving notice of a Judge's order under subsection (1), stay all proceedings in relation to the cause or matter referred to in the order and shall forward the original warrants, informations, complaints, summonses, process or other documents before him to the District Court to which the cause or matter has been transferred.

(4) The warrants, informations, complaints, summonses, process or documents forwarded to a District Court under subsection (3) shall be deemed to have been issued, received or entered in the District Court to which they have been forwarded.

103. Errors as to venue

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

[S. 103 amended by Act 20 of 1993.]

Sub-Part II – Jurisdiction of Intermediate and District Courts

104. Civil jurisdiction

(1) Subject to this Part, the Intermediate Court or a District Court shall have jurisdiction in all civil cases where the sum or matter in dispute, whether in balance of account or otherwise, does not exceed the prescribed amount, exclusive of interest and costs.

(2) The jurisdiction conferred upon the Intermediate Court or a District Court by subsection (1) shall include the power to make such orders and to issue such warrants or other process as may be necessary for the enforcement of the rights of the parties and no order made or warrant or process issued under this subsection shall be deemed invalid by reason only that it is in the nature of a mandatory injunction or other equitable remedy.

(3) Orders in the nature of an injunction and all orders within the competence of the Intermediate Court or a District Court, as the case may be, which, if they were made in an action or matter in the Supreme Court, could in that Court be enforced by attachment or committal, may be enforced by order of the Intermediate Court or District Court, as the case may be, by attachment or committal.

104A. Small claims jurisdiction

Notwithstanding any other enactment, a District Court shall have jurisdiction in any civil action, where the sum claimed or matter in dispute does not exceed 25,000 rupees and the case has been lodged under Part IIA of the District and Intermediate Courts (Civil Jurisdiction) Act, to hear and determine the action in accordance with the procedure set out under that Part.

[S. 104A inserted by Act 4 of 1999.]

105. When jurisdiction not ousted

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

(2) Where a claim is made to goods seized in execution of a judgment and the value of the goods does not exceed the prescribed amount, the Intermediate Court or a District Court, as the case may be, shall have jurisdiction to

entertain the claim even if the goods have been seized in execution of a judgment of the Supreme Court, provided the claim is made within such period and in such form as may be prescribed by Rules of Court.

106. Action by landlord

(1) The Intermediate Court or a District Court shall have jurisdiction in any action by a landlord to obtain cancellation of a lease, with or without damages, or to recover possession of real property from a tenant or occupier, including an action where the value of the property exceeds the prescribed amount.

(2) Where the yearly rent or rental value of the property does not exceed the prescribed amount and the sum claimed for damages, if any, and for rent do not together exceed the prescribed amount, the cancellation of any lease, damages and possession of real property from a tenant or occupier may be claimed in the same plaint in which rent is claimed.

(3) This section shall not affect the operation of the Landlord and Tenant Act.

[S. 106 amended by Act 6 of 1999.]

107. Alimony

(1) A District Court shall have jurisdiction in actions for payment of alimony by a wife against her husband, or in a case where the law gives a right to an alimony.

(2) Notwithstanding any other enactment relating to the attachment of salaries or pensions, a District Court may, in execution of its judgment under this section, issue an attachment against any portion of any salary or pension of which the defendant may be in receipt.

108. Possessory actions

(1) A District Court shall have jurisdiction in possessory actions concerning any land, premises, runs of water or other immovable property or any other rights arising out of immovable property including actions where the value of the property or right exceeds the prescribed amount if—

- (a) the plaintiff claims to be maintained or restored to the quiet enjoyment and possession of the property or rights;
- (b) the possessory action is entered within one year from the imputed trespass; and
- (c) the plaintiff has been in quite possession for at least one full year before the imputed trespass.

(2) In any possessory action, damages not exceeding the prescribed amount may also be claimed.

(3) Notwithstanding article 25 of the Code de Procédure Civile, where the value of the property or right in relation to which a possessory action is brought does not exceed the prescribed amount, the District Court may, if the issue of ownership is raised, adjudicate on it.

109. Powers of Magistrate under Codes

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

110. Security for costs

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

111. Jurisdiction taken away in certain cases

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

(2) The Intermediate Court shall have no jurisdiction in actions for payment of alimony or possessory actions.

112. Criminal jurisdiction of Intermediate Court

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

- (a) any offence which a District Magistrate has jurisdiction to try;
- (b) any offence triable in Rodrigues or any island under the jurisdiction of the State of Mauritius other than the Island of Mauritius;
- (c) any offence specified in section 117;
- (d) any offence under sections 104, 122, 123 (2), 228 (3) and (4), 235, 239 (1), 249 (1), (4) and (5), 251, 257, 283, 284, 291 and 346 of the Criminal Code;
- (e) any offence under the Forests and Reserves Act;
- (f) any offence declared triable by the Intermediate Court under any other enactment.

[S. 112 amended by Act 26 of 1991.]

113. Penalties

(1) Subject to subsection (2), the Intermediate Court shall have jurisdiction to inflict the penalties and forfeitures specified in the law applicable to the offence charged.

(2) (a) Subject to paragraph (b) and any other enactment, the Court shall not award against any person penal servitude for more than 15 years or imprisonment for more than 10 years.

(b) In the case of a persistent offender, if the Court is satisfied that, by reason of his previous conduct and of the likelihood of his committing further offences, it is expedient to protect the public from him for a substantial period, the Court may increase the sentence to 20 years penal servitude.

(3) For the purposes of subsection (2)—

(a) “persistent offender” means any person who—

(i) commits any offence before the expiration of 3 years from his previous conviction or from his final release from prison after serving a sentence passed on such conviction, whichever is the latter; or

(ii) has been convicted on at least 3 previous occasions since he has attained the age of 21 and has, on those 3 previous occasions, received sentences the total length of which was not less than 10 years;

(b) a certificate purporting to be signed by the Commissioner of Prisons regarding the date of final release from prison of an offender shall be sufficient evidence of the facts therein stated without proof of his handwriting.

[S. 113 amended by Act 5 of 1985; Act 29 of 1992, s. 2 (a) of Act 36 of 2008 w.e.f. 6 December 2008.]

114. Criminal jurisdiction of District Courts

(1) Subject to subsection (2), every District Court before whom any person is charged with having committed an offence, not being one of the offences mentioned in section 116, shall have power and jurisdiction to hear, try and determine the charge and all questions of fact and law arising in the case and to convict the person, and on conviction, to award against him any penalties not exceeding the maximum penalties applicable to the offence of which the person is convicted.

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

[S. 114 replaced by Act 7 of 1986; amended by Act 5 of 1999, s. 2 (b) of Act 36 of 2008 w.e.f. 6 December 2008.]

115. Preliminary inquiry by Magistrate

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

[S. 115 amended by s. 2 (a) of Act 18 of 2011 w.e.f. 9 July 2011.]

116. Matters excluded from summary jurisdiction

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

- (a) offences under sections 50 to 79, 82, 83, 86, 88 to 91, 100 (1), 101, 102, 104, 122 to 124, 215 to 223, 228 (3) and (4), 234, 235, 236 (1) and (2), 239 (1), 249 (1) and (4), 251, 257, 259, 276 to 281 (where the offence is committed before the Supreme Court), 283, 284, 291, 346 and 347 of the Criminal Code;
- (b) attempts at or complicity in offences excepted from the jurisdiction of the Magistrate;
- (c) offences which, under any other enactment, are punishable by death or penal servitude for life, or are excluded from the jurisdiction of the Magistrate.

117. Referral of cases by DPP

Notwithstanding section 116, where a person is charged with any of the offences provided for by sections 77, 79, 124 and 214 of the Criminal Code, the Director of Public Prosecutions may, either before or after commitment of the accused, authorise the Magistrate to entertain the case and to proceed to adjudication thereon, and thereupon the Magistrate may try, acquit or convict the person charged with the offence.

118. Further powers of District Magistrates

(1) A District Magistrate may, and may be required to, even in a district which has not been assigned to him—

- (a) issue a warrant to apprehend a party charged, or a search warrant;
- (b) take bail for the appearance of a party arrested before the proper Court;
- (c) take and receive any dying declaration;
- (d) take and receive the deposition of a witness in the presence of a party charged with any offence specified in section 116;
- (e) order the performance of a post-mortem examination, and, for the purpose of such examination, order the body of a person which has already been interred to be disinterred.

(2) Any act done under subsection (1) shall be as valid as if it has been done by a Magistrate to whom the district in which the act is done has been assigned.

(3) Nothing in this section shall authorise a Magistrate to hear a case or to make an inquiry in any district which has not been assigned to him.

Sub-Part III – Miscellaneous

119. Qualifications of Magistrates

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

[S. 119 amended by Act 41 of 1991; Act 6 of 1993.]

120. Disqualification from holding other office

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

121. Control of Magistrates

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

122. Control of Intermediate and District Courts

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

123. Reports to Chief Justice

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

124. Replacement of Magistrates

(1) Subject to the Constitution, where a Magistrate is, by reason of illness, challenge or for any other reason, incapable of acting, the Chief Justice may direct another Magistrate to replace him.

(2) In this section, "Magistrate" means a Magistrate of the Industrial or Intermediate Court, a Senior District Magistrate or a District Magistrate.

[S. 124 amended by Act 46 of 1988; Act 29 of 1990.]

125. Challenge

(1) No challenge shall be allowed against a Magistrate save on the ground of personal interest in any cause or matter brought before him or of his being related to one of the parties in the suit by blood or marriage, either in the direct line or in the collateral line to the degree of first cousin inclusively.

(2) Any challenge against a Magistrate shall be deposited at the registry of the Court where the Magistrate sits and the Magistrate against whom the challenge is made shall either accept the challenge or set down in writing the reasons for not abstaining from hearing the cause or matter.

(3) Where a Magistrate does not abstain from hearing a cause or matter upon a challenge made against him, the reasons in answer to the challenge as set down in writing under subsection (2) shall be transmitted to the Registrar for submission to a Judge in Chambers.

(4) The Judge in Chambers shall determine the question of challenge summarily, in the absence of the parties and, where the challenge is not admitted, may award costs not exceeding 50 rupees against the party having made the challenge.

(5) Where a Magistrate considers that he should abstain from hearing a cause or matter, he shall give notice of his reason to the Chief Justice who shall adjudicate on it and make an order accordingly.

126. Reservation of questions of law

(1) Without prejudice to the right of appeal conferred by any enactment, the Intermediate Court or any District Court may state a case for the opinion of the Supreme Court on any question of law which may arise on the trial of any civil suit or matter and may adjudicate on it subject to the opinion of the Supreme Court.

(2) The Supreme Court may, after hearing the interested parties, determine any question of law on a case stated under subsection (1) for its opinion.

127. Contempt

(1) Where any person wilfully insults a Magistrate, the usher or any officer of a Court during a sitting of, or while in attendance in, the Court or wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court, any usher or officer of the Court may, with or without assistance from any person, by order of the Court, take the person into custody and detain him until the sitting of the Court ends.

(2) The Court may commit any person referred to in subsection (1) to prison for a period not exceeding 7 days or may impose upon him a fine not exceeding 100 rupees and, in a default of payment, may commit him to prison for a period not exceeding 7 days unless the fine is sooner paid.

128. Summonses to witnesses

(1) Any party to a civil or criminal case, inquiry or other proceeding may obtain at the registry of the Intermediate Court or the District Court, as the case may be, summonses to witnesses, with or without a clause requiring the production of books, deeds, papers or writings in their possession, and in any such summons any number of names may be inserted.

(2) Any person on whom a summons is served and who refuses or neglects, without sufficient cause, to appear or to produce any books, papers or writings required by the summons to be produced, or any person who appears in answer to a summons and who on being required to give evidence refuses to be sworn or affirmed or to make a solemn declaration, as the case may be, and to give evidence, shall be liable to a fine not exceeding 2,000 rupees to be inflicted by the Court before whom the default or refusal occurs.

(3) Any person not appearing when duly served with a summons may, by warrant under the hand of the Magistrate, be arrested and brought before him to give evidence.

(4) (a) In the case of any prosecution entered by any public officer acting in the discharge of his duties, any officer of the department to which the officer belongs, whose attendance as a witness is required, may be served by any other officer of the same department, duly authorised to that effect by the head thereof, with a notice in writing to attend Court.

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

[S. 128 amended by Act 20 of 1993; Act 4 of 1999.]

129. Examination of witnesses

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

[S. 129 amended by Act 20 of 1993.]

130. Evidence outside Court

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

131. Language to be used

(1) The language to be used in the Intermediate Court or in any District Court shall be English, but any person may address the Court in French.

(2) Where any person who is required to give evidence, satisfies the Court that he does not possess a competent knowledge of English or French, he may give his evidence in the language with which he is best acquainted.

(3) Where any person gives evidence in a language other than English or French, the proceedings shall, if the Court so directs, be translated.

132. Interpreters

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

133. Absence of Magistrate

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

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

134. —

[S. 134 amended by s. 2 (b) of Act 18 of 2011 w.e.f. 9 July 2011; repealed by s. 11 (1) (a) of Act 39 of 2011 w.e.f. 1 June 2012.]

135. Error and *certiorari* taken away

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

(2) —

[S. 135 amended by s. 2 of Act 27 of 2006 w.e.f. 18 December 2006.]

136. Transfer of proceedings

(1) In any action commenced in the Supreme Court, the Court may at any time, on application made in that behalf by any party by way of motion, make an order that the claim and counterclaim, if any, or, if the only matter remaining to be tried is the counterclaim, the counterclaim, be transferred to any Court which has jurisdiction to hear and determine the subject matter of the claim or counterclaim, as the case may be, and the amount thereof.

(2) Where an order is made under subsection (1), the costs of the proceedings before the Supreme Court, including the costs of the application for the transfer, shall be in the discretion of the Supreme Court.

(3) The Court to which any claim or counterclaim has been transferred by an order made under subsection (1) shall adjudicate upon the claim or counterclaim as if the action had been commenced there and the provisions regulating the procedure of that Court in civil matters shall apply, *mutatis mutandis*, to any claim or counterclaim so transferred.

(4) (a) Where—

- (i) the trial of an action which has been entered in the Intermediate Court has not yet begun; and
- (ii) the sum or matter in dispute, whether in balance of account or otherwise, but exclusive of interest and costs, does not exceed the prescribed amount in relation to District Courts,

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

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

137. – 154. —

PART IV – LAW IN FORCE AND TO BE APPLIED IN COURTS

155. – 156. —

157. Extension of enactments to other islands

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

[S. 157 amended by Act 48 of 1991.]

158. Power to legislate for other islands

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

[S. 158 amended by Act 48 of 1991.]

159. Penalties for contravention of regulations

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

160. Regulations to be laid before Assembly

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

PART V – EVIDENCE

Sub-Part I – General Provisions as to Evidence

161. Interpretation

In this Part—

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

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

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

[S. 161 amended by s. 2 (b) of Act 30 of 2003.]

161A. Persons may be excluded from proceedings

Any Judge, Magistrate or other person having by law authority to hear, receive or examine evidence may, where he considers it necessary or expedient—

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

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

161B. Live video and television link

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

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

[S. 161B inserted by s. 2 (c) of Act 30 of 2003; s. 11 (1) (b) of Act 39 of 2011 w.e.f. 1 June 2012.]

161C. Summons to judicial officer

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

[S. 161C, previously 161B, inserted by Act 20 of 1993; amended by s. 2 (c) of Act 30 of 2003.]

162. English law of evidence to be followed

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

163. No exclusion because of relationship or interest

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

164. Saving as to accused person and spouse

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

165. Questions tending to incriminate

(1) Nothing in this Sub-Part shall render any person (other than a bankrupt examined before any Court or Judge under any law relating to bankruptcy) compellable to answer any question the answer to which would tend

continued on page C54 – 39

to expose him to prosecution for an offence punishable by law, or shall render any person compellable to answer the question whether he has or has not committed adultery.

(2) Where any person has stated voluntarily as a witness that he has or has not committed adultery, he may be further examined or cross-examined upon such statement.

166. Proof of occupation of immovable property

(1) (a) In any claim to rent or indemnity for the occupation of immovable property, oral evidence shall, when a lease is denied and is not completely established by writing, be admissible to prove or disprove the occupation and the amount or payment of the indemnity, and the party suing shall be entitled to the indemnity although it may result from the oral evidence given that the occupation existed under a lease.

(b) Such a claim for indemnity shall be barred by one year's prescription.

(2) Nothing in this section shall alter any law by virtue of which the possessor of immovable property is entitled to retain the fruits of the property and to make them his own.

167. Examination on *faits et articles*

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

168. Insufficiency of notices not to exclude evidence

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

(2) The State shall not be condemned in costs in any criminal trial.

[S. 168 amended by Act 48 of 1991.]

169. State need not file list of witnesses

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

[S. 169 amended by Act 48 of 1991.]

170. Copies of public documents admissible

(1) At any trial, the contents of any record, book, deed, map, plan or other document in the official custody of the Supreme Court, of the Conservator of Mortgages, of any Government department, of the Intermediate Court, of any District Court, or of any notary may be proved by means of a copy or extract certified under the hand of the Registrar, the Conservator of Mortgages, the chief clerk or head of such department, the Head Clerk of the Intermediate Court, the District Clerk, or such notary as the case may be, to be a true copy or extract.

(2) The copy shall be admissible in evidence at any trial to the same extent and in the same manner as the original would but for this Act be admissible.

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

171. Custodians of public documents

(1) (a) No person having the official custody of such original documents as are mentioned in section 170 shall be subpoenaed or summoned to produce the documents, nor shall they be admissible in evidence at any trial except upon the order of a Judge.

(b) Such order shall only be made where it appears to the Judge that the authenticity of the document itself is in question, or that the proof sought to be given cannot be given by means of a copy or extract, and that the proof of the authenticity or the proof sought to be given is material to the matter at issue, and in every such case the same fee shall, in addition to the allowance to be paid for the attendance of the person so subpoenaed or summoned, be charged for the production of such document as would have been payable for a copy or extract.

(2) Notwithstanding subsection (1), any record of any Court shall be admissible in evidence in the Court to which its custody belongs to the same extent and in the same manner as it would have been if this section had not been enacted.

172. Privilege not affected

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

173. Statements of witnesses

(1) (a) Any witness may be cross-examined at any trial as to previous statements made by him in writing or reduced into writing relative to the subject matter of the trial, without the writing being shown to him, or read, but if it is intended to contradict the witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him.

(b) The Court may at any time during the trial require the production of the writing to be used for the purposes of the trial in any way that to the Court seems proper.

(2) (a) It shall be competent to examine any witness who may be called in any judicial proceeding as to whether he has on any specified occasion made a statement on any matter pertaining to the issue which is different from the evidence given by him in that proceeding, and it shall be competent in the course of such proceeding to adduce evidence to prove that the witness, whether he has shown himself hostile or not, has made a different statement on the occasion specified.

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

174. *De bene esse* proceedings

(1) Any party who intends to call a witness who on the day of the trial—

- (a) will not be in Mauritius; or
- (b) may not be alive or fit to give evidence because of his failing health,

shall make an *ex parte* application of a *de bene esse* hearing of the witness before the Judge in Chambers.

(2) Where an application under subsection (1) is granted, the Judge shall direct that the order be served on all other parties to the proceedings.

(3) The *de bene esse* hearing shall take place on a date to be fixed by the Judge in Chambers.

(4) The *de bene esse* proceedings shall form part of the record of the main case and shall be admitted in evidence.

[S. 174 amended by Act 15 of 2000.]

175. Translation of evidence

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

176. Translation where not necessary in civil cases

Where in any proceedings before the Supreme Court on the civil side or the Master and Registrar or the Judge in Bankruptcy, a witness speaks in a language which is well known to both plaintiff and defendant as the case may be, the Judges, the law officers of the State, the Master and Registrar or the Judge in Bankruptcy and the Counsel engaged in the case, the examination of that witness may take place in that language and it shall not be

necessary to translate the deposition or answers in English, except where the depositions or answers are given in Creole, in which case they shall be taken down by the Master and Registrar or other officer of the Court.

[S. 176 amended by Act 48 of 1991; Act 29 of 1992.]

177. Recording evidence given before Supreme Court

(1) (a) In any criminal case heard before the Supreme Court, and at every stage thereof, the presiding Judge shall, save as hereinafter provided, take down in writing the oral evidence given before the Court, and in every civil case so heard the Master and Registrar or other officer of the Court performing the duties of Master and Registrar in Court shall, if the presiding Judge so directs, take down in writing, the oral evidence given before the Court.

(b) Where the presiding Judge in a criminal case finds himself temporarily incapacitated from taking down such evidence, he may direct that such evidence be taken down by the Master and Registrar, or by the officer performing the duties of Master and Registrar in Court or by any officer of the Court or other person whom the presiding Judge considers competent, reliable and suitable for the purpose.

(2) (a) Before the Master and Registrar, officer, or other person other than the presiding Judge takes down in writing any oral evidence, an oath shall be tendered to and taken by such Master and Registrar, officer or person for the accurate and faithful recording of such oral evidence according to the true purpose and meaning thereof, and such oath shall be in such terms as seem apt and sufficient to the presiding Judge.

(b) Where the Master and Registrar or officer of the Court performing the duties of Master and Registrar in Court, has once duly taken such oath, he shall not again be required to take such oath in respect of the same or any subsequent case.

(3) Notwithstanding subsection (1), the evidence and proceedings in any criminal or civil case before the Supreme Court may be recorded by tape or other technological means and the Judge may give such directions with regard to the recording of evidence and proceedings as he deems fit.

[S. 177 amended by Act 29 of 1992; Act 28 of 1999.]

177A. Objection to form of evidence

(1) Where under this Act or any other enactment, the evidence or proceedings are recorded by tape or other technological means—

- (a) no objection shall be allowed or taken on the ground that there is a defect in the recording of the evidence or the form of the evidence recorded;
- (b) any defect in the recording of the evidence shall not affect the validity of the proceedings.

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

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

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

[S. 177A added by Act 28 of 1999.]

178. Inspection of property

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

179. Penalty for non-attendance of witness

(1) Without prejudice to section 128, any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend at any subsequent sitting, shall be liable by order of the Court to a fine not exceeding 2,000 rupees.

(2) The fine shall be levied by attachment and sale of any movable property belonging to the witness within the limits of the jurisdiction of the Court.

(3) In default of recovery of the fine by attachment and sale, the witness may, by order of the Court, be imprisoned for a term not exceeding 15 days unless the fine is paid before the end of that term.

(4) For good cause shown, the Court may remit or reduce any fine imposed under this section.

[S. 179 amended by Act 4 of 1999.]

180. —

181. Certificates of certain officers as evidence

(1) (a) In subsection (2), “officer” means, subject to paragraph (b), a public officer who is the holder of, or is acting in, an office as—

- (i) Chief Government Analyst;
- (ii) Government Analyst;
- (iii) Medical and Health Officer;
- (iv) Pathologist;

- (v) Police Medical Officer;
- (vi) Principal Forensic Science Officer;
- (vii) Principal Veterinary Officer;
- (viii) Scientific Officer (Forensic Science);
- (ix) Senior Forensic Laboratory Assistant;
- (x) Senior Pathologist;
- (xi) Senior Police Medical Officer;
- (xii) Veterinary Officer;
- (xiii) Police Officer; or
- (xiv) Director, Pharmaceutical Services.

(b) Where an office specified in paragraph (a) is restyled, a public officer who is the holder of, or is acting in, the restyled office shall, for the purposes of subsection (2), be an officer.

(2) In all proceedings before any Court or before any person authorised by law or by consent of parties to hear, receive and examine evidence, a certificate under the hand—

- (a) of any officer; or
- (b) in the case of a medical certificate, of the officer in charge of the hospital where the examination of the person to whom the certificate relates was carried out,

shall be sufficient evidence of the fact therein stated without proof of the handwriting of such officer unless the Court or such person authorised as aforesaid decides that the attendance of the officer is necessary.

[S. 181 amended by Act 29 of 1992; Act 4 of 1999; Act 5 of 1999.]

181A. Microfilms and other reproductions

(1) Where the copy of a document which is admissible in evidence—

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

the copy shall be admissible in evidence in any legal proceedings.

(2) In subsection (1), “authorised person” means—

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

181B. Admissibility of out-of-court statements

(1) A statement made, whether orally or in a document or otherwise, by a person, whether called as a witness or not, shall, subject to subsection (2)

and to Rules of Court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence by the witness would be admissible.

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

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

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

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

[S. 181B inserted by Act 18 of 1998; amended by s. 11 (1) (e) of Act 39 of 2011 w.e.f. 1 June 2011.]

181C. Admissibility of certain records in civil proceedings

(1) A statement contained in a document shall, subject to section 181E, to subsection (2) and to Rules of Court, be admissible in any civil proceedings as evidence of any fact or opinion stated therein of which direct oral evidence would be admissible, where the document is, or forms part of, a record compiled, by a person acting under a duty, from information which—

- (a) was supplied by a person who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; or
- (b) in case the information was not supplied directly by the person referred to in paragraph (a) to the compiler of the record, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

(2) Where a party wishing to put in a statement under subsection (1) has called, or intends to call, as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement shall not be given in evidence—

- (a) without leave of the Court; and

- (b) before the conclusion of the examination-in-chief of the person who originally supplied the information.

(3) For the purposes of subsection (1), “person acting under a duty” includes a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

[S. 181C inserted by Act 18 of 1998 but incorrectly numbered 181B; amended by s. 11 (1) (c) of Act 39 of 2011 w.e.f. 1 June 2012.]

181D. Evidence in rebuttal

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

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

[S. 181D inserted by Act 18 of 1998.]

181E. Admissibility of statements produced by computers in civil proceedings

(1) In this section, “computer” means any device for storing and processing information, whether or not the information is derived from other information by calculation, comparison or otherwise.

(2) Where, over a period, the function of storing or processing information for the purpose of carrying an activity was regularly performed by—

- (a) a combination of computers;
- (b) different computers operating in succession;
- (c) different combinations of computers operating in succession;
- (d) the successive operation of one or more computers and one or more combinations of computers,

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

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

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

- (b) information of the kind contained in the statement, or of the kind from which the information is derived, was regularly supplied to the computer over that period in the ordinary course of that activity;
- (c) the computer was operating properly during the material part of that period; and
- (d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of that activity.

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

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

shall be evidence of any matter stated in the certificate.

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

181F. Proof of statements contained in a document

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

[S. 181F inserted by Act 18 of 1998.]

182. Illness of juror

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

183. This Sub-Part extended to other islands

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

Sub-Part II – Evidence in Criminal Cases

184. Competency of witnesses in criminal cases

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

(2) (a) A person so charged shall not be called as a witness in pursuance of this Sub-Part except upon his own application.

(b) The failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged, to give evidence, shall not be made the subject of any comment by the prosecution.

(c) The wife or husband of the person charged shall not, save as provided in this Sub-Part, be called as a witness in pursuance of this Sub-Part, except upon the application of the person so charged.

(d) Nothing in this Sub-Part shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage.

(e) A person charged and being a witness in pursuance of this Sub-Part may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged.

(f) A person charged and called as a witness in pursuance of this Sub-Part shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

- (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is then charged;
- (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecution or the witnesses for the prosecution; or
- (iii) he has given evidence against any other person charged with the same offence.

(g) Every person called as a witness in pursuance of this Sub-Part shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

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

185. Evidence of person charged

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

186. Right of reply

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

187. Evidence of husband and wife

(1) The wife or husband of a person charged with an offence against the person, property or conjugal rights of such husband or wife, or against the person or property of any child of either party to the marriage, may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Sub-Part shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

188. Application

This Sub-Part shall apply to all criminal proceedings.

188A. Admissibility of sound recording

(1) Subject to subsection (2), the sound recording of any evidence given by any person charged with an offence shall be admissible in evidence in any criminal proceedings where it is given to an investigating officer in the course of an investigation of an offence.

(2) In the case of evidence of an admission, the sound recording of any evidence shall be admissible where—

- (a) the recording is made in the course of official questioning in accordance with the requirements set out in the Third Schedule; and
- (b) the admission is made by a person who is reasonably suspected by an investigating officer as having committed an offence.

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

(4) In this section—

“investigating officer” means a police officer or any public officer whose function or duties includes functions or duties in respect of prevention or investigation of offences;

“sound recording” includes recording of visual images or sounds.

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

[S. 188A inserted by Act 4 of 1999.]

188B. Admissibility of written statements

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

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he could be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
- (d) none of the other parties or their Counsel, within 7 days from the service of the copy of the statement, has served a notice on the party proposing to tender it in evidence objecting to the statement being so tendered.

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

(3) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

- (a) where the statement is made by a person under the age of 21, the age of the person shall be stated;
- (b) where it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
- (c) where it refers to any other document as an exhibit, the copy served on any party to the proceedings under subsection (1) (c) shall be accompanied by a copy of that document or by such

information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding subsection (1) —

- (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; or
- (b) the Court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the Court and give evidence.

(5) An application to a Court may be made under subsection (4) (b) before the hearing and, on any such application, the powers of the Court shall be exercisable —

- (a) in the case of a District Court, by the Magistrate of the District Court;
- (b) in the case of the Intermediate Court, by the President of the Intermediate Court;
- (c) in the case of the Industrial Court, by the President of the Industrial Court;
- (d) in the case of the Supreme Court, by any Judge of the Supreme Court.

(6) The statement admitted in evidence under this section shall be read aloud at the hearing unless the Court directs that only part of the statement shall be so read and, where the Court so directs, an account shall be given orally of the part of the statement that is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(8) A document required by this section to be served on any person may be served —

- (a) by delivering it to him or to his Counsel;
- (b) by addressing it to him and leaving it as his usual or last known place of abode or place of business or by addressing it to his Counsel and leaving it at his office;
- (c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his Counsel at his office; or
- (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body corporate at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary or clerk of that body corporate at that office.

[S. 188B inserted by s. 3 (k) of Act 4 of 1999 w.e.f. 14 February 2000; amended by s. 11 (1) (e) of Act 39 of 2011 w.e.f. 1 June 2011.]

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

(1) In any criminal proceedings under the Piracy and Maritime Violence Act, a statement made out of Court shall be admissible as evidence, with leave of the Court, of any matter stated when—

- (a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter;
- (b) the person who made the statement is identified to the Court's satisfaction; and
- (c) one of the 5 conditions specified in subsection (2) is satisfied.

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

- (a) is dead;
- (b) is unfit to be a witness because of his bodily or mental condition;
- (c) is outside Mauritius and it is not reasonably practicable to secure his attendance;
- (d) cannot be found although such steps as is reasonably practicable to take to find him have been undertaken; or
- (e) through fear, does not give or does not continue to give oral evidence in the proceedings, either at all or in connection with the subject matter of the statement.

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

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

[S. 188C inserted by s. 11 (1) (d) of Act 39 of 2011 w.e.f. 1 June 2012.]

189. Translation where not necessary in criminal cases

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

[S. 189 amended s. 23 (2) of by Act 48 of 1991 w.e.f. 12 March 1992.]

189A. Evidence of formal character

(1) In all criminal proceedings before any Court, an affidavit sworn by a person whose evidence is of a formal character shall be sufficient evidence of the facts stated therein.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such person as to the facts contained in his affidavit.

Sub-Part III – Declarations instead of Oath

190. Declaration instead of oath

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

191. Form of declaration

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

“I do solemnly, sincerely and truly declare”

and shall then proceed with the words of the oath prescribed by law, omitting words of imprecation or calling to witness.

192. Solemn affirmation

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

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

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

(3) —

continued on page C54 – 53

(4) Without prejudice to subsections (1) and (2), any party to, or witness in, any judicial proceeding, civil or criminal, who is a Hindu or Moslem, or any person whose religious belief prevents him from taking the ordinary oath, may be called upon—

(a) by any other party to such proceeding; or

(b) in any criminal proceeding, by the prosecutor or the accused, to give evidence on oath or solemn affirmation in any form common among, or held binding by, persons of the race or persuasion to which he belongs and not repugnant to justice or decency, and the Court may tender such oath or affirmation notwithstanding subsection (1) or any other enactment.

(5) Where the oath or affirmation is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and the Court on being satisfied that the oath or affirmation has been administered may proceed to take evidence of the party or witness accordingly.

(6) Where the party or witness refuses to make the oath or solemn affirmation referred to in subsection (4), he shall not be compelled to make it, but shall give evidence on making the solemn affirmation, referred to in subsection (1), or the declaration prescribed by section 190, and the Court shall record as part of the proceedings, the nature of the oath or affirmation proposed, the fact that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

(7) Subsections (4), (5) and (6) shall apply to articles 1357 to 1369 of the Code Civil Mauricien.

193. Validity of oath, affirmation or declaration

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

194. Form of declaration in writing

Every declaration in writing shall commence—

“I, of do solemnly, sincerely and truly declare
.....”

and the form in lieu of jurat shall be—

“Delivered at this day of

Before me”

195. Penalty for swearing false affidavit

(1) Any person who swears a false affidavit where an affidavit is required or may be used, shall be liable to penal servitude for a term not exceeding 3 years and to a fine not exceeding 10,000 rupees.

(2) The prosecution may, in any case, take place before a District Court or the Intermediate Court at the discretion of the Director of Public Prosecutions.

[S. 195 amended by Act 5 of 1999.]

196. Swearing with uplifted hands

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

PART VI – MISCELLANEOUS

197. Reasons of judgment in criminal matters

(1) Notwithstanding any other enactment, a Judge or Magistrate, sitting without a jury and exercising his jurisdiction, whether original or appellate, in a criminal matter, shall, after hearing the case on both sides, record his judgment in writing.

(2) Every such judgment shall contain the point or points for determination, the decision and the reasons for the decision, and shall be dated and signed by the Judge or Magistrate at the time of judgment.

197A. Interest on judgment debts in accident cases

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

[S. 197A amended by Act 29 of 1990; Act 15 of 1994.]

197B. Costs in exaggerated claims

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

[S. 197B inserted by Act 29 of 1990.]

197C. Enquiry as to genuineness of deed

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

[S. 197C inserted by s. 3 (l) of Act 4 of 1999 w.e.f. 14 February 2000.]

197D. Wasted costs order

(1) The Magistrate, Master, Judge in Chambers or Court, as the case may be, may, at any stage of any civil proceedings, on an application by a party who has incurred wasted costs, order the legal representative of a party to meet personally the whole or part of those costs as specified in the Fifth Schedule.

(2) In this section—

(a) “wasted costs” means any costs incurred by a party—

- (i) as a result of any improper, unreasonable or negligent act or omission on the part of any legal representative or employee of the representative; or
- (ii) which, in the light of any act or omission occurring after the costs were incurred, the Court considers it unreasonable to expect that party to pay.

(3) Before making a wasted costs order, the Magistrate, Master, Judge in Chambers or Court, as the case may be, shall give the legal representative a reasonable opportunity to show cause why he or it should not make a wasted costs order and may make such enquiry as he or it thinks fit.

(4) Where the Magistrate, Master, Judge in Chambers or Court makes a wasted costs order, he or it shall specify the amount to be paid in accordance with the costs as specified in the Fifth Schedule.

(5) The Magistrate, Master, Judge in Chambers or Court may direct that notice shall be given to the legal representative’s client, in such manner as he or it may direct—

- (a) of any proceedings under this section;
- (b) of any order made by him or it against his legal representative.

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

[S. 197D inserted by s. 2 (d) of Act 15 of 2000 w.e.f. 30 June 2000.]

197E. Adjournment costs

Where any party applies for an adjournment at any stage of any civil proceedings, the Magistrate, Master, Judge in Chambers or Court, may, where he or it grants the postponement on good cause shown, and there is an

application by the party who has incurred costs, make such order as to costs as specified in the Fifth Schedule including costs in respect of the attendance of witnesses.

[S. 197E inserted by s. 2 (d) of Act 15 of 2000 w.e.f. 30 June 2000.]

197F. Vexatious proceedings

(1) Where, on an application made by the Attorney-General, a Judge is satisfied that any person has habitually, persistently and without any reasonable grounds—

- (a) instituted vexatious legal proceedings against the same person or against different persons; or
- (b) made vexatious applications in any legal proceedings instituted by him or another person,

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

- (i) no legal proceedings shall, without the leave of the Supreme Court, be instituted by him in any Court;
- (ii) any legal proceedings instituted by him in any Court before the making of the order shall not be continued by him without the leave of the Supreme Court; or
- (iii) no application, other than an application for leave under this section, shall, without the leave of the Supreme Court, be made by him in any legal proceedings instituted by him or another person in any Court.

(2) The Master and Registrar of the Supreme Court shall cause a copy of any order made under subsection (1) declaring any person to be a vexatious litigant to be published in the *Gazette* and in such other manner as a Judge may direct.

(3) An order made under subsection (1) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) Leave for the institution or continuance of, or for the making of an application in, any legal proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the Supreme Court is satisfied that the proceedings or the application are not an abuse of the process of the Court in question and that there are reasonable grounds for the proceedings or application.

(5) No appeal shall lie from a decision of the Supreme Court refusing leave for the institution or continuance of, or for the making of an application in, legal proceedings by a person who is the subject of an order for the time being in force under subsection (1).

(6) The provisions of this section shall be in addition to and not in derogation from—

- (a) the provisions of any other law for the striking out of vexatious pleadings or prevention of abuse of process of the Court, or

which require consent, sanction or approval in any form of any other authority for the institution or continuance of any civil or criminal proceedings;

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

[S.197F inserted by s. 3 of Act 6 of 2011 w.e.f. 30 April 2011.]

198. Rules of Court

(1) The Chief Justice may, after consultation with the Rules Committee and the Judges, make such rules as he thinks fit for the purposes of this Act.

(2) The following enactments shall be deemed to have been made by the Chief Justice under subsection (1)—

- (a) River Rules of 12 June 1885;
- (b) River Rules of 22 October 1886;
- (c) Bankruptcy Rules 1888;
- (d) Sale of Immovable Property Rules 1889;
- (e) Bankruptcy Court Rules 1899;
- (f) Three-Judge Cases Rules 1906;
- (g) Rules of the Supreme Court (State Proceedings) 1954;
- (h) District Courts (State Proceedings) Rules 1954;
- (i) Intermediate Court Rules 1971;
- (j) Letters of Requests Rules 1985;
- (k) Supreme Court (Jury Lists and Panels) Rules 1992;
- (l) District, Industrial and Intermediate Court Rules 1992;
- (m) District Court (Execution of Judgments) Regulations 1997;
- (n) Supreme Court Rules 2000 and Legal Fees and Costs Rules 2000.

(3) Rules made under subsection (1) may provide for—

- (a) the practice and procedure before any Court;
- (b) the means by which particular facts may be proved and the mode in which evidence thereof may be given in civil cases before any Court;
- (c) the forms, registers and books that may be required for the transaction of the business of the Courts;
- (d) the fees to be charged and to accrue to the Consolidated Fund in respect of any proceedings before any Court;
- (e) the sums allowable on taxation in respect of any proceedings before any Court;
- (f) the electronic filing of documents and management of cases;
- (g) the practice and procedure for mediation before a Judge.

[S. 198 repealed and replaced by s. 2 (e) of Act 15 of 2000 w.e.f. 30 June 2000; amended by s. 6 (b) of Act 20 of 2009 w.e.f. 19 December 2009.]

199. Rules Committee

(1) There shall, for the purposes of section 198, be set up a Rules Committee which shall consist of—

- (a) a Judge appointed by the Chief Justice, who shall be the Chairperson;
- (b) the Master or his representative;
- (c) a representative of the Bar Council;
- (d) a representative of the Mauritius Law Society;
- (e) a representative of the Attorney-General's Office;
- (f) 2 other law practitioners appointed by the Chief Justice.

(2) The functions of the Rules Committee shall be to advise and make recommendations to the Chief Justice in respect of the rules to be made under section 198.

(3) For the purpose of its functions, the Rules Committee may undertake such review as it thinks fit and give its advice or make its recommendations, on its own initiative, or as requested by the Chief Justice.

(4) The Rules Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

(5) The Chairperson and members of the Rules Committee shall be paid such allowances as may be determined by the Chief Justice.

[S. 199 added by Act 15 of 2000.]

200. Amendment of Schedules

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

[S. 200 added by Act 15 of 2000.]

201. Practice directions

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

[S. 201 added by Act 15 of 2000.]

FIRST SCHEDULE

[Section 69]

Ayurvedic and Other Traditional Medicines Act
Bus Industry Property Acquisition Act
Employment Rights Act
Excise Act

FIRST SCHEDULE—continued

Forests and Reserves Act
Ground Water Act
Medical Council Act
National Agricultural Products Regulatory Office Act
Nursing Council Act
Occupational Safety and Health Act
Professional Architects' Council Act
Registered Professional Engineers Council Act
Veterinary Council Act
Waste Water Management Authority Act

[First Sch. amended by Act 29 of 1992.]

SECOND SCHEDULE

[Section 113]

[Not reproduced – Obsolete.]

THIRD SCHEDULE

[Section 188A]

Sound Recording of Evidence

1. Sound recording of evidence shall be carried out in such manner as to instill confidence in its reliability as an important and accurate record of the interview.
2. When the suspect is brought in the interview room the recording officer shall without delay but in the sight of the suspect load the tape recorder with clean tape and set it to record.
3. The tape shall be unwrapped or otherwise opened in the presence of the suspect and each tape shall bear an identification number.
4. The recording officer shall then formally tell the suspect the following in relation to the sound recording—
 - (a) that the interview is being sound recorded, specifying the identification number of the tape;

- (b) his name and rank and the name and rank of any other persons (including legal representatives) present;
 - (c) the name of the suspect;
 - (d) the date, time of commencement and place of the interview.
5. The officer shall then caution the suspect in the following terms—
“You are not obliged to say anything unless you wish to do so but whatever you say will be recorded and may be used as evidence in Court against you.”
6. The officer shall remind the suspect of his right to legal representation.
7. The officer shall then tell the suspect in ordinary language—
- (a) what offence he is investigating;
 - (b) what fact he is asking the suspect to account for;
 - (c) that he believes this fact may be due to the suspect’s taking part in the commission of the offence in question;
 - (d) that a record is being made of the interview and may be given in evidence if he is brought to trial.
8. (1) If the suspect raises any objection to the interview being tape recorded either at the outset or during the interview or during a break in the interview, the officer shall explain the fact that the interview is being tape recorded and that the suspect’s objections shall be recorded on tape.
- (2) (a) When any objection has been recorded on tape or the suspect has refused to have his objection recorded, the officer may turn off the recorder.
- (b) In this eventuality he shall say that he is turning off the recorder and give his reasons for doing so and then turn it off.
- (3) The officer shall then make a written record of the interview.
- (4) If, however, the officer reasonably considers that he may proceed to put questions to the suspect with the tape recorder still on, he may do so.
9. If the suspect indicates that he wishes to tell the police officer about matters not directly connected with the offence of which he is suspected and that he is unwilling for these matters to be recorded on tape, he shall be given the opportunity to tell the police about these matters after the conclusion of the formal interview.
10. (1) When the recorder indicates that the tapes have only a short time left to run, the officer shall tell the suspect that the tapes are coming to an end and round off that part of the interview.
- (2) If the officer wishes to continue the interview but no second set of tapes is readily available, he shall obtain a set.
- (3) The suspect shall not be left unattended in the interview room.
- (4) The officer shall remove the tapes from the recorder and insert the new tapes which shall be unwrapped or otherwise opened in the suspect’s presence.
- (5) (a) The recorder shall then be set to record on the new tapes.
- (b) Care must be taken, particularly when a number of sets of tapes have been used, to ensure that there is no confusion between the tapes.

(c) This may be done by marking the tapes with an identification number immediately after they are removed from the recorder.

11. (1) When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded on tape.

(2) When there is a break in questioning under caution the interviewing officer shall ensure that the person being questioned is aware that he remains under caution and of his right to legal advice. If there is any doubt, the caution shall be given again in full when the interview resumes.

12. (1) If there is a failure of equipment which can be rectified quickly, for example by inserting new tapes, the appropriate procedures set out in paragraph 10 shall be followed, and when the recording is resumed the officer shall explain what has happened and record the time the interview resumes.

(2) If, however, it will not be possible to continue recording on that particular recorder and no replacement recorder or any other recorder in another interview room is readily available, the interview may continue without being recorded. In such circumstances, the interview may be proceeded with in writing.

13. The whole of each interview shall be recorded. At the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he has said and to add anything he may wish.

14. (1) One tape, referred to herein as the master tape, will be sealed before it leaves the presence of the suspect.

(2) A second tape will be used as a working copy. The master tape is either one of the two tapes used in a twin deck machine or the only tape used in a single deck machine.

(3) The working copy is either the second tape used in a twin deck machine or copy of the master tape made by a single deck machine.

15. (1) At the interview, including the taking and reading back of any written statement, the time shall be recorded and the recorder switched off.

(2) The master tape shall be sealed with a master tape label and treated as an exhibit.

(3) The officer shall sign the label and ask the suspect and any third party present to sign it also.

(4) If the suspect or third party refuses to sign the label, another appropriate officer shall be called into the interview room and asked to sign it.

16. The officer shall make a note in writing of the fact that the interview has taken place and has been recorded on tape, its time, duration and date and the identification number of the master tape.

17. (1) The officer in charge of each police station at which interviews with suspects are recorded shall make arrangements for master tapes to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes.

(2) (a) A police officer has no authority to break the seal on a master tape which is required for criminal proceedings.

(b) If it is necessary to gain access to the master tape, the police officer shall arrange for its seal to be broken in the presence of the suspect and his legal adviser.

(c) The suspect or his legal adviser shall be informed and given a reasonable opportunity to be present.

(d) If the suspect or his legal representative is present, the suspect shall be invited to reseal and sign the master tape.

(e) If he refuses or is absent, this shall be done by the police officer in the presence of another officer not below the rank of Superintendent of Police.

(3) In all other cases, the master tape shall be kept securely under lock and key under the responsibility of an officer designated for that purpose until it is removed for production in Court.

[Third Sch. Added by Act 4 of 1999.]

FOURTH SCHEDULE*

[Section 198]

[Fourth Sch. added by Act 15 of 2000.]

SUPREME COURT RULES 2000

[To be reproduced in Subsidiary Legislation Volume.]

FIFTH SCHEDULE*

[Section 198]

[Fifth Sch. added by Act 15 of 2000.]

LEGAL FEES AND COSTS RULES 2000

[To be reproduced in Subsidiary Legislation Volume.]

* EDITORIAL NOTE: These two Schedules were numbered Third and Fourth Schedules respectively in the new section 198 (2) (a) of this Act enacted by section 2 of Act 15 of 2000. The legislator, in the year 2000, overlooked that section 3 (m) of Act 4 of 1999 had already added a Third Schedule to this Act. These two Schedules have been renumbered as Fourth and Fifth Schedules respectively to avoid confusion as permitted under the Revision of Laws Act.

