

## STATE OF TRENGGANU

ENACTMENT No. 4 OF 1955

THE ADMINISTRATION OF ISLAMIC LAW  
ENACTMENT, 1955 (1375)

I ASSENT

ISMAIL,  
*Sultan of Trengganu*

[22nd March, 1956.]



An Enactment to consolidate the law relating to the administration of all matters relating to the Religion of Islam and the religious Courts.

[ 29 March , 1956 .] G.N. 207/1956

IT IS HEREBY ENACTED by His Highness the Sultan with the advice and consent of the Council of State as follows:

## PART I

## PRELIMINARY

1. This Enactment may be cited as the Administration of Islamic Law Enactment, 1955 (1375). Short title.

2. In this Enactment, unless the context otherwise requires— Interpretation.

“*anak dara*” means a female who has never had sexual intercourse whether married or not;

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

“Chief *Kadzi*” means the Chief *Kadzi* appointed under this Enactment;

“Commissioner” means the Commissioner of the Department of Religious Affairs appointed under this Enactment;

"Committee" means the Committee of *Ulamas* appointed under this Enactment;

"corporation" means the body corporate created by Section 6 of this Enactment;

"Court" means the *Shariah* Appeal Court, the Court of the Chief *Kadzi* or of a *Kadzi* as the case may be;

"Civil Court" means any Court constituted under any written law other than Courts constituted by this Enactment and includes any tribunal or individual exercising judicial or arbitrator's powers;

"Department" means the Department of Religious Affairs, Trengganu;

"*eddah*" means the period within which a divorced woman or a widow is forbidden by Islamic law to remarry;

"*fitrah*" means the amount of rice or its value payable under Islamic law annually by a Muslim at the end of the month of *Ramadhan* to be used in accordance with Islamic law;

"Fund" means the General Endowment Fund of the Corporation established under Section 57 of this Enactment;

"Government" means the Government of the State of Trengganu;

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

"*harta sapencharian*" means the earnings, or the property acquired, as the result of joint labour of two spouses and includes the income derived from capital which is itself the result of joint labour;

"*Hukum Shara*" means the body of law known in English as the Law of the Religion of Islam or Islamic Law;

"*janda*" means a female who is neither an *anak dara* nor a married woman;

"*Kadzi*" means a *Kadzi* appointed under this Enactment and includes the Chief *Kadzi*;

"*Majlis*" means the *Majlis Ugama Islam dan Adat Melayu* constituted by this Enactment;

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

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

"*mithkal*" means a weight of which 20 *mithkal* is equivalent to 2.125 tahils;

"mosque" means a building erected or used for the purpose of holding the prayers, services and other ceremonies connected with the Religion of Islam, and includes a *surau*;

"Mufti" means the Mufti of the State of Trengganu appointed under this Enactment;

"*mukallaf*" means a male Muslim who has attained the age of majority and who is not mentally defective nor deaf and blind;

"*mukim*" and "*mukim masjid*" mean the area prescribed by the Department in accordance with this Enactment within which a mosque is situated, and shall not necessarily coincide with the area of any mukim under the Land Enactment;

"*Nazar*" means an expressed vow made by a person creating an obligation upon himself to do any beneficial act for any purpose allowed by Islamic law;

"*nazar 'am*" means an expressed vow made by a person creating an obligation upon himself to do any beneficial act for the benefit of the Muslim community generally or in part as distinct from an individual;

"*pegawai masjid*" means the Mosque officials and includes the Chief *Imam*, other *Imams*, *Khatibs* and *Bilals* of a mosque, if any;

"*pemberian*" means a gift in cash or in kind made by the husband to the wife on account of the marriage;

"Penghulu" means a Penghulu who is in possession of a *Tauliah* from His Highness the Sultan authorising him to perform the duties relating to the interests of the inhabitants, and includes an Assistant Penghulu having the like authority;

"President" means the President of the Majlis;

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

"Registrar" means a Registrar of Muslim Marriages and Divorces appointed under this Enactment, and includes a Principal Registrar and an Assistant Registrar;

"*rojok*" means the demand by the husband to a wife divorced by less than three *talak* to resume cohabitation;

"Secretary" means the Secretary to the Department;

"*ta'alik*" means a declaration verbal or in writing made at the time of or after marriage by the husband that his wife will become divorced upon the occurrence of the contingency specified therein;

"*tauliah*" means a letter of authority issued by or on behalf of His Highness the Sultan;

"the four sects" mean the *Shafeite*, *Hanafi*, *Maliki* and *Hambali* sects;

"*wakaf 'am*" means a dedication in perpetuity of the capital and income of property for religious or charitable purposes recognized by Islamic law, and includes the property so dedicated;

"*wakaf khas*" means a dedication in perpetuity of the capital of property for religious or charitable purposes recognised by Islamic law, and includes the property so dedicated, the income of which is to be paid to a person or persons or for purposes prescribed in the *wakaf*;

"*Wali*" means the lawful guardian according to Islamic law of a woman who is to be married;

"*wali raja*" means a person to whom His Highness has by *tauliah* delegated his authority to act as a *wali* upon the marriage of any person who has no *wali*;

"*zakat*" means a levy on property made payable by a Muslim in accordance with the provisions of this Enactment.

All words and phrases used in this Enactment which are defined in Article II of the Laws of the Constitution of Trengganu (First Part) shall have the meanings thereby assigned to them respectively.

Saving of  
prerogative.

3. Nothing in this Enactment contained shall derogate from or affect the prerogative rights and powers of His Highness the Sultan as the Head of the religion of the State, as declared and set forth in the Laws of the Constitution of Trengganu.

Saving of  
religious  
liberties.

4. (1) Save as expressly provided in this Enactment nothing contained herein shall derogate from or affect the rights and powers of the Civil Courts.

(2) Nothing in this Enactment contained shall derogate from or affect the rights declared and set forth in the proviso to Article III of the Laws of the Constitution of Trengganu (First Part).

PART II

THE DEPARTMENT OF RELIGIOUS AFFAIRS

5. (1) His Highness the Sultan may appoint a Commissioner of the Department of Religious Affairs, a Secretary to the Department, a Mufti for the State, and such other officers and persons as may be necessary for the due administration of this Enactment and for such other matters as may be assigned to the Department. Appoint-ments.

(2) The appointment of Commissioner, Secretary and Mufti, shall be notified in the *Gazette*.

6. (1) The officer for the time being discharging the duties of Commissioner of the Department of Religious Affairs and his successors in office shall be a body corporate under the name of "Commissioner for Religious Affairs, Trengganu" hereinafter called "the Corporation". Incorporation.

(2) The Corporation may sue and be sued in its said name and shall have perpetual succession and a corporate seal. The said seal may from time to time be broken, changed, altered and made anew as to the Corporation seems fit, and, until a seal is provided under this section, a stamp bearing the inscription "Commissioner for Religious Affairs, Trengganu" may be used as the corporate seal. Right to sue.

7. (1) For the purposes of this Enactment the Corporation may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and subject to the provisions of any law affecting the same, may convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Corporation upon such terms as to the Corporation seems fit and in accordance with Islamic Law. Contract and property.

(2) The Corporation shall have power to act as an executor of a will or as an administrator of the estate of a deceased person or as a trustee of any trust. Power to administer estates.

Right to  
appear  
in Court

(3) The Corporation may appear in any Court, whether constituted under this Enactment or otherwise, or in any office of Government by the Commissioner or Secretary or by any person appointed for the purpose either generally or in any particular case under the seal of the Corporation.

Use of Seal.

8. All deeds, documents and other instruments requiring the seal of the Corporation including the following—

- (a) documents requiring registration in any Land Office;
- (b) letters of authority to the *pegawai masjid* of any mosque;
- (c) documents authorising any person to act for any particular purpose or purposes on behalf of the Department or the Majlis; and
- (d) such other documents or classes of documents as His Highness the Sultan may from time to time direct;

shall be sealed with the seal of the Corporation in the presence of the Commissioner or Secretary who shall sign every such deed, document or other instrument to which the corporate seal is affixed, and such signing shall be sufficient evidence that the said seal was duly and properly affixed and that the same is the lawful seal of the Corporation.

### PART III

#### THE MAJLIS—CONSTITUTION

The Majlis.

9. His Highness the Sultan hereby constitutes a *Majlis Ugama Islam dan Adat Melayu* to be called in English the Council of Religion and Malay Custom, to aid and advise His Highness in all matters relating to the Religion of the State and Malay Custom.

The Consti-  
tution.

10. (1) The Majlis shall consist of a President and not less than seven other Members all of whom shall be appointed by His Highness the Sultan by Instrument under His Sign Manual and the State Seal for a period not exceeding two years.

(2) No person shall be appointed a Member of the Majlis unless he be a male, over the age of 21 years, professing the Religion of Islam, able to read and write Malay, and of good character.

(3) Pending any appointment under this section the persons heretofore constituting the *Majlis Ugama Islam*

*dan Adat Melayu* shall be deemed to have been appointed to hold corresponding office under this Enactment.

11. His Highness the Sultan may appoint a Secretary to the Majlis.

Secretary.

12. The appointment of any member of, or the Secretary to, the Majlis shall determine—

Determination of appointment

(a) upon his death, or

(b) if he shall, by writing addressed to His Highness the Sultan through the State Secretary, resign such appointment, or

(c) if he shall before the expiration of his period of appointment be absent from the State for a period exceeding three months without written permission from the Mentri Besar given on behalf of His Highness the Sultan.

13. His Highness the Sultan may cancel the appointment of the Secretary or any member of the Majlis—

Cancellation of appointment

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

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

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

14. All appointments and cancellations under this Part shall be notified in the *Gazette*.

Appointments to be notified.

15. The Majlis shall have such powers and carry out such duties as may by this or by any other Enactment be assigned to it.

Powers.

16. The Members of and the Secretary to the Majlis shall be deemed to be public servants within the meaning of the Penal Code.

Members and Secretary are public servants

17. The Majlis may, from time to time, make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings but no such Rules or Orders shall have effect unless and until they shall have been approved by His Highness the Sultan in Council and published in the *Gazette* and until such time as further Standing Rules and Orders

Standing Rules and Orders

shall have been so made, approved and published, the Standing Rules and Orders contained in the first Schedule to this Enactment shall be deemed to have been made under this section.

Laws to be observed.

18. The Majlis shall take notice of and act upon all written laws in force in the State, the provisions of the *Hukom Shara'* and the ancient custom of the State or Malay customary law.

Committee.

19. (1) There shall be a Committee, consisting of not less than three *Ulamas* of the Majlis and not less than four other fit and proper persons who may be members of the Majlis or not which members shall be appointed by His Highness the Sultan by notification in the *Gazette* for such period as may be deemed fit.

(2) The Committee shall elect one of the members to be chairman for each meeting.

(3) Five members of the Committee shall be a quorum.

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

(5) The members of the Committee shall be deemed to be public servants within the meaning of the Penal Code.

Rulings (*Fetua*).

20. (1) Any person, Court, Civil Court, Department, or Institution, may, by letter addressed to the Commissioner request the issue of a *fetua* or ruling on any point of Islamic law, or doctrine, or Malay Customary law.

(2) On the receipt of any such request the Commissioner shall if the question be one of Islamic law or doctrine send the request to the Mufti; and if the question be one of Malay customary law present the request to the Majlis.

(3) The Mufti and the Majlis respectively shall consider every such request submitted to them and shall, unless the point referred be considered to be frivolous or for other good reason ought not to be answered, prepare a ruling thereon. The Mufti may in preparing his ruling consult the Committee but shall not be obliged to accept their advice.

(4) The ruling when prepared shall be forwarded by the Commissioner to the person presenting the request.

(5) If at any time the Majlis is of the opinion that it is in the interest of the Muslim Community as a whole that a ruling given by the Mufti should be reconsidered



they may by resolution supported by not less than three quarters of the members request His Highness the Sultan to consider the ruling. His Highness the Sultan may invite the Majlis to express an opinion thereon or take such other action as may be deemed fit. His Highness may thereupon determine the point referred.

(6) The Commissioner may at any time publish a ruling submitted to him by the Mufti or the Majlis made respectively upon a point of Islamic law or doctrine, or Malay customary law.

21. (1) In making and issuing any ruling upon any point of Islamic law or a doctrine in the manner hereinbefore provided the Mufti shall ordinarily follow the orthodox tenets of the *Shafeite* sect:

Authorities  
to be  
followed.

Provided that if the Mufti considers it to be in the interests and welfare of the Muslim community he may issue the *fatua* within the tenets of any of the four sects.

(2) In making and issuing any ruling upon a point of Malay customary law in manner hereinbefore provided the Majlis shall have due regard to the *Adat Istiadat Melayu* or Malay customary law applicable in the State and in the event of the point in any manner concerning Islamic law shall refer the matter to the Mufti for his advice.

(3) Any ruling shall, if the Majlis so determines or if His Highness the Sultan so directs, be published by notification in the *Gazette* and shall thereupon be binding on all Muslims resident in the State; Provided that a *fatua* on Malay Custom shall be binding only on Muslims of the Malay race resident in the State.

#### PART IV

#### RELIGIOUS COURTS

##### *Jurisdiction*

22. (1) His Highness the Sultan may by letter and notification thereof in the *Gazette* appoint any suitable person to be Chief *Kadzi* for the State and may similarly appoint any suitable persons to be *Kadzis* for such areas as may be prescribed, and may at any time revoke any such appointment.

Appoint-  
ments.

(2) His Highness the Sultan, after consultation with the Majlis, may from time to time grant, alter or revoke letters of appointment to any Chief *Kadzi* or *Kadzi* and may by the terms of any such letter restrict the exercise

of any powers which would otherwise be conferred on such Chief *Kadzi* or *Kadzi* by this Enactment or by any other written law.

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

Constitution  
of Courts.

23. (1) His Highness the Sultan in Council may by notification in the *Gazette* constitute a *Shariah* Appeal Court and a Court of the Chief *Kadzi* for the State, which shall be at Kuala Trengganu.

(2) His Highness the Sultan in Council may by notification in the *Gazette* constitute Courts of a *Kadzi* at such places as he may deem fit, and may prescribe the local limits of jurisdiction of such Courts.

Local limits  
of jurisdic-  
tion.

24. (1) The Court of the Chief *Kadzi* shall have jurisdiction throughout the State and shall be presided over by the Chief *Kadzi*.

(2) Subject as in this Enactment otherwise provided a Court of a *Kadzi* shall have jurisdiction in respect of any civil or criminal matter of the nature hereinafter specified arising within the local limits of jurisdiction prescribed for it under the preceding section, or, if no local limits are so prescribed, within the State, and shall be presided over by the *Kadzi* appointed thereto.

Extent of  
jurisdiction.

25. (1) The Court of the Chief *Kadzi* shall—

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

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

(i) betrothal, marriage, divorce, nullity of marriage, or judicial separation,

(ii) any disposition of, or claim to property arising out of any of the matters set out in sub-paragraph (i) of this paragraph,

(iii) maintenance of dependants, legitimacy, guardianship or custody of infants,

(iv) division of, or claims to, *harta sapancharian*,

- (v) determination of the persons entitled to share in the estate of a deceased person who professed the Religion of Islam, or of the shares to which such persons are respectively entitled,
- (vi) wills or death-bed gifts of a deceased person who professed the Religion of Islam,
- (vii) gifts inter vivos, or settlements made without consideration in money or money's worth by a person professing the Religion of Islam,
- (viii) *wakaf* or *nazar*, or
- (ix) other matters in respect of which jurisdiction is conferred by any written law:

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

(2) The Court of a *Kadzi* shall—

- (a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under this Enactment for which the maximum punishment provided by law does not exceed imprisonment for one month or a fine of one hundred dollars or both, and may impose any punishment therefor provided;
- (b) in its civil jurisdiction, hear and determine all such actions and proceedings as the Court of the Chief *Kadzi* is authorized to hear and determine, in which the amount or value of the subject matter does not exceed one thousand dollars, or is not capable of estimation in terms of money.

(3) No decision of the Court of the Chief *Kadzi* or a *Kadzi* shall affect any right of property of any non-Muslim.

(4) Nothing in this Enactment contained shall affect the jurisdiction of any Civil Court and, in the event of any difference or conflict arising between the decision of a Court of the Chief *Kadzi* or a *Kadzi* and the decision of a Civil Court acting within its jurisdiction, the decision of the Civil Court shall prevail.

## Appeals.

26. (1) An appeal shall lie to the *Shariah* Appeal Court hereinafter constituted from any decision of the Court of the Chief *Kadzi* or a Court of a *Kadzi*—

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

(b) in its civil jurisdiction—

(i) by any person aggrieved by the decision, if the amount in issue on the appeal is not less than one hundred dollars,

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

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

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

(c) in any case provided for by the provisions of this Enactment;

(d) in any other case, if the *Shariah* Appeal Court shall give leave to appeal.

(2) The *Shariah* Appeal Court shall consist of three members, one of whom shall be the Mufti and the other two selected from a panel of at least seven persons nominated annually by His Highness the Sultan in Council. The chairman of such Appeal Court shall hold or have held the office of Magistrate.

(3) On any person appealing against the decision of the Court of the Chief *Kadzi* or a Court of a *Kadzi* or applying for leave to appeal in accordance with the provisions of sub-section (1) of this section, the Commissioner shall nominate the *Shariah* Court of Appeal to hear such appeal or application for leave to appeal.

(4) On any appeal a *Shariah* Appeal Court may—

(a) in a criminal matter, quash the conviction; set aside, reduce, confirm or enhance the sentence; dismiss the appeal; or order a retrial;

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

(5) Whenever any appeal shall lie or any application for leave to appeal is made to the *Shariah* Appeal Court, such appeal shall be brought or application for leave to appeal shall be made by giving or lodging the appropriate notice or petition, or in such other manner as may be prescribed, but in any event within fourteen days after the occurrence of the act, omission, judgment, order or decision appealed from, or in respect of which an application for leave to appeal is made or, in the event that the appellant was not at the time of such occurrence aware thereof and could not by the exercise of reasonable diligence have been so aware, within fourteen days after such act, omission, judgment, order or decision shall have come to the appellant's knowledge:

Provided that a *Shariah* Appeal Court on hearing any application for leave to appeal may on special grounds which shall include the discovery of new and important matter or evidence, extend the time for appealing, notwithstanding that such time may have expired.

Appeals shall be decided in accordance with the opinion of the majority of the Judges composing the *Shariah* Appeal Court.

(6) There shall be no appeal from a decision of the *Shariah* Appeal Court, except that upon being satisfied that new and important matter or evidence has been discovered His Highness the Sultan may direct that the case be reconsidered by a *Shariah* Court of Appeal.

(7) His Highness the Sultan in Council may make Rules prescribing the procedure for the making of appeals and applications for leave to appeal.

27. (1) If in the course of any proceedings relating to the administration or distribution of the estate of a deceased person who professed the religion of Islam any Civil Court which is under a duty to determine the persons entitled to share in the estate or the shares to which such persons are respectively entitled may request the Court of a *Kadzi*, if the gross value of the estate does not exceed \$5,000, or the Court of a Chief *Kadzi* to certify upon the facts submitted by that Court its opinion as to the persons who are entitled to share in the estate and the shares to which they are entitled.

(2) The Court of the Chief *Kadzi* or a *Kadzi* may on the application of a person claiming to be a beneficiary

Inheritance  
Certificates.

and on payment by him of the prescribed fee similarly certify its opinion upon facts submitted and may in any case before certifying its opinion require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact. In any case of special difficulty the Chief *Kadzi* or a *Kadzi* may refer the question to the Mufti for his opinion, and shall, if such opinion be given, certify in accordance therewith.

*Procedure (General)*

Seal.

28. (1) The Court of the Chief *Kadzi* and every Court of a *Kadzi* shall have and use such seal or stamp as His Highness the Sultan shall approve.

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

Language and Records.

29. (1) The language of the Court shall be Malay.

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

(3) Every Court shall keep and maintain full and proper records of all proceedings therein and full and proper accounts of all financial transactions of the Court and shall account for all monies received in manner provided by Financial General Orders.

Advocates and Solicitors and Pleaders.

30. An advocate and solicitor or pleader may appear in any Court on behalf of a party to any proceeding provided that such Advocate and Solicitor or Pleader shall plead in the language of the Court or through an interpreter provided by him and approved by the Court.

Attendance of Parties.

31. Every party to any proceeding shall appear in person in criminal proceedings and in person or by advocate and solicitor or pleader in civil proceedings.

Service.

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

(2) In criminal proceedings service shall be personal.

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

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

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

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

33. (1) The Court shall observe all provisions of Islamic law relating to the number, status or quality of witnesses or evidence required to prove any fact. Save as aforesaid, the Court shall have regard to the law of evidence for the time being in force in the State, and shall be guided by the principles thereof, but shall not be obliged to apply the same strictly. Evidence.

(2) The Court is authorised to administer affirmation. Evidence shall ordinarily be given in affirmation in a form binding upon Muslims. An affirmation shall be in the form: "I . . . . . (name) solemnly affirm that my evidence shall be the truth, the whole truth, and nothing but the truth". A witness shall be bound to state the truth and shall take the said affirmation having declared himself a witness in the following terms "I . . . . . (name) do hereby stand witness in the matter of.....against.....".

(3) If in the opinion of the Court any witness has wilfully given false evidence in any proceedings, the Court may report the matter to the Public Prosecutor or his Deputy or, alternatively, may exercise all such powers as are by section 12 of the Oaths and Affirmations Ordinance, 1949, conferred upon a Magistrate of the First Class in a like case, subject always to the restrictions and conditions prescribed by the said section. Any person sentenced under the provision of this subsection shall have the right of appeal as if he had been sentenced under the said Ordinance.

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

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

Adjournment.

35. The Court may for sufficient reason adjourn any proceeding from time to time and, from place to place. Save as aforesaid, proceedings in the Court of a *Kadzi* shall be had in the Court-house of that Court, and proceedings in the *Shariah* Appeal Court or of the Chief *Kadzi* shall be had in the Court-house of that Court or in the Court-house of any Court of a *Kadzi*.

Time.

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

Provided that the power to extend the period of appeal shall only be exercised by the *Shariah* Appeal Court.

Courts to be open.

37. Every trial or hearing in Court shall be held in public.

Provided that a Court may order that the whole or any part of any proceedings before it may take place in a close Court if it is satisfied that it is expedient in the interests of justice so to do.

#### *Procedure in Criminal Matters*

Sanction of Majlis.

38. No prosecution for any offence against sections 141, 142 and 147 of this Enactment shall be instituted save in pursuance of a resolution of the Majlis, and no prosecution for any offence against sections 145, 146 and 150 of this Enactment shall be instituted without the permission of the Commissioner, sanctioning such prosecution and a certified copy of such resolution or permission shall be produced to the Court before any summons or warrant is issued. Such certified copy shall form part of the record at the trial.

Information.

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

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



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

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

(3) If the accused has failed to obey a summons duly served on him, or if the offence is one punishable by imprisonment and there is good ground to believe that a summons will be ineffective, for the reason that either the accused cannot be found or he is likely to disobey such summons, the Court may issue a warrant addressed to the Chief Police Officer and all other police officers in the State requiring them to arrest the accused and produce him before the Court. The warrant shall contain the particulars set out in sub-section (2) of this section. The accused shall be arrested and produced accordingly.

41. Any police officer and, if no police officer is known to be available, any Penghulu or any Imam may arrest without warrant— Arrest  
without  
warrant.

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

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

(c) any person against whom a warrant issued under this Enactment is extant, although such warrant is not in the possession of such Police Officer,

and shall thereupon produce such person or cause him to be produced without unnecessary delay and in any event within twenty-four hours before the Court.

42. Nothing in the preceding sections contained shall restrict or affect the powers of arrest or search conferred on any person by the Criminal Procedure Code or any other law for the time being in force relating to criminal procedures of the civil Courts. Saving of  
Powers.

43. (1) When any accused person is produced before a Court the Court may proceed to hear the charge against such person or may adjourn or postpone the case Bail and  
Remand.

on such terms as it thinks fit and for such time as it considers reasonable and may grant bail to such accused person. Such bail may be taken in cash or by bond with or without sureties. The Court may on issuing a warrant of arrest authorize the police to grant bail on such terms as may be endorsed on the warrant.

(2) If the hearing of the charge against any accused person is adjourned or postponed, such person shall, unless bail is granted, be remanded by warrant of the Court in custody and detained in prison pending trial.

(3) No Court shall remand any accused person in custody for a term exceeding eight days at a time.

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

Prosecutor.

44. The prosecution shall be conducted—

- (a) by any person appointed in writing by His Highness the Sultan to prosecute, or
- (b) by any person appointed by the Commissioner to prosecute, or
- (c) by the Public Prosecutor or his Deputy, or
- (d) by a Police Officer, or
- (e) by the Chief *Imam* of the mukim within which the offence was committed, or
- (f) by the Penghulu of the mukim within which the offence was committed, or
- (g) by the complainant.

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

Charge.

45. (1) The charge shall be framed by the prosecutor or by the Court and shall contain sufficient particulars of the offence alleged. More offences than one may be charged in different counts and tried together if arising out of the same transaction. More persons than one may be charged and tried together for the same or different offences if committed in the course of the same transaction.

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

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

46. (1) Any necessary sanction to prosecute shall be proved. Hearing.

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

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

(4) Each witness shall be examined by the party calling him and may then be cross-examined by the opposing party. Cross-examination may be directed to credibility. The party who called the witness may then re-examine on matters arising out of the cross-examination. The Court may put any question to any witness at any time. Any further question may be put, or the witness may be re-called, by leave of the Court.

(5) If after hearing the witnesses in support of the prosecution there be not sufficient evidence to establish the guilt of the accused of the offence charged the Court shall dismiss the case otherwise it shall call on the accused for his defence.

(6) If called on for his defence, the accused may address the Court, and then may either give evidence or make a statement without being sworn or affirmed or stand silent. If the accused elects to make a statement he shall not be liable to be cross-examined. If the accused gives evidence, he may be cross-examined, but not as to character or as to other offences not charged.

(7) The accused may then call his witnesses.

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

(9) The prosecutor may reply generally.

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

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

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

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

Provided that, if the complainant be the prosecutor, and if he does not act in any of the special capacities set out in items (a) to (e) inclusive of section 44 of this Enactment, he shall not so withdraw without the leave of the Court.

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

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

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

Sentence of imprisonment.

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

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

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

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

Sentences of fine.

48. (1) A Court passing a sentence of a fine may upon such conditions for ensuring payment as it shall deem necessary give time to pay, or allow payment by instalments.

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

Cautions and binding over.

49. In lieu of convicting any person the Court may caution and discharge him, and in lieu of sentencing any person convicted the Court may make an order binding him over to be of good behaviour for a period not exceeding one year and may accept a bond in any sum with or without sureties or the deposit of a sum of money. On a breach of the terms of any such bond

being proved, the Court may order it to be enforced as if the amount due thereon were a fine. An appeal shall lie from any such order.

50. (1) His Highness the Sultan in Council may commute, suspend or remit any sentence or part thereof. Clemency.

(2) Nothing herein contained shall affect the right of His Highness the Sultan to exercise His prerogative of pardon and mercy.

51. (1) Subject to the provisions of section 26 (1) (a) of this Enactment any person who is dissatisfied with any judgment, sentence or order pronounced by a Court of the Chief *Kadzi* or of a *Kadzi* in any criminal proceedings under this Enactment to which he is party may prefer an appeal to the *Shariah* Appeal Court constituted under section 26 of this Enactment. Appeal.

(2) Such appeal shall be brought by filing, in the Court which passed the judgment appealed from, a petition of appeal addressed to the *Shariah* Appeal Court setting forth particulars of the judgment complained of, whether the appeal is against conviction or sentence or both, and the grounds of appeal, and by paying the prescribed fee, if any. Such petition shall be filed not more than fourteen days after the judgment was given, unless on application to the *Shariah* Appeal Court such period of fourteen days is extended.

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

(4) On receiving copies of the documents referred to in the preceding sub-section of this section the President shall submit them to the *Shariah* Appeal Court selected by him for the hearing of such appeal.

(5) The *Shariah* Appeal Court shall then fix a date for hearing the appeal and shall notify the parties of the date upon which and place where such appeal shall be heard.

(6) On the appeal coming on for hearing the *Shariah* Appeal Court shall hear the appellant, and, if it considers necessary, the respondent to the appeal and may then make such order in accordance with section 26 (4) (a) of this Enactment as it shall consider appropriate.

Disposal of property.

52. The Court may make orders for the disposal of property brought before it in the course of criminal proceedings.

Irregularities.

53. Irregularities of procedure or the want of any sanction required under section 46 of this Enactment shall not render the proceedings unlawful or void, unless shown to have resulted in substantial injustice or hardship to the accused.

Matters not provided for.

54. In matters of practice and procedure in criminal proceedings, not expressly provided for in this Enactment or any rules made thereunder, the Court shall have regard to the avoidance of injustice and the convenient dispatch of business and may have regard to the practice and procedure obtaining in the Civil Courts in criminal proceedings.

Maintenance.

55. Proceedings under this Enactment relating to the maintenance of dependants shall be deemed to be civil proceedings.

Power to make Rules.

56. (1) His Highness the Ruler in Council may make Rules which shall be published in the *Gazette* prescribing the procedure to be followed in all matters of a civil nature before the Court and upon appeal.

(2) Without prejudice to the provisions of sub-section (1) of this section the Rules set out in the Second Schedule to this Enactment shall have effect until varied or revoked by rules made under this section and be deemed to be rules made under this section.

—  
PART V  
FINANCIAL

*General Endowment Fund*

General Endowment Fund.

57. (1) All property, investments and funds, including the fund heretofore constituting the *Bait-ul-Mal*, which are vested from time to time in the Corporation for the purposes of this Enactment, other than

(a) property held, by virtue of the terms of this Enactment, or of any trust, *wakaf* or *nazar* affecting the same for a specific purpose, or subject to specific express trusts, together with the income thereof;

- (b) all fees, fines and forfeitures collected or imposed by this Enactment or by the rules made hereunder;
- (c) the interest on all deposits left by the Corporation in the State Treasury so long as they remain in the custody of the State Treasury,

shall form the General Endowment Fund of the Corporation and shall be held by the Corporation in trust for such charitable purposes for the support and promotion of the Religion of Islam or for the benefit of Muslims in the State in accordance with Islamic law, as to His Highness the Sultan on the advice of the Majlis may from time to time seem proper :

Provided that—

(i) His Highness the Sultan may give directions, not inconsistent with Islamic law or with the provisions of this Enactment, for the collection or expenditure of any part of the Fund or the income thereof and may, in like manner, forbid any proposed expenditure thereof;

(ii) Any investments, assets and funds vested in the Corporation may be sold, realised and disposed of, and they and the proceeds thereof may be invested from time to time in any investments authorized by any written law for the time being in force for the investment of trust funds.

(2) The monies arising from the sources mentioned in (b) and (c) of sub-section (1) of this section shall be paid by the Corporation to the State Treasurer for the benefit of the State.

58. (1) The *Bait-ul-Mal* instituted by the *Bait-ul-Mal* Enactment and all investments and assets thereof, shall on the coming into force of this Enactment vest in the Corporation as part of the Fund. *Bait-ul-Mal.*

(2) Where a Muslim dies in circumstances that under the provisions of Islamic law any share of his estate is due to the *Bait-ul-Mal* the said share shall vest in and form part of the Fund.

(3) Every executor of the will of a deceased Muslim and every administrator of the estate of a deceased Muslim shall, if there be any share of the deceased's estate due to the *Bait-ul-Mal* in the State, report the fact to the Commissioner and furnish him with a true Duty of executors and administrators.

and full account of the value and nature of the estate within one month of obtaining probate or letters of administration, as the case may be, or with such further time as the Commissioner may in writing allow.

(4) Every executor or administrator as aforesaid shall pay to the Corporation the equivalent cash value of the share of the estate due to the *Bait-ul-Mal* within one month of the service on him of a notice from the Department demanding the same or within such further time as the Commissioner may in writing allow, provided that the Commissioner may allow further time on such terms as he may think fit.

(5) No executor or administrator as aforesaid shall apply to any Court for his discharge until he shall have produced a certificate from the Commissioner that no share of the estate is due to the *Bait-ul-Mal* or that the share so due has been paid.

#### *Wakaf and Nazar*

*Wakaf and Nazar.*

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

Vesting.

60. (1) (a) All property which on the coming into force of this Enactment is subject to the provisions of the preceding section shall if situate in the State vest in the Corporation.

(b) Immovable property vested in accordance with sub-section (a) of this Section may be recorded or registered in the name of the Corporation upon proof to the satisfaction of the Collectors that such land is so subject. The Collector may subject to his verification and so certifying accept in evidence lists of land so subject supplied by the Commissioner.

(2) Land which subsequent to the coming into force of this Enactment becomes subject to the provisions of the preceding section may be recorded or registered in



the name of the Corporation upon presentation of a memorandum of transfer executed by the parties thereto or upon filing with the Collector an order of the Court, Civil Court or a Collector in a probate, administration or distribution suit.

(3) The Corporation shall take all necessary steps to vest in the Corporation for the like purposes any such property situate elsewhere than in the State.

61. Whether or not made by way of will or death-bed gift, no *wakaf* or *nazar* made after the commencement of this Enactment and involving more than one-third of the property of the person making the same shall be valid in respect of the excess beyond such one-third unless expressly sanctioned and validated by all beneficiaries.

Restrictions on creation of charitable trusts.

62. The Commissioner, with the sanction of His Highness the Sultan, shall have power to set aside a certain sum out of any proceeds arising from a *wakaf* which does not confine itself solely to the welfare of the Religion of Islam and Muslims in general, and which for the time being is under the control of the Corporation. The sum to be set aside shall not exceed 10 per cent. of the annual proceeds and shall be credited to the Fund.

Remuneration.

63. (1) The income of a *wakaf khas*, if received by the Corporation, shall be applied by it in accordance with the lawful provisions of such *wakaf khas*.

Income of *wakaf* and *nazar*.

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

64. (1) Subject to the provisions of sub-sections (2) and (3) of this section, the capital property and assets affected by any lawful *wakaf* or *nazar 'am* shall not form part of the Fund, but shall be applied in pursuance of such *wakaf* or *nazar 'am* and held as segregated funds.

Capital of *wakaf* and *nazar 'am*.

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

Provided that the Commissioner may, with the approval in writing of His Highness the Sultan, direct that such property and assets shall be added to and form part of the Fund.

(3) If the terms of any *wakaf* or *nazar 'am* are such that no method of application of the capital property and assets affected thereby is specified, or it is uncertain in what manner the same should be applied, the Commissioner may direct that such capital property and assets shall be added to and form part of the Fund.

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

Construction  
of Instru-  
ments.

65. If in the opinion of the Majlis or the Commissioner the meaning or effect of any instrument or declaration creating or affecting any *wakaf* or *nazar* is obscure or uncertain, the matter may be referred to the Committee for its opinion as to the meaning or effect thereof, and the Commissioner shall on the approval in writing of His Highness the Sultan act on any opinion so given by the Committee or a Majority thereof.

#### Accounts

Annual  
Report

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

Audit.

67. The said annual balance sheet, income and expenditure account and list of investments shall prior to the issue thereof be audited and certified as correct by an auditor appointed by His Highness in Council. A copy of the auditor's certificate shall be annexed to all copies of the report and accounts as issued.

*Wakaf* and  
*nazar*  
property.

68. As soon as possible after 31st December in every year the Commissioner shall prepare, issue and publish in the *Gazette* a list of all properties, investments and assets vested in the Corporation subject to any trust, *wakaf* or *nazar*, and not forming part of the Fund.

Such list shall be audited in manner set out in the preceding section.

69. (1) The *Corporation* shall prepare and submit through the Majlis to His Highness the Sultan in Council not later than the 31st day of October in each year estimates of all income and expenditure of the Department, including therein estimates of all property receivable and disposable in kind, in respect of the ensuing year. His Highness the Sultan in Council may approve such estimates or may direct that the same be amended. Upon such approval or amendment the said estimates shall be published in the *Gazette*. Estimates.

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

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

70. All costs, charges and expenses of administering the property and assets vested in the Corporation, including the cost of maintenance and repair of any immovable property, shall be paid out of the property and assets of the Fund. Expenses of Religious Fund.

71. The State Treasury shall be the Bankers of the Corporation. All payments, deposits into and withdrawals from the Treasury shall subject to this Enactment be made in accordance with the General Orders. Bankers.

#### *Zakat and Fitrah*

72. The Department shall have the power, and shall be under the duty to collect on behalf of His Highness the Sultan and to dispose of as His Highness the Sultan with the aid and advice of the Majlis may, subject to the provisions of this Enactment, direct, all *zakat* and *fitrah* payable in the State in accordance with Islamic law. Powers of the Department.

73. The Commissioner shall be the Controller of *zakat* and *fitrah* for the State and may appoint such Deputy Controllers, collectors and assistant collectors in each *mukim masjid* as he thinks necessary. Controller and Deputy Controller and Collectors and Assistant Collectors

Assessment  
Lists.

74. (1) The Commissioner shall prepare annually assessment lists in respect of each *mukim masjid* in the State, showing the names of persons therein likely to pay *zakat* and *fitrah* and the amounts they are so liable to pay.

(2) Such lists shall be completed by the collectors and assistant collectors in respect of their *mukims* and a copy thereof shall be supplied to the deputy controller of their districts for onward transmission to the Commissioner.

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

(4) Any person may make an objection to the Commissioner against the inclusion of his name in any assessment list or against the amount or quantity in respect of which he is assessed. The Commissioner shall consider every such objection and may make such decision thereon as may be just. An appeal from any such decision shall lie to His Highness the Sultan, if the subject-matter is of a value not less than one hundred dollars. Any such appeal may be referred to the Committee for its opinion and thereafter determined, as if it were a civil appeal from the Court of a *Kadzi*.

Liability  
for *Zakat*.

75. (1) *Zakat* shall be payable by every Muslim producer of padi whose production is not less than 375 gantangs in any one year, according to Islamic Law, at the rate of not more than ten per cent of the amount produced.

(2) (a) *Zakat* on cattle shall be payable at the following rate:

On 30 to 39 head ... one calf of one year old

On 40 to 59 head ... one calf of two years old

On 60 to 69 head ... two calves of one year old

For total head of cattle in excess of 69 the rate shall be ascertained according to the number of times the total shall be divisible by thirty or forty or both and thereupon for each completed 30 head the rate shall be one calf of one year old and for each completed 40 head the rate shall be one calf of two years old.

(b) *Zakat* on goats or sheep shall be payable at the following rate:

- |                        |   |
|------------------------|---|
| On 40 to 120 head ...  | one sheep of one year old<br>or one goat of two years<br>old  |
| On 121 to 200 head ... | two sheep of one year old<br>or two goats of two<br>years old |
| On 201 to 399 head ... | three heads of sheep or<br>goats                              |
| On 400                 | ... four heads of sheep or<br>goats                           |

thereafter for each complete 100 head an additional one head of sheep or goats.

(3) *Zakat* shall be payable on property other than that mentioned in the preceding sub-sections of this section as follows:

- (a) upon gold, when the amount liable to *zakat* is 20 *mithkal* or more, at the rate of  $2\frac{1}{2}$  per cent. of the total value of the gold held;
- (b) upon silver, when the amount liable to *zakat* is 200 *drahms* or more, at the rate of  $2\frac{1}{2}$  per cent. of the total value of the silver held;
- (c) upon merchandise, when the amount liable to *zakat* is of the value of \$25.73 or more, at the rate of  $2\frac{1}{2}$  per cent. of the total value of the merchandise held;
- (d) upon gold or silver found as treasure-trove, at the rate of 20 per cent. of the total value of the treasure found; provided that amounts less than the weight specified in paragraphs (a) or (b), as the case may be, shall not be liable to *zakat*.

76. (1) *Fitrah* shall be payable by all Muslim householders in the State and shall be at the rate of one *gantang* of rice for every person, the calculation being based on *gantang Baghdad*.

Liability  
for *fitrah*.

(2) One *gantang Baghdad* is equivalent to 3 katties and 12 tahils Malayan measure.

(3) Payment of *fitrah* may be excused on grounds of poverty. The Collector may, with the approval of the *pegawai masjid* or *ketua kampong* concerned, note in the assessment list prepared by him the name of any person considered too poor to pay *fitrah*. Such note shall be accompanied by a certificate signed by the *pegawai masjid* or *ketua kampong* annexed to the list.

Payment  
of *zakat*.

77. (1) The Commissioner or the Deputy Controller, as the case may be, shall complete the *zakat* assessment list by entering the amounts produced and the amounts payable as soon as the harvest is complete.

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

(3) On completion of the assessment lists, and notwithstanding any appeal pending, the producer shall forthwith pay the *zakat* to the Commissioner or to the Deputy Controller.

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

Payment  
of *fitrah*.

78. (1) *Fitrah* assessment lists shall be completed not later than the 15th day of Sha'aban in each year and the *fitrah* shall be paid to the Commissioner or the Deputy Controller or to the collector or assistant collector not later than the 1st day of Shawal next ensuing.

(2) *Fitrah* shall be paid in rice or in cash as directed from time to time.

(3) The Commissioner may, with the approval of His Highness the Sultan, fix from time to time rates at which rice may be sold by any Collector or assistant collector, as the case may be, to persons liable to pay *fitrah*. Such rates shall not be lower than the current minimum market price.

Receipts and  
Accounts.

79. (1) The Department shall issue a serially numbered receipt in the prescribed form for every payment of *zakat* or *fitrah*, whether in cash or in kind.

(2) All *zakat* and *fitrah* received by the Department shall be accounted for and shall be held, stored and disposed of by the Department in such manner as His Highness the Sultan acting with the aid and advice of the Majlis may direct.

(3) The Commissioner shall cause all *zakat* and *fitrah* accounts to be audited and may for this purpose appoint and remunerate Investigators, and shall account for the same in his financial statements as provided for in section 66.

80. His Highness the Sultan with the aid and advice of the Majlis may make rules regulating further the collection, administration and distribution of *zakat* and *fitrah*. Rules.

*Collection for Charities*

81. (1) The Department may collect, or may grant licences to any person or body of persons, authorizing him or them to collect monies or funds for any charitable purpose for the support and promotion of the Religion of Islam or for the benefit of Muslims in accordance with Islamic law, and may by any such licence impose such terms as it may think fit. Charitable collections.

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

- (a) issue in respect of every sum so collected a serially numbered receipt in the prescribed form,
- (b) keep true and full accounts of all sums so collected and of the disposal thereof with all proper vouchers,
- (c) produce on demand the counterfoils of such receipts and all such accounts and vouchers for inspection and audit by the Department,
- (d) apply and dispose of all sums so collected in accordance with the terms of such licence, or, if no method of disposal thereof be thereby expressly authorized, pay and account for the same to the Corporation.

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

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

PART VI  
MOSQUES

82. (1) Notwithstanding any provision to the contrary in any written instrument, the Corporation shall be the sole trustee of all mosques in the State and every mosque, together with any immovable property on which it stands or appurtenant thereto and used for the purposes thereof, other than State land or land reserved Department to be trustee.

for a public purpose, shall upon the coming into force of this Enactment vest in the Corporation.

(2) Any land vesting in the Corporation in accordance with sub-section (1) of this section or subsequently becoming so vested shall be registered in the name of the Corporation upon the Collector being satisfied in the manner as provided in section 60.

Restriction  
on new  
mosques.

**83.** No person shall erect any mosque, or otherwise apply any existing building as or for the purpose of a mosque, without the permission in writing of the Department.

Repairs.

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

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

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

Closure or  
demolition.

**85.** The Commissioner may, for sufficient reason, close or demolish any mosque and, where any mosque has been demolished and it is not intended to build another mosque on the same site and no longer possible to use such site for the purpose of a mosque, may, if the site be a *wakaf*, apply the same in any manner allowed by Islamic law: Provided that all income derived therefrom shall be earmarked for the erection, maintenance, or repair, of mosques, and no other purpose.

Boundaries  
of *mukim*  
*masjid*.

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

Register of  
*pegawai*  
*masjid*.

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



88. (1) It shall be the duty of the Committee upon learning of a vacancy or impending vacancy for *pegawai masjid* of any mosque where Friday prayers are held to make enquiry for possible candidates for such appointment and after due examination of the qualifications of such possible candidates, recommend to the Commissioner two or more of them as candidates for his consideration.

Appointment  
of *Imam*.

(2) The Commissioner with the advice of the Committee having selected any candidate shall submit his name to His Highness the Sultan with a recommendation that he be appointed to fill the vacancy in question.

(3) His Highness the Sultan may appoint any fit and proper person to be Chief *Imam* or *Imam* of any mosque.

(4) Every person appointed to be an *Imam* shall receive a *Tauliah* under the seal of His Highness the Sultan.

89. (1) No vacancy in the office of *Khatib* of any mosque shall hereafter be filled unless in any case His Highness the Sultan shall so direct.

Appointment  
of other  
*pegawai  
masjid*.

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

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

(4) The Commissioner on behalf of His Highness the Sultan and on the recommendation of the Chief *Imam* may appoint any fit and proper person to be *Imam*, *Bilal* or *Khatib* of any mosque where Friday prayers are not held and shall issue a *tauliah* under the seal of the Department to any person so appointed.

90. It shall be the duty of the Chief *Imam* to bring to the notice of the Commissioner any disgraceful conduct on the part of any *pegawai masjid*, whether in relation to his duties as such or otherwise, and to make recommendations.

Removal of  
*pegawai  
masjid*.

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

Powers and  
duties.

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

- (b) shall be responsible for the good conduct of the *anak mukim* of the mosque in matters relating to the Religion of Islam, and
- (c) shall give due and prompt information to the Commissioner of all matters arising in their *mukim* and requiring the attention of the Commissioner.

Attendance  
at mosque.

92. No *anak mukim* shall habitually absent himself from Friday Prayers in his own *mukim masjid* if his absence would prevent Friday Prayers being held in that *mukim masjid*.

#### PART VII

#### MARRIAGE AND DIVORCE

Application.

93. Save as where otherwise herein expressly provided the provisions of this Part of this Enactment shall only apply to persons professing the Religion of Islam.

Appoint-  
ments.

94. (1) His Highness the Sultan may appoint any fit and proper persons to be Assistant Registrars of Muslim Marriages and Divorces in any place.

(2) The Chief *Kadzi* shall ex officio be the Principal Registrar of Muslim Marriages and Divorces for the State and the *Kadzis* shall ex officio be Registrars for the area in which they respectively have jurisdiction in criminal and civil matters.

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

(4) Registrars of Muslim Marriages and Divorces shall be deemed to be public servants within the meaning of the Penal Code, and shall be under the control of the Department.

Betrothal.

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

thereof and to pay as damages the amount of such other monies as aforesaid, and the same may be recovered by action in the Court.

96. (1) A marriage may be solemnized by any person holding a *Tauliah* from His Highness the Sultan authorizing him to solemnize marriages.

Authority to solemnize marriages.

(2) A marriage may be solemnised, with the prior knowledge of a Registrar, by a *wali* of the woman to be married who is permitted by Islamic law to solemnise such marriage.

(3) No person shall solemnize any marriage save in pursuance of sub-section (1) or (2) of this section :

Provided that a marriage solemnized in breach of the provisions of this sub-section, but in accordance with the provisions of Islamic law, shall be valid and shall be registered under the provisions of this Enactment.

97. A marriage shall be void and shall not be registered under the provisions of this Enactment unless all conditions necessary for the validity thereof, in accordance with the tenets of the four sects, are satisfied.

Void marriages.

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

Consent required

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

(b) the *Kadzi* having jurisdiction in the place where the bride resides or any person generally or specially authorized thereto by him has, after due enquiry in the presence of all parties concerned, granted his consent thereto as *wali raja* in accordance with Islamic law; such consent may be given wherever there is no *wali* available to act, or where the *wali* has refused his consent without sufficient reason.

99. Where the bride is a *janda*—

(a) she shall not be married to any person, other than, subject to clause (d) of this section, to the husband from whom she was last divorced, at any time prior to the expiration of the period of *eddah*, which shall be calculated in accordance with Islamic law,

Marriage of *Janda*.

- (b) she shall not be married unless she shall previously have produced—
- (i) a certificate of the death of her late husband, or
  - (ii) a certificate of divorce lawfully issued under the law for the time being in force, or
  - (iii) a certified copy of the entry relating to such divorce in the appropriate register of divorce, or
  - (iv) a certificate, which may upon her application be granted after due enquiry by the Court of a *Kadzi* having jurisdiction in the place where application is made, to the effect that she is a *janda*,
- (c) if the bride was divorced before the marriage had been consummated, she shall not be married to any person other than her previous husband during the period of *eddah* which would otherwise have been applicable, except with the permission of the *Kadzi* having jurisdiction in the place where she resides,
- (d) if the divorce was by three *talak*, she shall not be remarried to her previous husband, unless prior to such marriage she shall have been lawfully married to some other person and such marriage shall have been consummated and later lawfully dissolved.

Place of  
marriage.

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

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

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

*Mas-kahwin*  
and  
*Pemberian*.

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

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

- (a) the amount of the *mas-kahwin*,

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- (b) the amount of any *pemberian*,
  - (c) the amount of any part of the *mas-kahwin* or *pemberian* or both which was promised but not paid at the time of the solemnization of the marriage, and
  - (d) particulars of any security given for the payment of any *mas-kahwin* or *pemberian*.

102. (1) Within seven days after the solemnization of any marriage it shall be the duty of the parties to the marriage and of the *wali* of the wife, if any, and of the person who solemnized the same to report to the Registrar of the mukim in which the marriage was solemnized the fact of such marriage and all necessary particulars concerning the same and to pay the prescribed fees, and the Registrar shall forthwith register such marriage.

Registration  
of marriages.

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

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

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

(5) The Registrar shall also, upon payment of the prescribed fees, prepare a *surat ta'alik* in the prescribed form, obtain the signature of the parties thereto, sign the same and deliver one copy to each of the parties to the marriage.

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

103. (1) A husband may divorce his wife in accordance with Islamic law. Divorce.

(2) Within seven days after any divorce the husband shall report to the Registrar of the *mukim* in which the

divorce took place the fact of such divorce with all necessary particulars and shall pay to the Registrar the prescribed fees and the Registrar shall forthwith register the divorce and issue a certificate of divorce:

Provided that in the case of revocable divorce as defined in section 110 no certificate of divorce shall be issued to a woman until after the expiration of period of *eddah*.

(3) The provisions of sub-sections (2), (3) and (4) of the preceding section shall apply *mutatis mutandis* to the registration of divorces and the issue of certificates of divorce.

Divorce at  
wife's  
request.

**104.** (1) A married woman may apply to a *Kadzi* for a divorce in accordance with Islamic law.

(2) In any such case the *Kadzi* shall summon the husband before him and enquire whether he consents to be divorced. If the husband so consents the *Kadzi* shall on payment of the prescribed fees cause the husband to pronounce a divorce, register such divorce and issue certificates thereof to the parties to the marriage.

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

(4) If the husband does not agree to divorce by redemption, the *Kadzi* may appoint *Hakam* as provided in section 108 of this Enactment.

Divorce  
under  
stipulation.

**105.** (1) A married woman may, if entitled to a divorce in pursuance of the terms of a *surat ta'lik* made upon marriage, apply to a *Kadzi* to declare that such divorce has taken place.

(2) The *Kadzi* shall examine the application and make such enquiry as appear necessary into the validity of the divorce and shall, if satisfied that the same is valid in accordance with Islamic law, and upon payment of the prescribed fees, confirm the divorce, and register and issue certificates of the same in manner aforesaid.

Dissolution  
of marriage.

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

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

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

(4) Upon pronouncing a decree of dissolution of marriage the *Kadzi* shall register the same as a divorce and shall issue a certificate thereof in the prescribed form to the wife.

107. A woman who has been divorced by her husband may apply to a *Kadzi* for a consolatory gift, or *matta'ah*, and the *Kadzi* may after hearing the parties order payment of such sum as may be just and in accordance with Islamic law.

Gift to divorced wife.

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

Arbitration.

(2) The *Kadzi* may give directions to the *Hakam* as to the conduct of the arbitration and they shall conduct it in accordance with such directions and according to Islamic law. If they are unable to agree, or if the *Kadzi* is not satisfied with their conduct of the arbitration, he may remove them and appoint other *Hakam* in their place.

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

(4) If the *Hakam* are of opinion that the parties should be divorced but are unable for any reason to decree a divorce, the *Kadzi* shall appoint other *Hakam* and shall confer on them authority to effect a divorce and shall, if they do so, register and issue certificates of the same in manner aforesaid.

Assumption  
of conjugal  
relationship.

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

(2) If after a revocable divorce recohabitation takes place by mutual consent, the parties shall within seven days report the fact of such recohabitation and all relevant particulars to the Registrar of the mukim in which they reside. The Registrar shall make such enquiry as may be necessary and, if satisfied that recohabitation has taken place in accordance with Islamic law, shall upon payment of the prescribed fees, register such recohabitation by endorsement upon the counterfoil of the certificate of the divorce, if such divorce was registered by him, and shall require the parties to deliver to him the relevant certificates of divorce and shall issue to them certificates of recohabitation in the prescribed form. Any party who fails to report the fact of such recohabitation to such Registrar shall be liable to imprisonment for a term not exceeding fourteen days or to a fine not exceeding fifty dollars or to both such imprisonment and fine.

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

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

(5) If after a revocable divorce the husband has pronounced a *rojok*—

(a) if the wife has consented to the *rojok*, she may on the application of the husband be ordered by a *Kadzi* to resume conjugal relations, unless she shall show good cause in accordance with Islamic law to the contrary, in which case the *Kadzi* shall appoint *Hakam* as provided in section 108;

(b) if the wife has not consented to the *rojok* for reasons allowed by Islamic law, she shall not be ordered by the *Kadzi* to resume conjugal



relations, but on her application the *Kadzi* may require her husband to divorce her and on his refusal shall appoint *Hakam* as provided in section 108.

**110.** (1) If the husband of any married woman has died, or is believed to have died, or has not been heard of over a prolonged period, in such circumstances that he ought, for the purpose of enabling his wife to remarry, to be presumed in accordance with Islamic law to be dead, but a death certificate under the Births and Deaths Registration Enactment cannot be obtained, a *Kadzi* may, on the application of the wife and after such enquiry as may be proper, and upon payment of the prescribed fee, issue in accordance with Islamic Law and in the prescribed form, a certificate of presumption of death of the husband, and thereafter the wife shall be at liberty to remarry in accordance with the provisions of this Enactment, and such certificate shall be deemed to be a certificate of the death of the husband within the meaning of sub-paragraph (i) of paragraph (b) of section 99 of this Enactment.

Presumption  
of death.

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

(3) A certificate issued under sub-section (1) of this section shall be registered as if it effected a divorce.

**111.** (1) Registration of any matter required to be registered under this part of this Enactment shall be deemed to be effected by the completion of the counter-foil of a certificate to be issued by the Registrar in respect of such matter.

Method and  
effect of  
registration.

(2) In addition to registration under the preceding sub-section, every *Kadzi* shall maintain registers in book form containing particulars of all matters registered as aforesaid by all Registrars within the area of his jurisdiction, including matters so registered by himself.

(3) Every Registrar other than a *Kadzi* shall, at least once in every month, and in addition at any time when the amount payable by him to Government in respect of fees received under this part of this Enactment exceeds fifty dollars, deliver to the *Kadzi* of his district all certificate books used by him as Registrar, and pay

to the *Kadzi*, or otherwise lawfully account for, all sums due to Government in respect of fees as aforesaid:

Provided that in case of difficulty of transport the Commissioner may permit the Registrar to deliver such books and monies to the Penghulu of his *mukim*, and the Penghulu shall in such event deliver the same to the *Kadzi*.

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

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

(6) After the expiration of five years from the time it was made, an entry in the register of a *Kadzi* made under this part of this Enactment shall be conclusive proof of the matters stated therein, and no evidence to the contrary shall be received.

Inspection  
and copies.

112. (1) All registers, counterfoils of certificates and other documents held by any Registrar in pursuance of this part of this Enactment shall be public documents within the meaning of the Evidence Ordinance, 1950, and shall be open to inspection by any person on payment of the prescribed fee.

(2) The Registrar shall on payment of the prescribed fee furnish to any person a certified copy of any entry in a register, or counterfoil, certificate or other document as aforesaid.

Appeals.

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

(a) if the Registrar be the Chief *Kadzi* or a *Kadzi* to the Shariah Appeal Court, or

(b) in other cases, to the *Kadzi* of the district in which the Registrar acts as such, provided that from any decision of a *Kadzi* given on such an appeal a further appeal shall lie to the *Shariah* Appeal Court.

(2) The appellate authority may order the authority appealed from to do or refrain from doing any act which ought in the circumstances to have been done

or omitted and may make such other order as justice may require, including an order for rectification of any register maintained under this part of this Enactment.

(3) The decision of the *Shariah* Appeal Court shall be final.

114. (1) If it shall appear that any entry in any register has been made, or any certificate issued, under this part of this Enactment in error, and that such error ought to be corrected, a Registrar or any person affected by, but not responsible for, such error may apply to the *Shariah* Appeal Court for rectification of such register or certificate. Rectification  
of registers.

(2) The *Shariah* Appeal Court may, after such enquiry as seems proper, order rectification accordingly:

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

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

115. All fees collected under this part of this Enactment shall be accounted for in accordance with Government Financial General Orders and shall be paid into the State Treasury for the benefit of the State. Fees.

#### PART VIII

##### MAINTENANCE OF DEPENDANTS

116. (1) The Married Women and Children (Maintenance) Ordinance, 1950, shall not apply in the State in the case of any claim for maintenance made by a Muslim against a Muslim. Application  
F.M. Ord.  
No. 36 of  
1950.

(2) This part of this Enactment shall apply only to claims made by a Muslim against a Muslim.

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

(2) A woman who has been divorced may by application in the Court of a *Kadzi* obtain an order against her former husband for the payment in respect of the period of *eddah*, if the divorce was by one or two *talak*,

or in any case in respect of the period of her pregnancy by the former husband, of any such sum in respect of her maintenance as she may be entitled to in accordance with Islamic law.

Lawful  
minor  
children.

**118.** (1) A minor under the age of eighteen years may by application in the Court of a *Kadzi*, to be made either personally or through a representative as prescribed obtain an order against his lawful father or any other person liable in accordance with Islamic law to support him for the payment from time to time of any such sums in respect of his maintenance to which he may be entitled to in accordance with Islamic law.

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

Infirm and  
diseased  
person.

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

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

Illegitimate  
children.

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

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

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

Rescission  
and varia-  
tion of  
orders.

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

Enforcement  
of orders.

**122.** Without prejudice to the right of any person interested under any order made under this part of this Enactment to enforce the same by proceedings by way of execution in a Magistrates' Court or in the Court of

the Chief *Kadzi* in accordance with Rules made under this Enactment, the Court which made the order may, notwithstanding any provision in this Enactment limiting its criminal jurisdiction or powers of punishment, in case of wilful failure to comply therewith sentence the person in default to a term of imprisonment which may extend, if the order provides for monthly payments, to one week for each month's allowance or part thereof remaining unpaid, but not exceeding one month in all.

PART IX

CONVERTS

123. The Department shall maintain a register of the names of all persons converted to the Religion of Islam within the State, together with such particulars in respect of their conversion as may be prescribed by rule.

Register of converts.

124. No person shall be registered as a convert to the Religion of Islam otherwise than in accordance with the provisions of this Enactment or any rules made thereunder.

Control of conversions.

125. No person under the age of fourteen years and seven months shall be registered as a convert to the Religion of Islam.

No registration of conversion of children.

126. (1) If any person wishes to be admitted to the Religion of Islam he shall repeat the Confession of Faith, or *Dua Kalimah Shahadah*, before any Muslim and shall thereafter appear before the *Kadzi* of the district in which he ordinarily resides.

Conversion.

(2) The *Kadzi* shall make enquiry as to the age of such person and his understanding of the articles of Faith and shall if satisfied register such person as a convert.

(3) If such person is less than 18 years of age notwithstanding any right to his custody being vested in any other person or body, such person shall remain in the custody of the Department for so long as is considered desirable by the *Kadzi*, at the cost of the Department defrayed out of the Fund for Muslim converts:

Provided that no female under the age of sixteen years shall be kept in the custody of the Department without the consent of the lawful guardian.

(4) At the expiration of the said period the convert shall cease to be in the custody of the Department, and

the Department shall, if the convert so requests, defray the cost of his return to the custody of his lawful guardian.

(5) The *Kadzi* shall report all action taken by him under the provisions of this section to the State Secretary who if the convert were previously a Christian shall inform the British Adviser.

Report on conversion.

**127.** (1) Any person effecting a conversion shall forthwith report the same to the *Kadzi* with all necessary particulars relating thereto.

(2) The *Kadzi* shall issue to any person, lawfully converted according to the provisions of this Enactment, a Certificate of Conversion in the prescribed form.

#### PART X

#### OFFENCES

Application

**128.** (1) This Part of this Enactment shall apply only to persons professing the Religion of Islam, or to person who within six months prior to the trial of the offence shall have professed the religion of Islam.

(2) No prosecution for any offence which is an offence against this Enactment only shall be had in any Court other than the Court of the Chief *Kadzi* or a Court of a *Kadzi*.

Attendance at mosque.

**129.** Every *mukallaf* who fails to attend prayers on Friday at a mosque shall subject as hereinafter provided, be liable to be punished with a fine not exceeding twenty-five dollars:

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

- (a) his attendance is prevented by rain, or
- (b) his place of residence is more than three miles by the nearest route from a mosque, or
- (c) less than forty *mukallaf*, or such lesser number as His Highness the Sultan may prescribe as the number in whose presence Friday prayers may be performed, reside in the *mukim* in which he then is, or
- (d) he is absent on grounds of sickness, absence from his ordinary place of residence, or other lawful grounds.

Intoxicating liquor.

**130.** (1) Whoever shall purchase or sell any intoxicating liquor shall be liable to be punished with a fine of not exceeding twenty-five dollars.

(2) Whoever shall consume any intoxicating liquor, shall be liable to be punished with a fine of not less than eighty dollars or for a second or subsequent offence a fine not less than 100 dollars.

131. Whoever not being permitted to break fast shall, during the hour of daylight, in the month of *Ramadhan*, purchase for immediate consumption or whoever shall sell to a person professing the Religion of Islam for immediate consumption, or consume, any food, drink or tobacco shall be liable to be punished with a fine not exceeding twenty-five dollars, or in the case of a second or subsequent offence, not exceeding fifty dollars.

Food in  
*Ramadhan*.

132. Where any person has in contravention of the provisions of section 130 or 131 of this Enactment sold any article in his capacity as employee of another person, his employer shall be presumed to have abetted such offence and to have caused its commission by such abetment unless he proves that such offence was committed without his authority, knowledge or consent and that he had taken all reasonable steps to prevent its commission.

Presumption

133. (1) Whoever, having ceased to cohabit with his wife in manner required by Islamic law and having been ordered by the Court to resume cohabitation with her, wilfully fails or neglects to comply with such order shall be liable to be punished with imprisonment for a term not exceeding fourteen days or with fine not exceeding fifty dollars or with both such imprisonment and fine.

Desertion  
of wife.

(2) Whoever ill-treats his wife shall be liable to be punished with imprisonment for a term not exceeding fourteen days or with fine not exceeding fifty dollars or with both such imprisonment and fine.

134. Any woman who shall wilfully disobey any order lawfully given by her husband in accordance with Islamic law shall be liable to be punished with a fine not exceeding ten dollars, or, in the case of a second or subsequent offence, with imprisonment for a term not exceeding seven days or with fine not exceeding fifty dollars or with both such imprisonment and fine:

Dis-  
obedience  
of wife.

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

*Kheluat.*

**135.** (1) Any male Muslim who is found in retirement with and suspicious proximity to any woman or is found in any place in suspicious proximity to any woman whether or not professing the Religion of Islam, other than his wife or a woman who by reason of consanguinity, affinity or fosterage he is forbidden by Islamic law to marry, shall be guilty of *Kheluat* and shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars, or, in the case of a second or subsequent offence, with imprisonment for a term not exceeding two months or with fine not exceeding two hundred dollars or with both such imprisonment and fine.

(2) Any female Muslim who is found in retirement with and suspicious proximity to any man or is found in any place in suspicious proximity to any man whether or not professing the Religion of Islam, other than her husband or a male person whom by reason of consanguinity, affinity or fosterage she is forbidden by Islamic law to marry, shall be guilty of *Kheluat* and shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars, or, in the case of a second or subsequent offence, with imprisonment for a term not exceeding two months or with fine not exceeding two hundred dollars or with both such imprisonment and fine.

(3) The Court may order in lieu of or in addition to any other punishment in this section provided that any female found guilty of an offence under this section shall be committed to a home approved by the Department for such time, not exceeding six months, as to the Court may seem fit.

Resumption  
of cohabitation.

**136.** (1) Any man who, having lawfully divorced his wife, resumes cohabitation with her without having pronounced a lawful *rojok* shall be liable to be punished with imprisonment for a term not exceeding fourteen days or with fine not exceeding fifty dollars or, if his wife was not at the time of such resumption of cohabitation aware of the occurrence of the divorce, with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

(2) Any person who abets an offence punishable under sub-section (1) of this section shall be liable to be punished with imprisonment for a period not exceeding



seven days or with fine not exceeding twenty-five dollars or with both such imprisonment and fine.

137. Whoever solemnizes or purports to solemnize in accordance with Islamic law any marriage between persons both professing the Religion of Islam in contravention of the provisions of Part VII of this Enactment, or knowingly purports to solemnize any such marriage which is void under the provisions of such Part, shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

Unlawful solemnization of marriage.

138. (1) Whoever, being under a duty to report to a Registrar any marriage or divorce or *rojok*, wilfully neglects or fails to do so shall be liable to be punished with a fine not exceeding twenty-five dollars.

Failure to report.

(2) Whoever, being under a duty to report, or having reported, to a Registrar any marriage or divorce or *rojok*, and having been required by such Registrar to furnish any information or to execute or sign any document lawfully necessary for the purpose of effecting registration thereof, wilfully neglects or fails to comply with such requirement shall be liable to be punished with a fine not exceeding twenty-five dollars.

(3) Whoever makes to any Registrar orally or in writing any wilfully false statement or declaration relating to any matter required under the provisions of this Enactment to be recorded or registered by such Registrar shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

139. Whoever being a Deputy Controller, or Collector or person performing the duties of a collector, and having received as such any *habuan* or other monies which under the provisions of this Enactment are divisible among the *pegawai masjid* of his *mukim*, improperly retains the same or fails to account therefor to such *pegawai masjid* shall be liable to be punished with imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty dollars or with both such imprisonment and fine, and the Court may make a summary order for payment to the persons entitled thereto of any sums the subject-matter of the offence:

Improper retention of funds

Provided that no prosecution shall be brought under this section later than eighteen months after the alleged commission of the offence.

Wilful  
neglect of  
statutory  
duty.

**140.** Whoever, being charged by this Enactment with the duty of registering any matter or proceeding, or of making, preparing, keeping or maintaining any assessment list, report, book of account, estimate, register, counterfoil book, minute book, or subscription list, or of issuing any certificate, receipt or certified copy, refuses or wilfully neglects or fails to perform such duty, or wilfully performs the same in an unlawful or improper manner, shall be liable to be punished with imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty dollars or with both such imprisonment and fine.

Breach of  
secrecy.

**141.** Whoever in breach of the provisions of this Enactment or of any Rules, Orders or Regulations made thereunder improperly discloses or divulges any matter, which it was his duty to keep secret, to any person not lawfully entitled to be informed thereof shall be liable to be punished with imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty dollars or with both such imprisonment and fine.

Unlawful  
mosques.

**142.** Whoever, in contravention of the provisions of section 83 of this Enactment, erects any mosque or otherwise applies any existing building as or for the purposes of a mosque, without the permission in writing of the Department, shall be liable to be punished with fine not exceeding one hundred dollars and the Court may, subject to any rights of any third party, order the person convicted to demolish the building.

Religious  
teaching.

**143.** (1) No person shall in a *madrasah* or *rayaat* school teach or purport to teach any doctrine of the Religion of Islam without the written permission of the department; and

(2) No person other than a native of the State shall engage in the teaching of the Religion of Islam without the permission of the Department.

(3) Whoever contravenes the provisions of either of the preceding sub-section shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

144. Whoever delivers any lecture other than upon the Religion of Islam in any mosque without first obtaining permission in writing of the *Kadzi* or if the *Kadzi*, be not available, of the senior official-in-charge of that mosque, shall be liable to be punished with fine not exceeding two hundred and fifty dollars or with imprisonment for a term not exceeding three months or with both such imprisonment and fine.

Lectures in mosque.

145. Whoever shall teach or publicly expound any doctrine or perform any ceremony or act relating to the Religion of Islam in any manner contrary to Islamic law shall be liable to be punished with imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty dollars or with both such imprisonment and fine.

False doctrine.

146. If any person, other than the Mufti or a person acting under powers conferred by this Enactment, issues or purports to issue any *fetua* or ruling on any question of doctrine of the Religion of Islam or Islamic law or Malay customary law he shall be liable to be punished with imprisonment for a term not exceeding three months or with fine not exceeding two hundred and fifty dollars or with both such imprisonment and fine.

*Fetua*.

147. Whoever shall print or publish or sell or import into the State for sale any book or document giving or purporting to give instruction or rulings on any matter of doctrine of the Religion of Islam or Islamic law or Malay customary law shall, if such book or document contains any matter contrary to Islamic law or doctrine or to any lawfully issued *fetua*, be liable to be punished with imprisonment for a term not exceeding six months or with fine not exceeding five hundred dollars or with both such imprisonment and fine and such book or document shall be forfeited.

Religious books.

148. Whoever in any theatrical performance or in any place of public entertainment or amusement uses any passage from the *Koran* or any words having a sacred implication to persons professing the Religion of Islam; or whoever derides or copies in a derisive manner any act or ceremony relating to the Religion of Islam or uses any passage from the *Koran* in a derisive manner, shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

Misuse of the *Koran*.

Contempts  
of religious  
authorities.

149. Whoever shall be guilty of any contempt of the lawful authority of His Highness the Sultan in his capacity as the Head of the Religion of the State, or of the Department or Majlis or any Committee or Member or officer thereof or of any *pegawai masjid*, or of any Court or the presiding officer thereof, shall be liable to be punished with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

Contempt of  
religion.

150. Whoever by words spoken or written or by visible representations insults or brings into contempt or attempts to insult or bring into contempt the Religion of Islam or the tenets of any of the four sects thereof or the teaching of any lawfully authorized religious teacher or any *fatua* lawfully issued by the Mufti or under the provisions of this Enactment shall be liable to be punished with imprisonment for a term not exceeding six months or with fine not exceeding five hundred dollars or with both such imprisonment and fine.

*Bait-ul-Mal*  
offences.

151. Every executor or administrator of an estate part of which is due to the *Bait-ul-Mal* who fails to make the reports or to pay the amounts to the Commissioner in the manner and within the time prescribed by this Enactment shall be liable to a fine not exceeding one hundred dollars, and in the case of a continuing failure to a further fine not exceeding fifty dollars for each month or part of a month during which the failure continues.

Non-  
payment of  
*zakat* or  
*fitrah*.

152. (1) Whoever, having been lawfully assessed as liable to pay any *zakat* or *fitrah* and having failed to procure, by appeal or otherwise, the cancellation or modification of such assessment, shall refuse or wilfully fail to pay the same, shall be liable to be punished with imprisonment for a term not exceeding seven days or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

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

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

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

153. Whoever incites or persuades any person professing the Religion of Islam to refrain from attending any mosque or from attending Instruction on the Religion of Islam or from paying *zakat* or *fitrah* or from doing or paying whatever he is liable to do or pay under this Enactment shall be liable to be punished with imprisonment not exceeding fourteen days or with fine not exceeding fifty dollars or with both such imprisonment and fine.

Incitement to neglect religious duty.

154. Notwithstanding any other written law to the contrary, any Muslim who shall permit the adoption of any Muslim child under the age of fourteen years and seven months by a non-Muslim without the permission in writing of the Department shall be liable to be punished with fine not exceeding fifty dollars or imprisonment for a term not exceeding one month or with both such imprisonment and fine and such child shall be returned to its parent or lawful Muslim guardian.

Adoption by non-Muslim

155. Whoever attempts to commit, or abets the commission of, any offence against this Enactment shall be liable to be punished with the same punishment as if he had committed such offence.

Attempts and abetment.

#### PART XI GENERAL

156. In the exercise of all powers and the performance of all duties, other than judicial powers and duties, conferred or imposed by this Enactment, the Mufti, Chief *Kadzi* and all *Kadzis* and other officials appointed under the provisions of this Enactment shall be subject to the general directions and control of the Commissioner.

Supervision of officers.

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

Appearance of the moon.

(2) Upon giving his certificate as aforesaid, the Chief *Kadzi* shall forthwith report to the Commissioner who shall transmit the information in question to His Highness the Sultan.

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

Provident  
Fund.

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

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

(3) The Commissioner may appoint a Managing Committee to administer any such provident fund and such Managing Committee may include persons who are beneficiaries of the Fund, and persons who are not members of the Department nor of the *Majlis*.

(4) The Corporation with the approval of His Highness the Sultan may invest any monies or assets of any such provident fund in any of the investments by this Enactment authorized for the investment of monies and assets constituting the Endowment Fund of the Department, and shall have the like powers in respect of change of investment, employment of bankers and similar matters as relate to the Endowment Fund of the Department.

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

(6) The Commissioner may, with the approval in writing of His Highness the Sultan, make rules to regulate—

- (a) the institution, organization, administration and management of the provident fund,
- (b) the proceedings of the Managing Committee.
- (c) the proceedings of meetings of contributors to the provident fund,
- (d) the eligibility of contributors to the provident fund,
- (e) the amount of contributions and the terms upon which they will be received, and paid out,
- (f) the absorption of other provident funds or similar institutions,
- (g) the alteration or amendment of the rules governing the provident fund, and
- (h) the winding-up of the provident fund.

(7) The Commissioner with the approval of His Highness the Sultan may discontinue and wind up any such provident fund.

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

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

Protection of  
Department  
and Majlis,  
its members  
and  
employees.

(2) No member of the Department or Majlis, and no servant, agent or person acting under the authority of the Department shall be personally liable to any action or proceeding for or in respect of any act, matter or thing *bona fide* done or omitted to be done in the exercise or supposed exercise of any of the rights or powers of the Department or the Majlis or the Members thereof.

**160.** His Highness the Sultan in Council may, by notification in the *Gazette*, make rules for carrying out the provisions of this Enactment, and in particular, but without prejudice to the generality of the foregoing, such rules may provide for—

Rules.

- (a) the procedure of the Department or of the Majlis, the form and method of execution of instruments by the Department and the Majlis, and the appointment of subordinate officers of the Department and the Majlis,
- (b) the fees to be paid in respect of any act or thing done under or in pursuance of this Enactment, and the method of collecting and disposing of the same,
- (c) the powers and duties of the Committee and the practice and procedure in respect of all matters within its jurisdiction,
- (d) the appointment of Committees of the Majlis and their powers, duties and procedure,
- (e) the practice and procedure of the Shariah Appeal Court, the Courts of the Chief *Kadzi* and of *Kadzis*: in any such rule it shall be lawful for His Highness the Sultan to declare that any of the provisions sections 28 to 56 inclusive of this Enactment shall cease to have effect,

- (f) the forms, registers, books of account, reports, accounts, estimates and other documents to be used in respect of any act or thing done under or in pursuance of this Enactment,
- (g) the employment of bankers, and the bank accounts to be opened and operated, by the Co-operation of the Department,
- (h) the collection, expenditure and disposal of any property, investments and funds due to or vested from time to time in the Department,
- (i) the conduct of any charitable collection, and the disposal of the proceeds thereof,
- (j) the conduct of any mosque or burial ground and all matters relating thereto,
- (k) the powers and duties of any *pegawai masjid*, Deputy Controller of *Zakat* and *fitrah*, collector and assistant collector,
- (l) the conduct of elections for the selection of *Imam*,
- (m) the determination and publication of *mukim* boundaries,
- (n) the powers and duties of Registrars of Muslim Marriages and Divorces,
- (o) the care and instruction of juvenile converts by the Department, and the method of registering converts, and
- (p) the conduct of religious seminaries and schools,
- (q) all matters relating to *wakafs*, *Nazar*, *ta'alik* dowry.

Saving of rules and appointments.

**161.** All rules, notifications, orders, notices, forms, licences and appointments issued or made under or by virtue of any written law repealed by this Enactment shall remain in force, so far as they are not inconsistent with, or replaced by, the provisions of this Enactment, until revoked or replaced by rules, notifications, forms, notices, orders, licences or appointments issued or made under the provisions of this Enactment.

Repeals.

**162.** The written laws set out in the Third Schedule to this Enactment are hereby repealed to the extent specified in the third column of such Schedule.

Validation of judgments, sentences and orders.

**163.** Any sentence passed, judgment given, order made or act done before the coming into force of this Enactment by the Courts of Chief *Kadzi* or of a *Kadzi* including an order made in reference to any such



sentence, judgment, order or act by the appellate authority, shall be deemed to be and always to have been valid and within the jurisdiction of such Courts or appellate authority.

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

Pending matters.

#### FIRST SCHEDULE

(Section 17)

#### THE STANDING RULES AND ORDERS OF THE COUNCIL OF RELIGION AND MALAY CUSTOM

1. These Rules may be cited as the **Majlis Standing Rules and Orders, 1955.**

2. The President shall preside at all the meetings of the Majlis or in his absence, His Highness the Sultan may appoint any other member to act as Chairman: Provided that His Highness the Sultan, if present, may preside at any such meeting.

Chairman.

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

Quorum.

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

Conduct of business.

(2) A resolution in writing signed by all members of the Majlis shall, unless in any special case or class of cases His Highness the Sultan shall otherwise direct, have the same effect as a resolution duly passed under sub-section (1) of this section.

5. (1) All meetings of the Majlis shall be summoned by the Secretary to the Majlis.

Summoning meetings.

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

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

(4) At least seven days notice in writing shall be given of every meeting:

Provided that in an emergency the President or the Chairman may direct that notice shall be dispensed with.

(5) Any notice may be sent by post addressed to a member at his last known place of residence and shall be deemed to have been served in the due course of post. No notice of meetings shall be necessary in the case of any member for the time being out of the State.

Power of officers.

6. (1) The President shall have general control of all deliberations and proceedings of the Majlis and shall be responsible therefor to His Highness the Sultan.

(2) The Chairman shall in the absence of the President exercise all the powers of the President.

Duties and powers of Secretary to the Majlis.

7. Subject to the provisions of the last two rules, the Secretary to the Majlis shall, under the direction of the President, have charge of all correspondence and documents of the Majlis, and shall carry out the duties imposed upon him by this Enactment or allotted to him by order of the President.

Minutes.

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

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

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

Order of business and voting.

9. (1) The President shall determine the order of business at any meeting.

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

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

Strangers at meetings.

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

Certified copies of resolutions.

11. A copy of any resolution certified by the Secretary to the Majlis to be a true copy of such resolution shall be sufficient evidence thereof and all Courts shall take notice of the signature of the said Secretary.

Casual absences.

12. (1) The President or Secretary to the Majlis shall, if he desires to be absent on leave or for other reasons for more than twenty-one days, apply for leave to His Highness the Sultan who may give such directions as he may deem fit.

(2) Any other member of the Majlis so desiring to be absent shall apply to the President, who may grant leave or submit the matter to His Highness the Sultan for his directions.

Acting in emergency.

13. In any case of emergency the President with the concurrence of the Commissioner may, after consultation with the Mentri Besar or in his absence the State Secretary do or direct to be done on behalf of the Majlis any act or thing which might lawfully be done by resolution of the Majlis:

Provided that in any such case a meeting of the Majlis shall be called within one week thereafter for the purpose of ratifying

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and confirming the action taken and, if the Majlis shall decline to ratify and confirm the same, His Highness the Sultan may give such directions thereon as he may deem fit.

14. (1) The Majlis may by resolution approved by His Highness the Sultan delegate to the President or Secretary to the Majlis or to any committee of the Majlis such of its duties and powers, not being judicial or quasi-judicial powers as it may deem fit. For the purposes of this section the powers conferred on the Majlis by sections 20 and 21 of the Enactment shall be deemed to be quasi-judicial powers.

Delegation of powers.

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

15. The proceedings of the Majlis shall be secret and no member or servant thereof or member or servant of the Department shall disclose to any person other than His Highness the Sultan or the Mentri Besar or any member of the Majlis or Department any matter which has arisen at any meeting, unless he is expressly authorised to do so:

Secrecy.

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

16. All communications on behalf of the Majlis to His Highness the Sultan shall be forwarded through the Mentri Besar or State Secretary, as His Highness may direct.

Channels of communications.

SECOND SCHEDULE  
(Section 56)

1. These Rules may be cited as the **Islamic Religious Courts (Civil Procedure) Rules, 1955.**

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

Plaint.

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

3. More persons than one may be joined as plaintiffs or defendants, and more causes of action than one may be raised in the same proceedings, but the Court may order separate trials in its discretion. The Court may in its discretion try two or more proceedings together if they relate to the same issues of fact or law.

Joinder and consolidation.

4. (1) When filing a plaint, in addition to the original, the plaintiff shall hand to the Court a copy thereof for each defendant.

Summons and service.

(2) The Court shall issue a summons to each defendant and shall cause the same to be served on him with a copy of the plaint. The summons shall direct the defendant to appear to

answer the claim at a stated place, date and time, and shall warn him that, in case of his non-appearance, the Court may proceed to allow the claim in his absence.

Persons deceased or under disability.

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

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

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

Defence.

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

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

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

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

Interlocutory proceedings.

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

Withdrawal and settlement.

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

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

Provided that no withdrawal or settlement shall be made by the personal representative of a deceased person's estate or by a representative appointed under rule 5 of these Rules without the leave of the Court, which shall have due regard to the interests of the beneficiaries of persons represented.

Trial or hearing.

9. (1) If, at the time appointed for the hearing, the plaintiff does not appear, the proceedings may be struck out: if the plaintiff

appears, but the defendant does not appear, the plaintiff may prove his case and the Court may give judgment:

Provided that—

- (a) in any such case the Court may in its discretion order an adjournment, and
- (b) the Court may deal with a counter-claim although the claim is struck out.

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

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

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

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

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

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

10. (1) Every judgment of the Court shall after delivery be drawn up in writing, dated, signed by the presiding officer of the Court, and sealed, and shall be retained with the record. Any party shall be entitled on payment of the prescribed fee to obtain a certified copy of the judgment.

Judgments.

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

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

Costs.

12. (1) If any person bound by any judgment or order of a Court fails to comply with the same within such time as the Court considers reasonable, the Court may, on the application of any person entitled to benefit under such judgment or order or of its own motion, send a certified copy of such judgment or order to any Magistrate's Court having jurisdiction in the place where the Court which gave or made the judgment or order is situate, together with a request addressed to the Magistrate that such judgment or order may be executed, and such Magistrate's Court shall execute such judgment or order and exercise in connection therewith all ancillary powers, including powers of arrest and commitment and issue of a judgment debtor summons, in like manner as if the judgment or order had been given or made by itself:

Execution.

Provided that, if the amount payable under the judgment or order or the value of the subject-matter thereof exceeds one thousand dollars, the foregoing provisions shall be read as if the words "Sessions Court" and "President" were substituted for "Magistrate's Court" and "Magistrate" respectively.

(2) The Court of the Chief *Kadzi* shall have in respect of the execution of its own judgments and orders all such powers and duties as are conferred and imposed on Magistrates in respect of the execution of judgments and orders of Magistrate's Courts by Orders XXI, XXII and XXIV of the Subordinate Court Rules, 1950, or such other corresponding rules as may from time to time be in force save and except that it shall not issue execution in respect of any immovable property. The Chief *Kadzi* shall have power to appoint any subordinate Officer of his Court to act as the bailiff thereof.

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

Evidence *de bene esse*.

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

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

Contempt of Court.

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

(2) If any person shall be arrested under the preceding sub-rule, or shall be guilty of any other contempt of the lawful authority of the Court, the Court shall report the matter to the Public Prosecutor or his Deputy, or to the Chief Police Officer.

Poor persons.

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

Appeals.

16. (1) Subject to the provisions of section 26 (i) (b) of the Enactment any party to a Civil proceeding in the Court of the Chief *Kadzi* or of a *Kadzi* may appeal against the judgment or order of such Court to the *Shariah* Appeal Court constituted under Section 26 of the Enactment.

(2) Such appeal shall be brought by filing, in the Court which gave or made the judgment or order appealed from a notice of appeal addressed to the Court, and by paying the prescribed fee. The Court shall serve a copy of such notice as soon as possible on each respondent.

(3) No notice of appeal may be filed after the expiration of fourteen days from the date upon which the judgment or order appealed against was given or made. Provided that on application to the *Shariah* Appeal Court it may, if it considers that special circumstances render an extension just, give leave to appeal within such extended time after the expiration of such fourteen days as it may think fit.

(4) On receiving a notice of appeal the presiding officer of the Court shall thereupon prepare and sign a copy of the grounds of his judgment, and shall, on payment of the prescribed fees, supply the same to the appellant together with a copy of the notes of the proceedings and copies of any other documents for which the appellant has applied to enable him to prepare the record.

(5) When the documents referred to in the preceding sub-rule are ready, the Court shall give notice thereof to the appellant, and within twenty-one days after receipt of such notice the appellant shall file in the Court sufficient copies of a record of appeal. Four copies of the said record shall be forwarded by the Court to the Commissioner and a copy shall be served on each respondent to the appeal. The record of appeal shall consist of a petition addressed to the *Shariah* Appeal Court stating the grounds of the appellant's objection to the judgment or order appealed from, a copy of the plaint, a copy of any written defence, copies of any interlocutory orders, a copy of the Court's note of the proceedings, copies of all exhibits and documentary evidence, a copy of the judgment or order, a copy of the grounds of judgment, a copy of the notice of appeal and an index. If the record is irregular, or is filed out of time, or if any respondent has not been served, the Court shall inform the Commissioner of such facts.

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

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

17. (1) On receiving a record of appeal under the provisions of the preceding rule, the Commissioner shall appoint a *Shariah* Appeal Court to hear such appeal in the manner provided in the Enactment.

Hearing of appeal.

(2) Such *Shariah* Appeal Court shall then fix a date for hearing the appeal, and shall notify the parties of the date upon which and the place where such appeal shall be heard.

(3) On the date fixed, or on any other day to which a hearing may be adjourned the *Shariah* Appeal Court shall hear the parties to the appeal and refer to any part of the record of appeal and shall then make such order as in the case may be just and reasonable.

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

Irregularities.

19. In matters of practice and procedure in civil proceedings, not expressly provided for in this Enactment or any rules made thereunder, the Court may adopt such procedure as may seem

Matters not provided for.

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

THIRD SCHEDULE

(Section 162)

REPEAL

| No. and year            | Title   | Extent of repeal   |
|-------------------------|---|--|
| 4 of 1340 ... ..        | Courts Enactment, 1340 ... ..                                 | All provisions relating to Courts of Kathis and Assistant Kathis and appeals therefrom |
| 3 of 1342 ... ..        | Prohibition of Improper Inter-course Enactment ... ..         | The whole  |
| 37 of 1356 ... ..       | Bait-ul-Mal Enactment ... ..                                  | "  |
| 38 of 1356 ... ..       | Muhammadan Marriage and Divorce Registration Enactment ... .. | "  |
| 1 of 1949 ... ..        | Council of Religion and Malay Customs Enactment (1368) ... .. | "  |
| 5 of 1949 ... ..        | Court of Kathis Appeal Enactment (1369), 1949 ... ..          | "  |
| 2 of 1348 ... ..        | Rules for Kathis' Courts ... ..                               | "  |
| Ishtihar 29/1341 ... .. | Punishment for non-observance of Friday Prayers ... ..        | "  |
| Pemberitahu 34/1345     | Suspended Marriage ... ..                                     | "  |
| Ishtihar 26/1353 ... .. | Punishment for non-observance of Friday Prayers ... ..        | "  |
| Pemberitahu 9/1346      | Return of Conjugal Marriage ... ..                            | "  |
| Ishtihar 37/1347 ... .. | Tithe ... ..  | "  |
| Ishtihar 45/1351 ... .. | Rules during Puasa (Fast) ... ..                              | "  |
| Ishtihar 24/1353 ... .. | Rates of Mas Kahwin (Dowry) ... ..                            | "  |
| Ishtihar 9/1354 ... ..  | Rates of Mas Kahwin (Dowry) (Ruling House) ... ..             | "  |

Passed by the Council of State, this 5th day of November, 1955.

MOHAMED YASSIN BIN ABDUL MALIK,  
*Clerk of Council, Trengganu*