

# DIGEST OF CASES

REPORTED IN

## THE LAW REPORTS OF PALESTINE

1940 – 1944 (inclusive)

IN INDEX FORM

**VOLUME 1**  
**Letters A – I**

by

**CHALOM COHEN**  
Haifa

Ref  
KMQ  
1002.23  
.A35  
1940-1944  
RBK v.1



Ac 17 6506

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### INTRODUCTORY

Mr. Chalom Cohen is already well known in Judicial and Legal Circles in Haifa for his monthly reports of the Judgments of the District Court of Haifa. I have therefore very little to say to introduce him. It was on my suggestion that he prepared the present publication which, as its title indicates, is a Digest of the cases reported in the Palestine Law Reports from the year 1940 to 1944 inclusive.

This work, which shows much industry, will, I am certain, prove to be of great help to all who are engaged in the legal profession. It is my hope, which I am sure, many share, that Mr. Cohen will continue publishing periodically and as need arises similar digests.

A. Nasr

JUDGE

JUDGES CHAMBERS  
District Court  
Haifa.

Nov. the 10th, 1945



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NOTE. All reference in this book is to the Law Reports of Palestine. The Number of the Case is given and is followed by the Volume and Page at which the Report is published.

Thus "C.A.19/44 XI 373" stand for

" Civil Appeal 19 of the year 1944 published in Volume 11 of the Law Reports of Palestine at page 373".

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245	Jan	8	8				
246	Jan	55	8				
249	Jan	34	8				
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				55	Apr	179	8
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				62	May	226	8
				64	May	197	8
				67	May	192	8
				68	Dec	575	8
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87	June	401	9	210	Dec	763	9
89	July	439	9	212	Dec	779	9
90	July	449	9	215	Nov	737	9
91	July	419	9	216	Nov	739	9
92	July	503	9	220	Dec	773	9
93	Sep	554	9	221	Dec	775	9
96	Sep	559	9	222	Dec	766	9
98	July	404	9	225	Dec	769	9
99	July	443	9	226	June	302	10
101	Sep	576	9	228	Nov	741	9
105	July	432	9	236	July	383	10
106	July	510	9	237	Feb	84	10
107	July	519	9	242	Dec	789	9
109	July	435	9	243	Jan	21	10
110	July	437	9	244	Jan	46	10
113	July	458	9	245	Dec	792	9
121	Aug	531	9	246	Dec	799	9
122	Sep	550	9	248	Dec	788	9
123	Sep	565	9	249	Jan	30	10
124	July	501	9	250	Jan	32	10
126	Oct	604	9	255	Jan	34	10
128	Sep	587	9	257	Jan	14	10
129	Nov	707	9	260	Jan	38	10
131	Nov	752	9	265	Feb	60	10
135	Oct	595	9	269	Apr	199	10
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141	Sep	547	9	275	Feb	51	10
143	Oct	617	9	279	Feb	96	10
147	Dec	786	9	281	Feb	64	10
149	Oct	619	9	282	Feb	101	10
153	Oct	635	9	285	Jan	26	10
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159	July	338	10	312	Nov	586	10
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166	Feb	74	11	324	Feb	67	11
168	July	371	10	327	Sep	456	11
170	July	432	10	328	Dec	633	10
174	July	402	10	329	July	414	11
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65	July	421	7	111	Sep	403	8
69	Sep	456	7	115	Oct	420	8
76	Sep	437	7	119	Oct	442	8
77	Sep	438	7	120	Oct	456	8
85	Oct	481	7	124	Nov	473	8
107	Dec	605	7	126	Nov	478	8
109	Dec	590	7	127	Nov	488	8
125	Nov	567	7	132	Nov	506	8
127	Dec	593	7	133	Nov	528	8
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86	Aug	477	10
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101	Oct	506	10
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Abduction- Accomplice- Accounts- Acquittal- Action

### ABDUCTION

When a person has been abducted and has as part of the transaction been murdered, the charge should be laid under Section 214 of the Criminal Code Ordinance.

Cr.A.54/41 VIII- 205

### ACCOMPLICE

2. Whether a person is or is not one - for trial Court.

Cr.A.62/45 X -354

3. Corroboration- Necessity of corroboration of accomplice's evidence.

Cr.A.18/44 XI 101.

4. Factors for consideration in determining whether a particular witness is an accomplice or not.

Cr.A. 151/44 XI 629.

5. Innocent persons signing document necessary for furtherance of a conspiracy - are not accomplices.

Cr.A. 44/43 X 283.

6. Witness- Whether or not a witness is an accomplice is primarily a matter for the Court of trial provided of course they apply their minds to the proper tests in coming to their conclusion. For a man to be an accomplice there must be a guilty intent.

Cr.A. 124/41 VIII -473

### ACCOUNTS

7. Appropriate Court- An action for accounts, having regard to the limited language of Section 3 of the Magistrates Courts Jurisdiction Ordinance, 1909, must be brought in the appropriate District Court. See M.C.Procedure Rules 1940, Rule 171.

C.A.48/42 IX 346.

### ACCOUNTS (continued)

8. Settled Accounts- It is an accepted principle that in the absence of fraud, a Court will not re-open a settled account.

C.A.179/41 VIII 536

### ACQUITTAL

9. Doubt as to acquitted accused not ground for quashing conviction of other accused.

Cr.A. 29/40 VII 218

### ACTION

10. Administrators- Action against Administrators for balance of purchase price of land alleged due from deceased person.

CA.233/40 VIII 20

11. Bills of Exchange. (See Bills of Exchange.

12. Institution of..by one of the heirs on behalf of the estate- whether in order.

CA.257/41 IX -70

13 Machinery-return of. Action for return of machinery brought under Civil Procedure Rules 1938 Rule 241- action misconceived as rule not applicable- Court cannot amend under Rule 359.

CA.268/40 VIII -1.

14. Masha land. Action instituted by a co-owner for restraining mortgagees from registering shares of his co-owners in Mortgagees' names -Land held in common (Mash'a) whether entitled to do so-

Held. First appellant was entitled to bring the action he brought to restrain the mortgagees from interfering with his possession, because the land, the subject matter of the action was Masha' and every owner and co-owner had an interest in every particle in the land

CA.52/42 IX 318.



## Action- adjournment

## Administration - Admiralty

## ACTION (Continued)

15. Action- Motion. Where a party desires to bring a matter before a Court and does so by action, and not by motion, and the procedure by motion is open to him, the proceedings by action cannot be upset on the ground that that party should have proceeded by way of motion and not by action but that the matter would be otherwise where a party proceeds by way of motion when his proper course is to proceed by way of action.  
CA.32/43 X 181
16. Stay- Power to stay  
CA.66/40 VII -220
17. Villager- Action by one villager on behalf of village against trespassers- Inhabitant proper plaintiff.  
CA.45/40 VII -171
18. Waqf. Action by beneficiary of waqf against Manager thereof.  
CA. 84/40 VII 241.

## ADJOURNMENT.

19. Of Criminal trial matter for discretion of trial Court Court of appeal will not interfere with refusal of adjournment unless it amounts to irregularity of procedure. Absence of Accused's Advocate on the ground of his being sick not ground for interference as it might have been possible for another Advocate to have undertaken the defence. Court however lays no rule as to when an adjournment should be granted. Each case to be considered on its facts.  
CA. 85/40 VII 481

## ADJOURNMENT (continued)

20. Discretion- When Appellate Court will interfere in matters of.  
CA 285/42 X- 26  
CA 152/44 XI-617
21. Not right to ask for an adjournment when it is the duty of the party requesting the adjournment to file the facts necessary in support of his case.  
PCLA 7/40 VII 450
22. Parties not entitled to an adjournment as of right in order to produce evidence. Question of adjournment is entirely in discretion of Land Settlement Officer.  
CA 177/41 VIII 470
23. Questions of adjournment primarily in the discretion of Land Settlement Officers, but discretion must be exercised judicially.  
CA 135/41 VIII 509
24. Land Settlement officer having accepted certain claims made on last day of hearing, should grant an adjournment to persons opposing the claims to enable them to rebut them.  
CA 135/41 VIII 509

25. The Civil Procedure Rules do not apply to Land Settlement Courts. Land Settlement Officer has discretion to refuse adjournment. Circumstances in which adjournment should have been granted.  
CA. 207/41 VIII 520

## ADMINISTRATION.

26. See Succession.

## ADMIRALTY.

27. Admiralty Court has jurisdiction of English High Court in Admiralty matters subject to Palestinian Ordinances.  
Ad. 8/40 VIII 15



## Admiralty -

## Admission-

## Adverse possession

ADMIRALTY (continued)  
Court

28. Bound to follow the opinion expressed by the Court of Criminal Appeal which is at least a Court of equal standing.

Ad. 2/40 VIII-339

29. Damages- Whether the Supreme Court sitting as Admiralty Court has jurisdiction to determine a claim for damages for breach of a charterparty- Colonial Courts of Admiralty Act 1890 Palestine Admiralty Jurisdiction Order 1957 Art. 2(1)

Ad. 3/42 IX 676

## ADMISSION.

30. Binding effect on persons not parties thereto.

CA 107/44 XI-550

31. ..in Palestine are governed by special considerations without reference to principles of English Law, and in the absence of fraud, in order to disprove a written admission only written evidence or admission of the opponent is admissible

CA 168/41 VIII 563

32. Admission of ownership of Government of Palestine of certain land. Persons making admission liable to pay heavy damages for breach of contract for sale of other land- admission made by said persons owing to their inability, for lack of time to dispute ownership if the breach of the contract were to be avoided- Held. Admission in such circumstances not made under duress.

CA 173/41 VIII 573

## ADMISSION (Continued)

33. Promissory note. An admission of liability contained in a promissory note is sufficient prima facie evidence of such liability.

CA 63/43 X 247

34. Sickness- mortal -

Since the enactment of the Succession Ordinance the Articles of the Mejlle regarding admissions made in mortal sickness which are part of the Sharia personal law do not apply and have no effect in regard to estates of Christians.

CA 147/41 VIII 426

## ADVERSE POSSESSION

35. Co-heir- Doctrine that possession by one co heir raises a presumption that it is on behalf of the other co heirs applies to mulk immovable property and is rebuttable by evidence of adverse possession.

CA 288/44 XI 615

36. Co heir- Does not automatically oust the title of a co heir.

CA 106/44 XI 505

37. Cannot be basis of a Judgment. Land Law (Amendment) Ordinance not retrospective.

CA 390/43 XI 217

38. It is for the person relying on adverse possession as contemplated by Section 2(1) of the Land Law (Amendment) Ordinance to rebut the presumption that he occupied and possessed the land in dispute on behalf of the heirs not in occupation, and that his possession was adverse to those heirs.

CA 37/42 IX 362

39. Where adverse possession is relied upon and established, the adverse possession, in order to be of assistance to the party, relying upon it, must have existed for the prescriptive period.

CA 53/44 XI 300



## ADVOCATE

## ADVOCATE

40. An admission made by an advocate on behalf of his client in the course of proceedings is binding on the client. Otherwise parties to litigation would come forward and say that what an advocate had said was not true.

CA 33/42 IX 378

41. Where a party holds out an Advocate on his behalf to settle a case, and appears in open Court and asks the Court to ratify a settlement, that party cannot be heard to say that his advocate had no authority to settle even though the power of attorney given to that advocate does not authorise him to make such a settlement.

CA 277/43 XI 196  
278/43

42. Advocate - criticising of. One of the most ungrateful tasks that any Judge has to perform is to criticise advocates, especially in a murder case where the strain and responsibility upon Counsel on either side is very great.

CA 14/42 IX 63

43. Advocate & Client: Confidential communications.

For the perfect administration of Justice, and for the protection of the confidence which exists between a Solicitor and his client, it has been established as a principle of public policy that those confidential communications shall not be subject to production. But, to that of course this limitation has been put, and justly put that no Court can be called upon to protect communications which are in themselves part of a criminal or unlawful proceeding.

## ADVOCATE

## ADVOCATE (continued)

(See Bullivant v A.G. for Victoria 1901 A.C. 196 at p.200 Production- means production in evidence by a witness and not merely production by a Solicitor.

Cr.A.144/42 IX  
628.

44. Deposit- failure to pay by.. Rule 338 C.P. Rules 1938 Absence of Appellant's Advocate when appeal dismissed immaterial as dismissal automatic.

CA 44/40 VII 372

45. Fees of. No advocate's fee awarded since Advocate raised two preliminary objections which had no foundation and therefore failed.

CA 41/41 VIII 152

46. Fees Agreement to pay.. The object of an agreement between an Advocate and his client for the advocate's remuneration is to avoid the work involved in taxation, and that object would be defeated if costs had to be taxed.

CA.201/42 IX 696

## Fees.

47. Agreement for remuneration (in which respondent undertook to reward appellant with 35 dunums of land) Application to Settlement Officer to have agreement enforced- Settlement Officer dismissed the application. Whether proper Order.

Held. Before the question of enforcing the agreement could be entertained by any Court, the Settlement Officer should certify whether in accordance with S.22 of the Advocate's Ordinance, 1938 the agreement for remuneration was fair and reasonable.

CA 83/42 IX 415

48. Foreign Advocates Law Examination.

The High Commissioner in refusing the application for an order nisi to issue to the Law Council calling upon it to show cause why petitioner should not be allowed to take one examination



## ADVOCATE

## ADVOCATE

## ADVOCATE (continued)

only in 1941, namely -that -in Civil Procedure, and why he should not be exempted from taking any language test- HELD (1) there being no rule in existence entitling the petitioner to a certain right but merely a long established practice, the petitioner could not rely on Section 5(1)(c) of the Interpretation Ordinance. (2) The mere fact that an alteration in the practice might cause hardship to any individual not matter for the High Court, but a matter for the Legal Board.

HC 98/40 VII 535

Fees.

49. Recovery of payment, of

Where a payment is made it cannot be recovered unless there is a total failure of consideration

CA 74/40 VII 255

50. Failure to appear. Failure of an Advocate to appear to defend the interest of his client at the time appointed not ground for setting aside an order made in his absence unless the time and place fixed were unreasonable. HC 57/44 XI 260

51. Guardian-ad-litem. Advocate acting as guardian ad litem -entitled to his instruction fee.

CA 99/41 VIII 269

52. Licence. of Advocate suspension of.

MA 5/40 VII 51

53. Ordinance- Advocates Ordinance. S. 20(1) Striking name of Advocate off the Roll of Advocates. MA 36/42 IX 354

54. Ordinance. Advocates Ordinance to be read together with the Law Council's Ordinance, 1938. S. 20(1)

MA 5/40 VII 51

## ADVOCATE (continued)

55. Advocates Ordinance, 1938 Section 20(2)

Advocate's name struck off the Roll of Advocates ; at time of Law Council's decision term of Office of Law Council had already expired- Appeal by Advocate to Appellate Tribunal appointed under Section 20(2), dismissed, application by Advocate to the newly appointed Council for re-entry of his name on Roll refused. Appeal to Appellate Tribunal, allowed.

MA 32/43. X 439

56. Section 20(2) Disgraceful conduct.

Where an Advocate had been convicted of charges which, in their very nature, involved all the offences mentioned in Section 20(1), it is not necessary for the Law Council to re-hear those charges and enquire into them. MA 34/42 IX 338

57. Section 21. CA 401/43 XI 97

58. Section 21(1) HC 76/41 VIII 460

59. Section 22 CA 83/42 IX 415

60. Section 22 CA 201/42 IX 696

61. Relationship.

Relation between Advocate and client one of trust- Advocates Ordinance intended to cover those relations Mejlle not applicable- Laws of contract also not applicable.

62. Witnesses. Advice by Advocate to accused as to whether to go to the witness box.

.....It has been said the late Marshall Hall always required his client previously to state in writing whether he desired to give evidence in the witness box or not Admittedly many accused have, by their own evidence convicted themselves and no doubt will continue to do so. Per Gordon Smith C.J.

Cr.A. 48/42 IX 258

63. Legislation had never given or intended to give the Court power to open every transaction between Advocate and client as it did in case of Usurious Loans

CA 74/40 VII 255



Affidavit- Affirmation- Age - Agency- Agudat Israel-  
A.R.P. Allied Forces.

## AFFIDAVIT.

(64) See Cross Examination

(65) Delay in filing Affidavit  
in reply to a rule nisi- no  
good cause shown.

HC.13/44 XI 83

AFFIDAVIT See Motion

## AFFIRMATION

(66) Before a witness gives  
evidence upon affirmation the  
Court should be satisfied that  
he is entitled to do so, and  
it is desirable that the REASON  
should be recorded.

Cr.A.29/41 VIII 144

AGE OF ACCUSED Factors.

(67) The determining fact-  
ors in considering the age of  
an accused person for the purp-  
ose of deciding whether or not  
he could be sentenced to death  
for committing the offence of  
murder is the time when the tri-  
al of the accused took place  
and not the time when the of-  
fence was committed and the fact  
that the accused was at the time  
of the commission of the offence  
below the age of Eighteen- no  
avail to such accused.

Cr.A 152/42 IX 643

Cr.A. 8/44 XI 63.

(68) Fact that accused was  
young at the time of the commis-  
sion of the offence is matter  
which may be taken up administ-  
ratively with the authorities.

Cr.A.8/44 XI 63.

AGENCY-- repudiation of.

CA. 209/41 VIII 521

AGREEMENT-- See contract

## AGUDAT ISRAEL.

(69) Not an independent  
Jewish community and have there-  
fore no legal right to be sup-  
plied with forms of divorce  
or registration certificates  
for their rabbis because the  
rabbis entitled to be recognised  
by the District Commissioner as  
registering authorities are  
those rabbis designated by the  
competent religious authority  
of the Jewish Community

HC. 110/42 IX 572

AIDING AND ABETTING See Immig-  
ration .

AIR RAID PRECAUTIONS (Splintered  
Glass) Order 1941.

Cr.A 92/42 IX 398

ALIEN ENEMY See Enemy

ALIMONY See Personal Status.

ALLIED FORCES (Application of  
Acts to Colonies etc ) Order  
No.1 of 1941

H.C. 71/44 XI 355

ALLIED FORCES (Application of  
23 Geo.5 c 6 (No.1) Order in  
Council 1940.

(70) The Military Courts  
of the Polish Forces had been  
vested with jurisdiction to  
detain and try the members of  
such forces for offences com-  
mitted by them by virtue of..

HC. 78/42 IX 526

(71) ALLIED FORCES

Trial by Court Martial of members  
of..

HC 71/44 XI 355.



## Allocutus- Animal Diseases

## Appeals

ALLOUTUS See sentence

(72) ANIMAL DISEASES ORD.  
S.22 (2)

Interpretation of the words  
"Animals or things" these  
cover meat.

(73) ALTERNATIVE ACCOMMODAT  
ION.

See Landlord &  
Tenant.

APPEAL BY ATTORNEY GENERAL  
See S. A.G.

## APPEALS TRIBONAL.

(74) Case stated by upon  
a point of law for opinion of  
District Court. Judgment of  
District Court subject to  
appeal as of right.

CA. 124/44 XI 153

APPEALS H.M. Birthday

(75) Time for filing of...  
expired on June 11th 1942  
on which date the offices of  
the Supreme Court were closed  
that day- that day being H.M.  
Birthday- Appeal could not be  
filed on the 11th and was  
filed on the 12th June-  
Application made for extension  
of time. In granting the  
application the Supreme Court  
held: That the Offices of the  
Supreme Court were properly  
closed on the 11th June on the  
order of the Chief Secretary  
but that such closing was not  
notified to the public, and  
therefore could not affect them  
; and that the closing of the  
offices on the 11th June was  
not a proceeding which should  
adversely affect the public.  
CA. 98/42 IX 404

APPEALS Civil Procedure.

(76) The Civil Procedure Rules  
1938 are not applicable to an  
appeal from the decision of the  
District Court in proceedings  
under the Succession Ordinance.  
CA. 172/41 VIII 436

APPEALS Custodian

(77) Although the decision  
in CA 255/40 (VIII ELP 20) to  
the effect that when a person  
is empowered "to institute Civil  
proceedings" he is entitled to  
appeal against the Judgment given  
in the proceedings instituted by  
him, would seem to be in conflict  
with the English Authorities  
cited the Court of Civil Appeal  
was bound by that decision and  
therefore the submission that  
the custodian of Enemy Property  
was not empowered, by Section  
9(A)(2) of the Trading with the  
Enemy Ordinance, 1939, as amended  
on October 4th 1940, to appeal  
should be overruled.

CA 143/41 VIII 467

APPEALS

(78) Court of Appeal can  
make any order which Court of  
First instance can make.  
CA 140/41 VIII 579

APPEALS Cross Appeal - fees

(79) When a notice of Cross  
Appeal under Rule 339 Civil P.  
Rules 1938 is filed the full  
fees should be paid as on a  
cross appeal.  
CA. 162/40 VII 489

APPEALS District Court

(80) President of found no  
evidence to support the charge-  
proper course for him to acquit  
accused not to remit case to  
Magistrate for re-trial.  
Cr.A.44/42 IX 224



## Appeals

## Appeals

APPEALS      Extension, FEES

(81)      Inability to pay fees not reasonable excuse for the grant of an extension of time within which to lodge appeal.  
           MA. 46/40 VII 530  
           CA 184/41 VIII 492  
           MA 5/43 X 56

APPEAL - Plea of guilty

(82)      An appeal is entertained when there is a plea of guilty when: (a) Applicant did not appreciate the nature of the charge, or did not intend to admit that he was guilty of it, or (2) that upon the admitted facts he could not in law have been convicted of the offence charged.  
 (Rex v Forde IT 128 p. 798)  
           Cr.A.42/40 VII 285

(83)      APPEAL - Imprisonment Order- Sentence

Imposition of fine not exceeding L.P.10- accused to enter into bond of good behaviour- Order of imprisonment if bond not produced- Order of imprisonment appealable as of right sentence of fine appealable only by leave.  
           Cr.A. 17/44 XI 81

APPEALS      Immovable property

(84)      Appeals from decisions of Magistrates Courts in action concerning immovable property only-lie to Supreme Court.  
           CA 126/44 XI 501

APPEALS      Joinder

(85)      Appeal from order refusing the joining of certain persons as co-defendants lies by leave and not as of right  
           CA 334/43 XI 165

APPEALS      Judgments - validity of

(86)      District Court remitted case to Magistrate with certain directions - Second appeal made to District Court- which dismissed the appeal.

Held: Aggrieved party at liberty to contest the validity of the earlier Judgment after the matter has been finally determined on appeal by the District Court.  
           CA 244/42 X 46

APPEAL      Jurisdiction

(87)      A decision as to want of Jurisdiction is not a decision as to irregularity of procedure and an appeal lies to the S.C.  
           Cr.A.111/41 VIII 403

APPEAL      Land Court

(88)      Questions of fact raised whether appeal entertainable in view of the Land Courts Ordinance S. 4(1)  
           CA 251/41 IX 56  
           CA 4/42 IX 62

Appeal      Land Settlement Off.

(89)      Appeal from the Land S. Officer can also be made on questions of fact,  
           CA 55/40 VII 291

APPEAL      Leave to ..

(90)      Judgment for L.P.19.575 and interest at 9% as from date of filing action- amount due at date of filing action only L.P.19.575- leave to appeal necessary.  
           CA 358/43 XI 212.

APPEALS      New Legislation

(91)      New legislation between date of Judgment appealed from and date of delivery of Judgment on appeal. Court of appeal must take judicial notice of..  
           CA 78/44 XI 523



## APPEALS

## APPEALS (continued)

Notice of..  
 (92) Not signed by App. or,  
 by Advocate duly appointed to  
 act- No appeal before the Court.  
 CA 72/40 VII 334

(93) Notice of appeal filed  
 under C.P.R. Rule 339 Fee  
 payable as on cross appeal.  
 CA 182/40 VII 489  
 CA 185 )

(94) To be served on each  
 of the respondents to an  
 appeal. (Rule 328)  
 CA 221/44 XI 568

(95) Notice of appeal did  
 not show name of Court that  
 gave Judgment under appeal-  
 Defect NOT FATAL. (Rule 314(c))  
 CA 301/44 XI 610

APPEALS Parties.

(96) Appellant not party to  
 proceedings in Court below-  
 whether proper appeal:

Held: A person who was not  
 a party to the original proce-  
 eding could not come to the  
 Court of Appeal and ask it to  
 vary or upset a decision in  
 a case in which he was not a  
 party.  
 CA 147/42 IX 786

(97) Party- dissatisfied

Proper course for a dissatis-  
 fied party where leave to  
 appear and defend has been  
 refused- and where the decree  
 to the form of which the order  
 refusing leave to appear and  
 defend has been reduced - has  
 been served upon him, is to  
 appeal against that decree.  
 CA 187/44 XI 386

## APPEALS

## APPEALS (continued.)

Partition -Joint prop.

(98) Judgment for partition  
 of jointly owned property- is  
 not subject to appeal until Mag.  
 giving the Judgment has done  
 all the acts he is required by  
 Law to do.  
 CA 378/43 XI 234

(99) Partnership

One of agreed issues to the  
 effect whether a partnership  
 existed between the parties to  
 litigation- Finding that a  
 partnership existed. Held  
 Judgment a decree because it  
 decides definitely one of the  
 matters in controversy between  
 the parties, although such  
 decision did not decide all  
 the matters in dispute. It is  
 therefore appealable as of  
 right and no leave to appeal  
 necessary.

CA 174/43 X 402.

(100) Point of Law.

When an appeal to the Supreme  
 Court lies on a point of law  
 only, the Supreme Court will  
 not deal with a question of  
 fact,  
 CA 120/39  
 CA 121/39 VII 23.

(101) Point of Law.

An appeal from an Appellate  
 Judgment of a District Court  
 to Court of Civil Appeal lay  
 only on a point of law- Court  
 of Appeal could not deal with  
 a question of fact - as to whe-  
 ther or not an order of attachment  
 was served or not.

CA 120-121/39 VII p.23.



## APPEALS

## APPEALS

## APPEALS (Continued)

(102) Points not raised  
in Court below  
nor in issue could not be raised  
on appeal.  
CA 13/42 IX 225.

(103) Points -not pleaded  
Court of Appeal will not listen  
to a point raised before it  
which was neither pleaded in  
the pleading nor was it an  
issue in the trial Court nor  
was it adverted to in the  
Judgment of the Trial Court.  
CA 330/43 XI 170

(104) Power of attorney  
Notice of Appeal signed by  
Appellant holding a General  
Power of attorney- Notice of  
Appeal bad as not signed by  
Appellants or their Advocate  
Failure by Appellant to cite  
all parties to the action as  
respondents- mistake by appel-  
lant not good cause for such  
action.  
CA 89/40 VII 258

APPEAL to Privy Council (See  
Privy Council

(105) Procedure -Distinct  
claims.  
Distinct Claims made by one  
plaintiff in one action against  
several defendants. Judgment  
given for plaintiff.

Held: Separate appeals should  
be entered by each defendant  
Effect of not citing by the ap-  
pellant all the parties to the  
original action as respondents  
- non compliance with Rule  
3 C.P.R. 1938-  
Court will not apply Rule 335  
if no good cause shown.  
CA 203/42 X 17

## APPEALS (continued)

(106) Procedure- several  
applicants  
Application for leave to appeal  
by several applicants- several  
applicants shown as "X Y &  
Others" No appeal proper before  
Court of Civil Appeal  
CA 17/44 XI 254

(107) Registrar  
No appeal against order of  
the Registrar of the District  
Court under Section 6(e)(4)  
of the Registrars Ordinance.  
HC 16/40 VII 155.

(108) Ruling by lower Court  
Law creating offence does not  
allow appeals- High Court will  
not issue an order to a Criminal  
Court to set aside a ruling  
made by that Court in the course  
of proceedings  
HC 20/43 X 116

(109) Separate appeals  
Separate interests  
Expropriation of separate parcels  
of land all of which comprise one  
block. Expropriated parcels  
belonging to several persons and  
registered in their names sepa-  
rately. Land Court assessing  
compensation payable- Appeal by  
members to Supreme Court- Filing  
of separate appeals in respect  
of separate interests necessary.  
CA 386/43 XI 308

Several appellants

(110) Where there are se-  
veral appellants to an appeal  
the names of all such appellants  
must be shown in the Notice of  
appeal  
CA 203/42 X 17



## APPEALS

## APPEALS

## APPEALS (continued)

## APPEALS (continued)

(111) Separate claims

Separate claims before Settlement Officer. Combination of losing claimants before Settlement Officer in one appeal. Proper procedure to be followed.

CA 252/43 XI 57

(112) Sentence increase of.

Leave to appeal - grant of on ground of substantial increase of sentence.

CrA 140/44 XI 561

(113) Signature by A.G.'s authorised representative (See Cr.P.(T.U.I.) Ord Section 57.

(114) Stamp Duty.

No appeal lay from a decision that the stamp duty upon a document was sufficient or that a document did not require a stamp.

CA 11/40 X 91  
CA 169/41 VIII 438

(115) Supreme Court-

In appeals to Supreme Court sitting as a Court of Appeal from Judgments of District Courts on appeal from Magistrates Courts, all matters raised before either the Mg. Court or the D.C. can properly be tested in the Supreme Court and the Supreme Court is not limited to those points definitely raised before the D.C. To this rule, there are certain exceptions e.g. matters not raised before either Courts cannot be raised on appeal to the Supreme Court except questions such as of jurisdiction which can be raised in any Court.

CA 86/43 X 204

(116) Supreme Court - parties

Parties to appeals to the Supreme Court sitting as a Court of appeal from decisions of a District Court, in its appellate capacity must be limited to arguing matters directly arising out of the decisions of the District Court, that is to say, matters which were very definitely raised before the District Court, during the argument in that Court, or at any rate, in the pleadings (oral or written) in the appeal in that Court under Section 12 of the Magistrates Courts Jurisdiction Ordinance, 1939, it is the Decision of the Magistrate's Court that comes before the Supreme Court sitting as a Court of Appeal, and then only on a point of Law novelty, complexity or general importance, which point must have been acutely and definitely in the minds of the learned Judges of the District Court when they were giving their decision on the appeal. The Court of Appeal can, of course of its own motion, take a point of jurisdiction whether or not the point has been taken by the parties.

CA 195/42 IX 691.

APPEAL Fine-small

(117) If a fine is only a small one, that is to say under L.P.100 no appeal lies as of right.  
CR.A.105/41 VIII 455

(118) APPEARANCE. Entering of..under protest.  
The practice of entering appearance under protest is not laid down under any English rule nor is it contained in the Civil Procedure Rules. It will be difficult to introduce the practice here without a supporting rule however desirable it may be.



(APPEARANCE - Application - Appropriate Court ARBITRATION

(118) continued.

There may however be difficulties in framing such a rule here in view of the article concerning jurisdiction in the Order in Council

CA 154/40 VII 467

APPLICATION. Effect of absence of ruling or order on application.

CA 197/40 VII 504

APPROPRIATE COURT

(119) An action entered in an appropriate Court must be tried by that Court.

CA 156/40 VII 435

(120) Parties not prevented by C.P.R. Rule 4(b) from choosing Appropriate Court- where the Court has unlimited jurisdiction

CA 119/41 VIII 317

(121) Arab-Jewish Cases

Courts of Jaffa are the more appropriate Courts for purely Arab cases and Courts of Tel-Aviv are the more appropriate Courts for purely Jewish Cases.

M.A.47/44 XXI 542

ARBITRATION

Workman & UNDERTAKER

(122) President District Court may decide only questions of Law- question whether digger -not party to contract- a workman or undertaker question of fact for arbitrator.

CA 32/40 VII 145

(123) Section (8 (2))  
CA 117/39 VII 47

ARBITRATION Ordinance S.5  
Arbitration clause  
in lease

(124) Application by one of the plaintiffs to Mag. Court to refer matter to arbitration steps taken by other defendants before application for reference to arbitration.

HELD Not equitable that defendant who had taken no steps should lose his rights.

CA 251/40 VIII 26

Section 14. Misconduct

(125) In opposing an application made under S. 14 for leave to enforce an award, a defence of misconduct or mistake on the part of the arbitrators cannot be pleaded; The proper course to be followed where misconduct or mistake is pleaded is to move the Court under S. 13 to have award set aside.

CA 365/43 XI 318

(126) S.15(1) VIII 590

(127) S.15(3)

No distinction should be made between the words "an order" and the words "the order" in: and therefore leave to appeal necessary. Misunderstanding of the law and misleading description of "order" as a "Judgment" not good cause for extension of time under Rule 333 of the C.P.Rules 1938

CA 234/41 VIII 587

(128) Stay of proceedings pending determination of action in District Court. District Court has power by injunction to stop an inferior tribunal such as the arbitrator appointed under the Ordinance from continuing the arbitration pending the hearing of the action in the District Court.

HC 99/41 VIII 567

CA 247/41 VIII 618



## ARBITRATION

## ARBITRATION

## ARBITRATION

(129) Several applicat-  
-ions.

Hearing together of several applications under.. such applications are actions within the meaning of Rules 2 and 304 of the C.P. Rules 1938: Consolidation to be ordered.

CA.352/43 XI 275

Award by Land Court.

Authentication of  
CA 228/41 VIII  
624

(131) Cooperative Societ-  
ies.

Rules of a Cooperative Society referring members to arbitration. Before such rules were made petitioner ceased to be a member of the Society.

HELD:- Petitioner not bound by the Rules.

HC.96/42 IX 589

(132) Coop. Societies.

Mortgage of immovable property to Cooperative Society by member thereof. Provision in Rules of Society for settlement by arbitration of disputes between it and a member. Application by Society for Order of sale of property - Liability to pay mortgage debt disputed by member- Application by member under Section 6(1)(a)- Arbitrator appointed by D.C to settle "the disputes between the parties"  
Held: The Chief Execution Officer to refrain from making Order for sale and postpone sale pending result of arbitration.

HC.90/41 VIII 525

Draft award-Advocate

Nothing objectionable in Arbitrator taking a rough draft of his award to an Advocate to put it into legal shape.

CA 229/41 VIII 603

English Principles

In the absence of any statutory time limit in the Law of Palestine, an application to set aside an award must be made following English Principles within a reasonable time after the issue of the award, but the application should not be dismissed on the ground that it had not been brought within a reasonable time unless the other side had suffered damage because of the delay. When the other side has not asked for the enforcement of an award he cannot argue he suffered damage because of the delay.

CA 5/41 VIII 82.

Intention

The Courts are always inclined to support the validity of an award and will make every reasonable effort intendment and presumption in favour of its being a final, certain, and sufficient termination of the matters in dispute. The award will be sustained although the arbitrator has omitted in his award to notice some claim put forward by a party if, according to the fair interpretation of the award, it is to be presumed that the arbitrator has taken the claim into consideration in making his award.

CA 15/42 IX 157



ARBITRATION

ARBITRATION

ARBITRATION (continued)

(136) Leave to appeal.

Application made to have award set aside. District Court confirmed part of award and remitted certain matters to the arbitrators for clarification- Whether application for leave to appeal premature.

HELD: That no leave to appeal could be granted from such Judgment as the application for leave was premature, but that when the District Court had adjudicated on the matter remitted to the arbitrators, then an appeal would lie from that final Judgment by leave. CA 141/42 IX 547

(137) Misconduct

Application to set aside Arbitration Award for.. CA 229/41 VIII 603

(138) Misconduct-Partnership.

Oral evidence admitted to prove existence of partnership Goods purchased by partner and brought on to partnership premises or into partnership business. Presumption that goods were bought for the partnership and with partnership funds. Ottoman Code of C.P. Art.80. CA 15/42 IX 157

(139) Misconduct

Arbitrator met one of the parties to arbitration on a number of occasions- whether this amounted to misconduct on his part.

HELD: The conduct of the arbitrator by constantly allowing respondent to visit him and be seen whispering to him which

ARBITRATION (continued)

was found to be a fact by the District Court- amounted to an act which could be construed as indicative of partiality or unfairness ; in other words, it amounted to essential misconduct and not misconduct in matters of procedure objection to which could not be waived by appellant. CA 154/42 IX 686

(140) Misconduct.

Arbitrators disagreed -and umpire appointed . Umpire addressed questionnaire to arbitrators. One of them sent in a reply attaching thereto, his draft award.

HELD: This was technically a legal misconduct and did not matter that the draft award was in effect merely a copy of the answers to the questionnaire or vice versa. CA.32/43 X 181

(141) Misconduct.

Parties to arbitration proceedings however informal such proceedings might be should be summoned to appear before the arbitrator, either by being formally served, or by being notified personally by the arbitrator himself. The proceedings by an arbitrator in the absence of all the parties technically a legal misconduct. CA 15/43 X 73.

(142) Mukhtars- (See Mukhtars)

Notarial Notice

A claim for damages in proceedings before arbitrators- a claim for damages in order to succeed must be preceded by a NOTARIAL Notice O.C.C.P. Art.106) CA 126/42 IX 604



## ARBITRATION

## ARBITRATION

## ARBITRATION (continued)

## (144) Practice of Courts

The general practice is that the Court will always lean towards referring proceedings to arbitration where the parties themselves have agreed to the arbitration, and a heavy burden is laid on the person seeking to avoid the arbitration to establish why the proceedings should not be stayed- nevertheless Courts must be careful to give effect to contractual relations entered into by parties.

CA 299/44 XI 580

## (145) Procedure.

An application by way of motion under Rule 305 C.P.R. to have the award set aside is, in the absence of rules laying down the procedure to be followed in making petitions under the Arbitration Ordinance as required by S. 15(1) a compliance with the procedural law of Palestine.

CA 154/42 IX 686

Sec. 6. (CA48/40  
VII 163)

## (147) Sec. 7.(b)

A Court to whom an application is made under Section 7(b) has a discretion either to appoint or refuse to appoint an arbitrator which discretion will only be exercised with considerable care and only where there are circumstances to be considered other than the fulfilment of the prerequisite conditions laid down in Section 7(b)

CA 269/42 X 199

## ARBITRATION (continued)

## (148) Splitting claim

It would be inequitable that a respondent who has taken no steps in an action should lose his right to arbitration merely because some of his fellow respondents have taken such a step. A court should not however, split the claim into two parts, part to be tried before the Court and the other part before the arbitrator- and the whole matter should have to go to arbitration.

CA 251/40 VIII -26

## (149) Submission.

A clause in a contract relating to arbitration does not become a submission unless and until arbitrators are appointed thereunder.

CA 65/42 IX 392

## (150) Submission

Not essential that actual submission itself should be signed if it appears from the document itself that there was actually a submission to arbitration

CA 180/42 IX 745

(151) Submission- must be signed by the parties thereto.  
CA 365/43 XI 318

## (152) Trade Disputes

Whether any particular clause in the award of an arbitration Board in a Trade dispute is ultra vires- must depend on examination of the law or trade practice prevailing in the area within the jurisdiction of the arbitration board.

HC 25/44 XI 187



Arbitration- Armed Forces - Arrest of accused- Arson

Attorney General - Appeals by

ARBITRATION (continued)

(153) Warning to attend

Not necessary for an arbitrator to warn respondent twice or more to attend- Warning party once sufficient.

CA 180/42 IX 745

(154) ARMED FORCES

Although there is at present very close cooperation between the civil authorities and the armed forces but close cooperation cannot constitute the Armed Forces a part of the Government of Palestine- and the Civil Administration has no control whatsoever thereon. In addition Civil Administration is responsible to S/S for the Colonies while the Army is administered by the Secretary of State for War.

CA 150/40 VII 394

(155) ARREST OF ACCUSED.

In a criminal prosecution it is desirable to adduce evidence as to the date of the arrest of the accused.

Cr.A.53/42 IX 219

(156) ARSON- False Pretences

Non acquittal on an Arson charge does not necessarily involve an acquittal on a false pretence charge.

CR. A 146/41 IX 35

ATTACHMENT (See Execution)

ATTEMPT TO IMPORT Goods into Palestine (See Import, Export and Customs Powers (Def) Ord. 1939.

ATTEMPTED MANSLAUGHTER

(See Cr. C.O. S.29(b))

ATTEMPTED MURDER.

(157) In order to obtain a conviction of attempted murder the facts required to establish murder, except for the death of the injured person, must be proved by the prosecution. The only distinction between attempted murder and murder is that the injured person does not die. Cr.A.86/43 X 477

(158) ATTORNEY GENERAL.

Appeal by

An appeal would lie by the A.G. in cases where the trial Court had agreed upon the facts and made findings thereon, although it had disagreed on the law applicable to those facts, but an appeal would not lie if the trial Court had disagreed on the facts and no findings of fact had been made by it.

Cr.A.57/42 IX 287

ATTORNEY GENERAL. Binding over

(159) Binding over being a statutory punishment A.G. may appeal against sentence.

Cr.A.98/41 VIII 351.

ATTORNEY GENERAL Powers of  
(160)

Attorney General can appeal in cases in which he did not prosecute originally; because under the provisions of S.11(3) of the M.C.J.Ordinance 1939 which place no limitation on the powers of the A.G., the A.G. can appeal in any criminal case.

Cr.A 84/44 XI 515

ATTORNEY GENERAL's Representative

(161) Can sign appeals on behalf of. See C.P.(T.U.I) Ord. S. 67.



Attorney General- Autrefois Acquit- Autrefois convict- AVAL  
 AVLAWIYAH

ATTORNEY GENERAL (Continued)

(162) Appeals- Town Plan.

A.G. has a right of Appeal against any prosecution under the Town Planning Ordinance. Cr. A. 127/41 VIII 488

AUTREFOIS ACQUIT

(163) Charge against accused withdrawn before plea Court allowed withdrawal of charge and dismissed it under the provisions of Rule 265 M.C.P. Rules 1940- Court at the time of making the order not labouring under the proviso to the said rule- Fresh charge filed whether previous proceedings operate as a bar to the subsequent proceedings: HELD: In using the word "dismissed" the Court meant "discharged"

Cr.A.144/43 X 619

AUTREFOIS CONVICT

(164) Autrefois acquit-plea in bar. Accused put in jeopardy at first trial Court of Criminal Appeal allowed Appeal and quashed conviction Held: accused not subject to fresh trial on same charge.

Cr.A.100/43 X 492

AUTREFOIS CONVICT

(165) Charge of breaking into a building and committing theft therein preferred- addition of charge of receiving stolen property in respect of which first charge preferred. Held: no conviction on two charges can be given.

Cr.A.83/44 XI 376

AVAL

(166) Aval on a promissory note deemed to be given for the endorser and not for the maker unless the contrary is proved.

CA 112/40 VII 344

AVAL

(167) The Appellant and respondent both signed an aval upon a promissory note The note was in printed form and the aval was in Hebrew which has been translated "We guarantee mutually by aval for the maker (signor) of the bill" and in English "Bon pour aval with joint and several liability for maker of note" Below that there were three dotted lines, upon the first of which appellant signed and the second the respondent The appellant was called upon to pay, and did so, and now seeks contribution from the Respondent.

Held: That the general proposition that there should be contribution between sureties, the right to which is not founded on contract, but is the result of a general equity arising at the conception of a contract of guarantee on the ground of equality of burden and benefit applies.

CA 64/41 VIII 197

AVLAWIYA (See Land Transfer Ordinance S. 2)

AVLAWIYA

(168) Consent by claimant to transaction before actual transfer in Land Registry- Whether consent must be at time of actual transfer in Land Registry.

Held: That the meaning of the



AFLAWIYEH - AFCAF-

Bad faith- Banking- Bankruptcy

AFLAWIYA (continued)

- B -

words "at the time of transfer" in Art. 41 of the Ottoman Land Code must be AT ABOUT THE TIME OF TRANSFER.

CA 183/43 X 429

(169) Transfer of land by co-owner to his daughter to secure debt due to daughter. Claim for prior purchase by other co-owner- two days after filing claim land re transferred by daughter to her father. HELD claimant not entitled to land.

CA 389/43 XI 214

(170)

AFLAWIYA - Right of unexercisable more than one year after the right first accrued/ Time at which right deemed to have accrued.

CA 393/43 XI 305

(171) AFQUAF COMMISSION

(see WAQE )

BAD FAITH

(172) Agreement for sale of land at a fixed price Offer of price higher than that agreed upon . Refusal by purchaser to pay the highest price offered- Sale of land to the person offering the higher price- Claim for refund of amount paid and of damages based -on bad faith

Held: sale to person offering the higher price not sufficient proof of bad faith. Respondent entitled to interest as from date of payment of purchase price. CA 125/44 XI 502

(173)

BANKING EMERGENCY ORDINANCE 1939 Section 6.

CA 86/40 VII 280

(174)

BANKRUPT Liability of.. extent of..for debts incurred by Syndic. CA 130/43 X 398

BANKRUPTCY

(175) Examples of persons held not to be aggrieved. (See Willis' Bankruptcy Practice 14th Ed. p.421

BANKRUPTCY

Appeals

(176) Order of bankruptcy Court given on 21.6.43- Appeal from that order filed in Supreme Court on 12.7.43. Held- Appeal out of time.

CA 227/43 X 514



## BANKRUPTCY

## BANKRUPTCY

Curator  
Mejelle

(177) No provision in Mejelle which defines the powers and duties of a curator in a Civil Bankruptcy, to the effect that a curator cannot repudiate a contract without leave of the Court. CA 162/40 VII 482

(178)

Hearing

Inadvertance or misunderstanding no excuse for non appearance at the hearing of a bankruptcy petition. Court may however rescind a receiving Order if it thought that there was good reason to do so- despite the failure of the party to appear at the hearing of the bankruptcy petition.

CA 260/41 IX 26

(179) International Law

Purchaser of land- prior to action for breach of contract for sale of land declared bankrupt by Mixed Courts Cairo- Rules of Private International Law applicable to Palestine- action properly brought in Palestine by Syndic in purchaser's bankruptcy.

CA 85/40 VII 304

(180) Mejelle

There is no connection between interdiction or Civil Bankruptcy under the Mejelle and a Bankruptcy under the Bankruptcy Ordinance, and there is nothing in the provisions of the Mejelle on this subject which says that a curator cannot repudiate without leave of the Court.

CA 162/40 VII 482 .

(181) Ordinance S.3(1)(c) and 3(2)( ) CA 58/41 VIII 212

(182) S.8(2) and 39

In view of the provisions of... Trustee in bankruptcy has no power over mortgaged property.

HC 91/41 VIII 497

## BANKRUPTCY

(183)

BANKRUPTCY Ord. S. 39. (See No.182.) Construction of... Before a creditor is entitled to retain the benefit of the execution it is necessary for him to show two things- that he has completed the execution of attachment before the date of the receiving order, and secondly, before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy. (Referred to: re Andrew 1937 (1 Ch.D.122) CA 275/42 X 51

(184) Section 94 .CA227/43  
X 514

(185) Section 95(2)... application by bankrupt to Bankruptcy Court to reverse decision of trustee in bankruptcy to sell his property- Decision reserved -application by bankrupt before decision given for decision to be withheld for three months- Order for adjournment of proceedings for three months- Bankruptcy Ordinance S. 95(2) applicable as proceedings before the Court within the meaning thereof.

CA 104/41 VIII 272

(186) S. 123. VII 407

(187) Partnership. Effect of Order adjudicating partnership bankrupt is to adjudicate each partner bankrupt. Trustee in bankruptcy of partnership trustee in bankruptcy of each partner.

CA 217/41 VIII 547

(188) Surety.

A surety can only exercise his right to prove in bankruptcy when he himself paid the full amount of his liability and he cannot deplete the assets of the estate until he has fulfilled the terms of his bond, but where a surety



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 Bankruptcy - Bedouin control - Bigamy - **BILLS OF EXCHANGE**


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**BANKRUPTCY (continued)**

has guaranteed part only of the debt and has paid that part he can prove in the estate for the amount he paid.

CA 119/44 XI 510

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**BEDOUIIN CONTROL ORDINANCE, 1942**

(189) To bring a tribe within the operation of the Ordinance the nomade quality must exist at the time of the making of the order applying the Ordinance to that particular tribe.

HC 59/44 XI 198

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(190) **BIGAMY. S. 181 CCO.**  
Test for determining whether bigamy committed. Cr.A 11/40 VII 147

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**BILLS OF EXCHANGE****(191) ACCOMMODATION Bill**

Absence of consideration - onus of proof - impossibility of bringing direct evidence - Trial Court entitled to draw inference from evidence before it.

CA 14/42 IX 150

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**(192) Admission**

An admission of liability contained in... is sufficient prima facie evidence of such liability

CA 63/43 X 247

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**(193) Alteration apparent.**

Where there is no alteration apparent on the face of the note the onus of proof is on the maker thereof to prove that in fact, the note had been altered.

CA 84/42 IX 417

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**(194) AVAL. See AVAL****BILLS OF EXCHANGE (continued)**

(195) Consideration absence of  
In actions on bills of Exchange and promissory notes absence of consideration is a defence as between the immediate parties to the action, and in such cases leave to defend should be given.

CA 78/42 IX 376

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**(196) Conditional promise**

If the words on a promissory note make the promise conditional - on defendant to show that.

CA 67/41 VIII 192

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(197) Expert evidence  
Credibility of - matter for Court of trial. CA 24/42 IX 182

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(198) Syndic  
Bills drawn on Syndic and accepted by him with express approval and consent of bankrupt. Bankrupt not a party to bills - whether syndic has power to accept the bills on behalf of the bankrupt. Held: Syndic has no authority to accept the bills and in no one of the articles of the O. Comm. Code wherein the rights and duties of a Syndic are mutually described is the Syndic given such authority.

(2) A Bankrupt not estopped from denying the authority of the Syndic to accept the bills, although the bills were accepted with the bankrupt's express approval and consent.

CA 240/41 IX 148

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(199) S. 2. See S. 30

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(200) S 2(1) VII 568

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(201) S. 2(2). Extension without consent of guarantor.

As by S. 2(2) the Ordinance is to be interpreted by reference to



## BILLS OF EXCHANGE

the Law of England relating to Bills of Exchange, cheques and promissory notes save in so far as it is inconsistent with the provisions of the Ordinance, where an action is brought on a promissory note in Palestine the Courts must apply the Law of England exactly as it would be applied if the action were brought in England, and according to English Law, where an extension of time is granted to the principal debtor without the consent of the guarantor the guarantor's liability is discharged.

(202) S. 9(1)(b) Time.  
If no time for payment is expressed in the note, the note is payable on demand.  
CA 118/40 VII 390

(203) S. 21(1) Capacity to incur a liability as a party to a bill is co-extensive with capacity to contract.  
CA 91/40 VII 314

(204) S. 28. Plaintiff gave no consideration to the person who indorsed note to him, nor to the makers of the note. He says he gave consideration to somebody not connected with the note at all. HELD- he is not holder in due course.  
CA 282/42 X 101.

(205) s. 29 IX -1

(206) s. 30, 2, & 37.  
The question is whether a person whose name does not appear upon a bill made to order can sue upon it. HELD- he being not a party to the note, his claim must fail.  
CA 244/42 X 46

(207) s 37. (See s.30)

## BILLS OF EXCHANGE

(208) s.57(2) AVAL (see also (Aval).. on a promissory note deemed to be given for the endorser and not for the maker unless the contrary is proved.  
CA 112/40 VII 344.

(209) s. 57(2) merely creates a presumption in law, which can be rebutted by evidence.  
CA 118/40 VII 390

(210) s. 57(2) When guarantees do not state in whose account they are given, and in absence of such a statement the effect of Sections 57(2) and 90 is that they ARE DEEMED TO BE GIVEN FOR THE FIRST INDORSER.  
CA 118/40 VII 390

( See No.210)

(211) s. 57(2)...in case there is no first indorser, the guarantee is not a nullity, the question on whose account the guarantee was given matter to be decided by evidence. CA 118/40 VII 390

(212) S. 72(4) applies not only to bills drawn out of and payable in Palestine and not expressed in Palestine currency, but also to bills in which the sums are not expressed in Palestine currency and which bills are made and payable in Palestine.

(2) The correct date for calculating the rate of exchange should be the date of the breach by non payment, that is, the date of the maturity of the bill or note and not the date of the actual payment. PCA 1/42 X 271

(213) s. 84(1) X 271

(214) s. 87(1) and 88(1) words "payment at Jerusalem Romema M C Chaikin" written on face of p.N. presentment for payment at said place necessary.  
CA 114/39 VII 10



BILLS OF EXCHANGE - Bills of Lading - Binding over - body of victim

(215) s. 96(1) VII 569

(216) Name of partnership

Action on bills against partnership and partners thereof - name of partnership not correctly stated in acceptance.

HELD Partners signing on bills liable thereon and the partner who did not sign not liable.

CA 141/41 VIII 407

(217) Prescription - date when interrupted.

The beginning of an action is the date on which it is filed in the Court. Prescription is interrupted so as to run from the date of filing action - and an action followed up so far as a plaintiff is able to follow it breaks the period of prescription. CA 228/42 IX 741

(218) res judicata

Action on bill of Exchange in Chief Magistrate's Court - action dismissed as plaintiffs held not to be holders of bill owing to absence of necessary endorsement - necessary endorsement subsequently obtained and action brought in District Court by plaintiffs on said bill. HELD - Claim in District Court res-judicata. CA 234/40 VII 603

(219) WAIVER. Any waiver term, variation, stipulation or otherwise by a drawer or endorser relating to a bill must be included in the bill itself, as, if the position was to the contrary, a subsequent holder of such bill will have no notice whatsoever of such matters if they were not included in the bill itself.

CA 54/43 X 220

BILL OF LADING - Assignee for value.

(220) Assignee for value must accept all the obligations and liabilities arising from the bill of Lading. CA 167/44, 168/44 XI 544

BILLS OF LADING (continued)

(221) The tender of one bill out of a set of two - not compliance with the condition requiring the surrender of the full set.

CA 81/41 VIII 320

BINDING OVER - First offenders

(222) There is no rule of law that a first offender should necessarily be bound over, and each case must depend upon its own facts, regard being had to the nature of the offence, and the age and other circumstances of the convicted person. per TRUSTED C.J.... In Cr.A. 4/41 Supreme Court stated it was in favour of first offenders being given an opportunity to mend their ways but we pointed out that Courts of Trial should satisfy themselves if in all the circumstances it is right that persons convicted of a serious offence should be bound over.

Cr.A. 98/41 VIII 351

(223) See Criminal Code Ordinance 1936 S. 37(e)

BIRTHDAY OF H.M. See Appeals (No. 75)

BODY OF VICTIM.

(224) As a general principle in cases of murder there must be evidence as to the finding of the body, or a satisfactory explanation given as to why it was not found. When, trial Court entitled to find that certain skeleton found was that of victim.

Cr.A. 21/41 VIII 89

(225)

BOND forfeiture of .HC 14/42 IX 186

BREACH OF CONTRACT - claim for damages - (See Damages)

BREAKING charge of. See C.C.O. s. 297(a)



British Forces "Brokers"  
Bus Company "Business Names.

Candidate "Canon Law CARRIER  
"Common"

## BRITISH FORCES.

(226) Not part of Government  
of Palestine- Attorney General  
has no power to sue on their  
behalf. CA 150/40 VII 394

BROKERS. Custom.

(227) Claim by brokers to  
commission in respect of sale of  
land- Brokers Ordinance not ap-  
plicable to brokers assisting  
in the disposal of immovable  
property- Proof of custom that  
brokerage fee of 2% of value of  
land payable- custom reasonable  
CA 166/40 VII 452

BUS COMPANY. Garage

(228) If a bus Company uses  
any workshop for the purpose  
of repairing its own busses  
, which it uses for providing  
means of conveyance to the  
public, it cannot be held to be  
carrying on the business or  
trade of a garage.  
Cr.A. 5/43 X 49.

## BUSINESS NAMES.

(229) User of business name  
likely to deceive. Grant of  
injunction by Court.  
Factory carried in goods under  
title ARIGIM Appellants started  
business under name "Arigim Ltd"  
CA 258/43 X 555

CANDIDATE to Municipal Council

(230) (See Municipal Corporat-  
ions Ordinance, 1934) VII 342.

CANON LAW. Examination of  
witnesses.

(231) Under Article 1271 of.  
the parties to the litigation  
could not attend the examination  
of the witnesses and that such  
witnesses could not be cross  
examined except by leave of the  
Court. HO 103/42 IX 579.

CARRIER. Negligence

(232) For a carrier of goods  
to escape liability, he must  
prove that the goods he undertook  
to carry perished by purely fort-  
uitous accident impossible to  
prevent, and that no lack of  
care or negligence can be attrib-  
uted to him, in other words, a  
carrier must satisfy the onus  
upon him to show that the loss  
could not possibly be attributed  
to his lack of care and could  
not possibly have been prevented  
(b) that as, a corollary, it is  
not for an owner of goods lost  
in transit to prove that the  
loss was caused by the fault of  
the carrier.  
CA 68/43 X 175

(233)

Taxi Co. Common Carr-  
iers.

Passenger allowed to carry his  
luggage with him in taxi- loss  
of luggage en route- liability  
of Taxi Co. as common carrier.  
Ottoman Commercial Code Ch.V  
applicable to taxis.

CA 379/43 XI 280



CARRIER- No CASE TO ANSWER-

CASE

CARRIER - (Continued)  
(234)

Carriage of goods marking of differ from those on Bill of lading -Liability of consignee to pay freight charges. CA 167/44 XI 544

CASE- Re-hearing of by Settlement Officer. (See Settlement Officer)

CASE - NO CASE TO ANSWER  
(235) Submission of..  
Per GORDON SMITH C.J..

The general rule is that there must be a prima facie case put forward by the prosecution and which the defence should be required to answer. The difficulty is what amounts to a prima facie case. This means that there must be evidence in proof of the charge as laid. It may be that such evidence may be of a slender nature or that there are essential elements in a charge on which there must be substantial evidence, and if there is no such evidence, then there is no case to answer. But it is not at this stage that the Court has to consider either the weight of such evidence or the credibility of the witnesses giving the evidence; what it has to consider is whether there is any evidence or not and by ANY EVIDENCE I do not mean a mere scintilla of evidence. If therefore the Court considers that there is evidence on these or other essential points, then the defence should be called upon.... Where there is no evidence at all on a material point which is essential in proving the case for the prosecution Counsel for the accused should submit that there is no case to answer and if the Court agrees with such submission then, it should stop the case and acquit the accused, and even without such a submission the Court CAN DO SO ON ITS OWN

(continued on Column 48)

INITIATIVE. The submission should be made at the close of the case for the prosecution and BEFORE the accused is asked whether he desires to make a statement or give evidence in the witness box. Further, it is not expected, nor is it desirable that Counsel for the defence should make a speech on the accused's behalf or address the Court on the evidence already given- It is not at this stage that consideration is given to the weight of evidence, and it is quite sufficient for counsel merely to draw the attention of the Court to the entire absence of such evidence as is necessary to secure the conviction of the accused and submit that there is no case to answer.

Cr.A.48/42 IX 264

(236) Plea of guilty after notification of ruling

Whether a ruling that there was a case to answer was right or wrong is immaterial, because the fact that appellant had, after the notification of the ruling in question pleaded guilty, made it too late for him to raise the question as to whether or not he was rightly convicted.

Cr.A.130/43 X 578

CASES Consolidation of  
(237)

The practice which is frequently adopted of consolidating cases where there are many complicated claims in different plots of land is a practice which should be adopted.

CA 210/41 VIII 556

CASES Striking out with liberty to renew without fees.  
(238)

Magistrate has no power whatever to do. Mag. should proceed under Rule 137(c) and 165 of the Mag. Courts Procedure Rules 1940. CA 235/41 IX 4.



CASE CAUTION - CEMETERY- Certified copies - Character Charge.

CASE- Striking out  
(239)  
A case having been struck out, the only way a respondent could proceed is to apply under Rule 163 by Motion to set aside the ex parte Judgment; failing which the whole subsequent course of the case vitiated.

CA 235/41 IX 4

(240)  
CASES Trial of. Cases must be tried through when once started with celerity.

CA 235/41 IX 4

CAUTION. Confession

(241)

The objection to telling a prisoner that "it would be better to speak the truth is that the words import that it would be better for him to say SOMETHING whereas an essential element of a proper caution is to make it clear that he is not obliged to say anything unless he wishes to do so. ...The form of words suggested in the Judges Rules is, in the case of a formal charge as follows" Do you wish to say anything in answer to the charge, you are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence. In other circumstances, it is suggested that the caution should take the form "you are not obliged to say anything but anything you say may be given in evidence" There is no special virtue in these particular words and it is not important what precise words are used so long as the caution conveys to the person concerned that he has a completely free choice as to whether he should say anything or not, but that if he does say anything what he says may be given in evidence.

Cr.A.155/42 IX 654

(Berkovitz case)

CAUTION Words "during your  
(242)

Nothing wrong in caution by Police to accused when charging them with the offence of murder and no inducement could be inferred from the words "DURING YOUR TRIAL" used in caution.

Cr.A.30/43 X 188

CEMETERY Moslem cemetery  
(243)

Claim in land Settlement to miri land as Moslem cemeteries- no submission to Land Settlement Officer land a Holy Place- when cemetery a Holy place.

CA 28/40 VII 242.

CEMETERY Claim of land as..  
use of prior to promulgation of Ottoman Land Code..

CA 25/40 VII 138

(244)

CERTIFICATE OF SUCCESSION  
(See Succession)

CERTIFIED COPIES.

(245)

Inconceivable that copies of documents would be issued officially of non-existent entries in the Register, and there could not have been any entries unless the deeds had been properly executed by the parties.

CA 147/40 VII 464

CHANGE OF VENUE See Venue.

CHARACTER- Cross examination of complainant as to- wrongly stamped.

(246)

Cr.A.70/39 VII 6.

CHARGE Amendment of

(247)

Magistrate has power to amend the charge against a person brought for trial before him, District Court on appeal equally has the same power as the Magistrate to amend the charge.

Cr.A.16/43 X 131



CHARGE - CHARITABLE TRUST      Cheques- Circulars- CHILD-Custody  
of

CHARGES      more than one

(248)      If more charges than one are pending against a particular prisoner, it is the duty of the Police to bring that fact to the notice of the prosecution, and it is the duty of the prosecution to inform the Court of that fact.      Cr.A.81/42 IX 356

CHARGES      Public mischief

(249)      Two charges against same accused contrary to provisions of two different laws Charges not stated to be in the alternative- whether two charges can stand against accused. HELD:- That the two charges which were not stated as having been laid in the alternative although it would have been permissible for the Court of trial to have proceeded as if they were alternative charges could not stand as laid, as they did not comply with S. 21 of the C.C.O. in that appellant was twice criminally responsible for the same offence arising out of the same facts under the Cr.C.O.

CHARGE SHEET.      Not signed by Magistrate

(250)      Objection to its not having been signed by the Chief Magistrate properly taken at the beginning of the proceedings in the D.C.      Cr.A.107/41 VIII 384

CHARGE SHEET - defective

(251)      Charge charging accused with receipt of money from a certain person- physical receipt of money from another person acting as agent for both parties- charge not defective.      Cr.A.18/44 XI 101.

CHARITABLE TRUST

(252)      Miri land. There could be no dedication of miri land for the purposes of a Charitable Trust either by a devise by will or by any act inter vivos, as miri land could not be the subject of a Charitable Trust      CA 117/40 IX 291

CHARITABLE WAQF (See Waqf)

CHARTERPARTY- Claim for damages for breach of. Ad.3/42 IX 676

CHEQUE - mere giving of.. not presumptive evidence of a loan.      (253)      CA93/42 IX 554

CHIEF EXECUTION OFFICER      See Execution

CHIEF REGISTRAR      See Registrar

CIRCULARS      by the Chief Secretary.      (254)      The Chief Secretary's circulars are for departmental use only and definitely not issued to the public.      CA 98/42 IX 404

CUSTODY AND GUARDIANSHIP      See Guardianship

CHILD -CUSTODY OF - change on re-marriage      (255)      The Orthodox Ecclesiastical Court, in exercising its power under the Byzantine Law to order the change of custody of a child on the re-marriage of the mother should consider the state of affairs existing at the time of the re-marriage, in particular the home and surroundings which the mother can give to the child after the re-marriage and the home the father can give.      HC 24/41 VIII 175



## CHILD- CITRUS- CIVIL &amp; RELIGIOUS COURTS- CIVIL &amp; LAND COURTS

CHILD- Order contrary to natural Justice.

(256) An Order of an Ecclesiastical Court may be said to be contrary to Natural Justice if it provides for a change of custody of a child in the future without regard to the state of affairs then existing and the Court has no sympathy with an Order which provides that a young mother to whom custody of her child has been given, shall lose it merely because she re-marries

HC 24/41 VIII 175

(257) Claim by both father and mother

In cases in which both father and mother of a child claim custody thereof, the Court must see, in so far as the substantive law allows it so to do, that the best interests of the child are served.

HC 24/41 VIII 175

(258) Child of 7 years

Application for return of girl of 7½ to persons from whom taken.

HC 6/44 XI 48

CITRUS CROP LOANS (Government Guarantee) Ordinance 1940

(259) Loan by approved Co. to orange grove owner- guarantee of loan by Government- payment of loan by Government- property in question previously mortgaged sold in satisfaction of mortgage debt- proceeds sufficient to satisfy both mortgage and Government:

HELD- That Government by virtue of the combined effect of the Taxes (Collection) Ordinance and Order 54 of 1941 made under S. 2 of that Ordinance, which gave Government a first charge on the immovable property of the defaulter, and which charge must also extend to the proceeds of sale of such immovable

property, was entitled to priority, in spite of the fact that the mortgage of the second respondent was created before the loan was made by the approved Company, because the words 'first charge' in S. 12 of the Taxes (Collection) Ordinance meant, and must mean a first charge ranking in priority to all other charges and did not mean a first charge subject to existing charges.

HC 75/43 X 503

CIVIL AND LAND COURTS

(260) A Civil Court is entitled to take cognizance of the fact that a Land Court would hold a document (e.g. a document for sale with right to repurchase) valid in view of S. 8 of the Land Courts Ordinance

CA 155/41 VIII 417

CIVIL & RELIGIOUS COURTS (Jurisdiction) Ordinance.

(261) S. 3. not ultra vires Order in Council

Sp.Tr.1/43 X 535

(262) s. 3(b) When proceedings under it, are taken before a Civil Court- that Court must apply the general principles of equity. By "proceedings concerning administration" in S. 3(b) is meant some action which would call for the application of the principles of Equity, that is an action in the nature of an administration action before the Chancery Court in England as distinct from a mere claim for a liquidated amount- (See Appendix C to the Yearly Practice of the Supreme Court in England; Compare S.11 No.10 with S. IV No.12)

CA 84/40 VII 401.

(263) s. 5 not inconsistent either with Art. 52 of the O.C. or with the relevant portions of Art. 9 of the Mandate for Palestine.

CA 100/40 VII 318



## CIVIL PROCEDURE RULES 1938

## CIVIL PROCEDURE RULES 1938

(264) Although they do not apply to proceedings brought in the District Court under the Succession Ordinance, apply to an appeal to the Court of Civil Appeal from a decision of the District Court given in such proceedings. CA 172/41 VIII 436

(265) meaning of "adjourn" "postpone" "stay". CA 66/40 VII 220

No inherent power to grant stay

(266) R.2. XI 508

(267) R.2 & 304- See Arbitration No.129.

(268) r. 21. An order striking out a statement of claim under. cannot be appealed against without leave. (CA366/43 XI 85  
(CA219/40 VII 600

(269) r. 24. to be strictly interpreted. CA 89/40 VII 258

(270) r. 24. could not enlarge or vary a power of attorney. CA 72/40 VII 334

(271) r. 52(2) IX 384

(272) r. 52(4) XI 592

(273) r. 65- not in conflict with article 1645 of the Mejelle the requirements of Rule 65 must be complied with beforehand. CA 313/43 X 586

(274) r.67. XI 165

(275) r.67(2) The joinder of first and second appellants as defendants in the action in the Land Court which was a matter entirely in the discretion of the Land Court, was a matter of procedure under Rule 67(2) as no new cause of action had arisen and because there might be unnecessary endless litigat-

ion if the first respondent had to take a fresh action against the persons joined as defendants or against any other persons in the event of the land changing hands.

CA 229/43 X 510

(276) r. 82 not applicable to appeals under the Income Tax Ordinance. ITA 13/42 IX 611.

(277) r.100. The filing of a reply under... is a matter for the discretion of a plaintiff and is merely permissive.

CA 233/43 X 593

(278) r. 109. VII 346

(279) r. 122 IX 401

(280) r. 122 does not compel a plaintiff to allege in a reply to a defence specifically that consideration was given, when in that defence it was alleged that there was no consideration; that the Bills of Exchange Ordinance presumed in favour of the owner that consideration was given and it would therefore be useless to demand that he should repeat something which was already presumed in his favour.

CA 87/42 IX 401

(281) r.135 Reply to counter-claim within 15 days necessary. CA 98/43 X 236

(282) r.141. XI 579



## CIVIL PROCEDURE RULES

## CIVIL PROCEDURE RULES

(283) r. 165 XI 298

(284) r. 168 XI 298

(285) r. 189(1) IX  
611

(286) r. 189- lays down the procedure in regard to stating one's case- it is a usual provision- and counsel for the defence is entitled to take advantage of it if he cares to take the risk of calling no evidence, relying on the weakness of his opponent's case. It is a legitimate technical step of obtaining the last word before the Court, and if the advocate for the beginner has not stated his case fully or keeps some point of law up his sleeve that will be his own misfortune if subsequently he loses his right to put it before the Court. Proviso to the rule therefore results in no hardship.

CA 54/43 X 220

(287) r. 197 This rule applies to cases (a) Where the hearing of the action is commenced before one judge sitting alone and that Judge is replaced by another Judge sitting alone, and (b) where the hearing is commenced before a Court consisting of two or more judges both of them, or in the case of a Court consisting of more than two judges all of them being replaced by new or fresh Judges - but does not apply when the action is commenced before a Court composed of two Judges and only one of them is replaced by another Judge.

CA 16/44 XI 262

(288) r. 205 VIII 196.

(289) r. 213. The question as to whether a decree or order given ex parte should or should not be set aside under r.213 is one for the Court or Judge who gave the order, and that in matters of discretion an appel-

-late Court would always be extremely loath to interfere.  
CA 45/42 IX 289

(290) r. 214. VIII 130

(291) r. 221 VIII 536

(292) r. 241 Action for return of machinery brought under r.241 misconceived as rule not applicable. Court cannot amend under r.359. CA 268/40 VIII 1

(293) r. 250- VII 157

(294) r. 250 refers to any order made under Part XXI of the rules and an application thereunder must be made to the Court and not to a Judge. CA 218/41 VIII 544

(295) r. 260 See rule 266

(296) r. 260 - The intention of the rule making authority by making this rule was that application for the dissolution of a partnership and consequential action thereupon should normally be made by an Originating Summons.  
CA 6/42 IX 428

(297) r. 266. This rule gives a discretion to the Court in respect of all the matters covered by Part XXIII and that as regards an Originating summons under r.260 the discretion under r.266 should not normally be exercised. CA 61/42 IX 428.

(298) r. 278 See Costs IX 432

(299) r. 279 IX 146

(300) r. 297 The wording of this rule is sufficiently wide to enable a Court or a Judge appointing a receiver in a case where arbitration proceedings are in existence, if the Court or Judge is satisfied that such appointment is just and convenient and it is not essential for the appointment of a receiver that there should be a lis pendens



## CIVIL PROCEDURE RULES 1938

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Although Form 28 of the First Schedule contemplates the existence of a *lis pendens*, yet this fact does not seem to be important as r. 297(1) provides for such variation of the form in question as the circumstances may require. CA 125/43 X 281

(301) r. 305, 306, 307, 317 319. Order made in a pending action- it is appealable only by leave under r. 317. Soon after delivery of order an application for leave was made and leave granted: HELD- Proper procedure was not followed in obtaining leave as the application should have been made by MOTION. The Court remarked- It may be that this method of applying for leave to appeal is a very convenient method and one that deserves every consideration but we are unable to find anything in the rules which authorises it. CA 192/43 X 437

(302) r. 305 (See Arbitration)

(303) r. 305 See Motions-

(304) r. 305, 311 and 315 See Court Fees Rules 1935 r.19(2)

(305) r. 306 X 437

(306) r. 307 X 437

(307) r. 311 XI 494

(308) r. 312 XI 379 (See Motion)

(309) r. 313 (See Appeals)

(310) r. 313 and 333 - mistake not good cause for failure to cite all parties to the action as respondents. CA 89/40 VII 258

(311) r. 313 VIII 200

(312) r. 313. all parties to proceedings before the Land Settlement Officer not having been made respondents to appeal - appeal dismissed.

CA 113/41 VIII 323

(313) r. 313, 334 IX 204

(314) r. 313 XI 344

(315) r. 313 and 314 - Description of appellants in the Statement of Appeal as "heirs of X" insufficient compliance with the provisions of.

CA 8/44 XI 487

(316) r. 313. XI 608

(317) r. 314 (c) Name of Court that gave Judgment not shown in Notice of Appeal- defect not fatal to appeal. CA 301/44 XI 610

(317) r. 315 XI 494 VIII 63)

(318) r. 317 VII 280) VII 600)

rule not ultra vires art. 43 of the Palestine Order in Council when it purports to regulate appeals in interlocutory Orders. CA 154/40 VII 467

(319) r. 317 IX 497 IX 690 X 437

rule not ultra vires art. 43 of the P.O. in Council because it did not create a new right of appeal nor did it abrogate an existing right. It merely regulates the practice and procedure in District Courts during the course of litigation before those courts with a view of a speedy and better administration of Justice. CA 233/43 X 593

(320) r. 317. The test as to whether a decision of a Court is a "decree" or an "order" is whether the decision determined conclusively the rights of the parties or was a mere inter-



## CIVIL PROCEDURE RULES 1938

## CIVIL PROCEDURE RULES, 1938

- locutory order. If the former the decision is a "decree" if the latter, it is an Order.  
MA58/43 X 465

(321) r. 317- An "Order" by the District Court admitting a document in evidence - As document held sufficiently stamped at the time it was tendered in evidence - not "Order" as contemplated in r.317 CA. 18/41 VIII 78

(322) r. 319 X437

(323) r. 321 VIII 492

(324) r. 324 & 333, Application for extension of time within which to lodge appeal Inability to pay fees- not reasonable excuse for grant of extension. MA 46/40 VII 530

(325) r. 324. VIII 582  
XI 49

(326) r. 325 and 327- Time construction of..  
VII 252

(327) r.325 - document filed with appeal to District Court - not bond complying with r. 325. VII 252

(328) r. 325. "Surety " in this rule must be a person other than appellant. VIII 228

(329) r. 326. Filing copy of formal order made by the Registrar sufficient compliance with rule. VIII 377  
VIII 228

(330) r. 327 VII 252  
VII 372

(331) r. 327.  
Notice for payment of deposit under r. 327 served on appellants' Advocate, Appellant not informed thereof by advocate Notice of listing of appeal for dismissal served on appellant's advocate- Appellant not informed thereof by advocate-

HELD- It is immaterial whether applicant's advocate on whom the notice stating that the appeal was listed for dismissal for non payment of the deposit, was properly served, was present in Court or not at the time when the appeal was dismissed, because the dismissal in such cases followed automatically.  
CA 44/40 VII 372

(332) r. 327. Extension of time fixed by the Chief Registrar for payment of deposit- Supreme Court sitting as a Court of Civil Appeal may extend such time in good cause shown. CA 393/42 X 83

(333) r. 328(c)(ii) See Deposit As no notification of the security given under, ..the attention of the District Court should have been invited to r.333- and as that was not done, and appellant showed no good cause he could not rely thereon in the Court of Civil Appeal; in the circumstances appeal properly dismissed by the District Court. CA 37/41 VIII 136

(334) r. 328 Extension of time- no good cause shown, X 56

(335) r. 328 A , 328(c)(ii)  
X 335

(336) r. 328. A copy of each of the documents mentioned in this rule should be served on each of the respondents to an appeal. even though represented by one advocate in Court below. XI 568

(337) r. 329. increase of amount to be deposited in Court as security for costs. English Practice followed, VII 134

(338) r. 330. VIII 63

r. 330 Refusal by Registrar of Supreme Court to accept appeal with which appellants desired to file one copy only for service on one respondent only- reference to a British Puisne Judge of S.C. under proviso to r. 530  
CA 252/43 X 518



## CIVIL PROCEDURE RULES 1938

## Claim- Club- Co-Heir

(340) r. 331 & 334- Under rules 331 and 334 the D.C. has power to deal with applications for stay of execution of a Judgment of a Magistrate's Court pending appeal to the District Court. HC 54/40 VII 423

(341) r. 333- See Appeals - Distinct claims

(342) r. 333- VII 258  
VII 530  
IX 786  
X 335

(343) r. 334 VII 423  
IX 204

(344) r. 338 See Deposit No.44.

(345) r. 339- The word "shall" is mandatory- the seven days' notice required by the rule must be given. IX 58

(346) r. 339- Notice of appeal filed under- fee payable as on cross appeal. The rule provides that it shall not be necessary for a respondent to give notice of motion by way of cross appeal but this would not seem to alter the matter of a cross appeal contemplated by the rule if in fact such cross appeal is made. CA 98/40

(347) r.358. inapplicable when passage in Judgment expresses what Court of Appeal wished to say. CA 226/38 VII 153

(348) r. 359 see r. 241

(349) r. 361 XI 49

(350) r. 385 - see interest.

## CLAIM

(351) A claim is not a right it is a possible right that may become a real right in the future. HC 44/40 VII 341

## (352) CLAIM AND COUNTER CLAIM

If a substantive claim is within the jurisdiction of the District Court, the counter claim, although within the jurisdiction of a Magistrate's Court is also within the jurisdiction of the District Court and the District Court not thereby prohibited or restricted from hearing the counterclaim together with the claim. Reply to counterclaim necessary- Rule 135 C.P.R. 1938. CA 98/43 X 236

## (353)

CLAIM. Party not successful in establishing his case should not be given another chance to do so. CA 307/43 XI 151

## CLUB.

(354) Registered under OTTOMAN LAW of Societies- dismissal of member of- On application the High Court HELD Respondent not a Public Officer or Public Body- High Court will make no Order. HC 49/40 VII 381

CO-HEIR- Adverse Possession  
See Nos.35 & 36

CO-HEIR - Adverse Possession

(355) In general when co-heirs live together as a family or take the produce of their ancestors land in common or share in its management, there can be no adverse occupation by one against another, but when one ceases  
(cont. on column 65)



Co-heir- Collision- Collusion Commentaries-Mejelle- Committal  
Common Design- COMPANIES.

to be a member of the family or to take part of the produce or rents or admits by any statement, act or claim that another co-heir has been the reputed owner of the land, the occupation of the land, is in general adverse. CA 197/41 VIII 499

(356) CO-HEIR - adverse possession does not automatically oust title of..CA106/44 XI 505

(357) CO-HEIRS- Prescription

The doctrine that there is no prescription between co-heirs appears to form part of the law as to implied agency or trusteeship, and by reason of Art. 46 P.O.C. the interpretation of that doctrine should be subject to the principles of Equity in so far as the matter is not specifically dealt with by Ottoman or other legislation while a Land Settlement Officer in accordance with the provisions of S. 10(3) of the Land (Settlement of Title) Ordinance must have regard to equitable as well as legal rights to land. CA 197/41 VIII 499

(358) COLLISION- Between lorry and railway trolley- Lorry driver acquitted- Civil action against lorry driver for damages Negligence of lorry driver basis of claim in civil action- Held: claim in civil action res judicata. CA 146/40 VII 382

(359) COLLUSION- See Execution Law Art. 123

(360) COMMENTARIES- on Mejelle not Law. CA 169/41 VIII 438

(361) COMMITTAL by Magistrate No appeal lay from a committal or refusal to commit. Cr.A.90/44 XI -452.

COMMON CARRIER See Carrier.

COMMON DESIGN.

(362) When persons go out armed to commit robbery, the natural inference to be drawn from their being armed is that they intend to use the arms they carry, and the use of the arms must be in the contemplation of all of the party. Cr.A.30/43 X 188

(363) COMPANY & MEMBERS

Action for repayment of loan money lent to three persons-agreement between lender and borrower that on registration of Company to be formed by borrower debt would be automatically transferred to Company "since the Company will come in their stead" Company registered debt entered in its books and resolution by directors for payment thereof- Held: agreement only binding on actual makers thereof and not on Company Company cannot ratify agreement ostensibly made on its behalf before its registration- Only bound if new agreement to the same effect made between it and lender. CA 208/41 VIII 539

(364) COMPANIES ORDINANCE  
s. 25A XI 249

(365) s. 127(1) Time limit of 21 days begins to run from the date of the issue of the Certificate of registration by the Land Registry and not from any other date. CA 26/40 VII 346

(366) s. 127(1) Application by mortgagee to Registrar of Companies for registration of mortgage under- mortgagee not notified by Land Registrar that mortgage deed ready for delivery Date of issue of mortgage deed is the date of actual delivery thereof to mortgagee. HC 82/40 VII 528



COMPANIES - COMPENSATION - CONCLUSIONS- CONCEALMENT

(367) COMPANIES ORDINANCE

s.127(8) applicable to a mortgage by a Cooperative Society by virtue of s. 59 of the Cooperative Societies Ordinance- Certificate of registration conclusive evidence that the terms of s.12(1) of the Companies Ordinance have been complied with. CA 26/40 VII 346

(368) s.132- rectification of Register of Mortgages. VII-346

(369) s.132- similar to s. 85 of the corresponding English Act; the effect of which is that as a matter of practice relief is only granted without prejudice to prior creditors and is not granted at all in a case when it would be of no practical importance and use to applicant owing to application being subsequent to the Order of Liquidation. CA 26/40 VII 346

(370) s. 165- This section does not override the distinct provisions of the Land Courts Ordinance which are based upon Art. 42 P.O.C. which gives Land Courts exclusive jurisdiction to deal with any question regarding ownership or possession of land. CA 279/42 X 96

(371) COMPANIES- Share Register When can a person claiming right to certain shares in a Company have his name entered into the Share Register. CA 342/45 XI 360

(372) COMPANIES Shares. Mortgage of.. CA 162/41 596

(373) COMPENSATION -is a punishment- Under s. 37(d) C.C.O. 1936, payment of compensation is a punishment and therefore an order for its payment jointly and severally could not be made. Cr.A. 72/41 VIII 265

COMPENSATION (continued)

(374) for wrongful dismissal by Company in liquidation. CA 58/40 VII 187.

(375) to dismissed employee- CA 5/40 VII 80

(376) Criminal Court trying the criminal case must award compensation immediately after conviction. CA 113/40 VII 363

(377) Claim by employee against Company for compensation -for dismissal- circumstances in which employee not entitled to refuse to instruct another employee of the Co. refusal to instruct entitling Co to dismiss employee- dismissed employee not entitled to notice or payment in lieu thereof. CA 90/41 VIII 261

(378) General claims Tribunal- Claim for rent in respect of goods requisitioned for the Army- allegation that the rent awarded by the Tribunal was a nominal rent and not economic rent- HELD - High Court not a Court of Appeal from the General Claims Tribunal. HC 32/42 IX -256

(379) ..Compensation - rape- Unsuitable to order a boy of sixteen to pay a fine of L.P.50 or compensation to complainant Cr.A.113/42 IX 478

(380) CONCLUSIONS. The Court must always specify the facts upon which they relied in coming to a conclusion. Cr.A.77-40 VII -44.

(381) CONCEALMENT AND DESTRUCTION of Controlled Articles Prohibition Order, 1941-

Concealing- hoarding- "Concealing not same thing as "hoarding- the latter not an offence under...



## CONFESSIONS

## CONFESSIONS

(382) CONFESSION - Judges Rules Formulated many years ago by H.M.'s Judges in England for the guidance of the Police and the Courts and WHICH IT IS THE PRACTICE of the Courts of Palestine to follow-- are to be found in Archbold's Book Criminal Pleading Evidence and Practice (28th Ed at p.406) Cr.A.155/42 IX-654

(383) CONFESSION - The Berkovitz Case

A Court of Appeal should not interfere if the Trial Court comes to a decision that a confession free and Voluntary--

(2) The weight to be attached to a confession is a matter of pure fact for the trial Court with whose decision an appellate Court would be most unlikely to interfere; but its admissibility is eminently a matter with which a Court of Appeal not only may but should interfere if, in their opinion the wrong tests have been applied. To be admissible a confession must be free and voluntary- if it proceeds from a remorse and a desire to make reparation for the crime, it is admissible. If it flows from hope or fear, excited by a person in authority it is inadmissible. On this point the authorities are unanimous. . .The material question consequently is whether the confession has been obtained by the influence of hope or fear and the evidence to this point being in its value preliminary is addressed to the Judges who will require the prosecutor to shew affirmatively to his satisfaction that the statement was not made under the influence of an improper inducement and who IN THE EVENT OF Any doubt subsisting under this head will REJECT THE CONFESSION. (Taylor on the Law of Evidence.) As to the question whether a confession is true is utterly immaterial when considering its admissibility. CR. A.155/42 IX 654--

CONFESSION (continued)

(382) It is the law that it must be affirmatively proved that the confession was free and voluntary- That proposition was laid down in the Queen v Thompson (1893 2 C.B.12) and was confirmed by Rex v Chadwick 24 C Cr.Ap. R.138) and further approved in Ibrahim v The King (1914 Ap.Cases 599) Nobody disputes this proposition- It is therefore important for the prosecution to prove that the statement made was free and voluntary. In Cr.A.8/41 VIII 66 the Police Inspector charged and a cautioned accused. Statement read over and signed by accused- at the head of that statement it appears that he was charged cautioned very fully and the statement goes on to say that "whatever you say shall be taken down in writing word by word and may be produced as evidence at your trial and you are not compelled to say any thing if you do NOT wish to do so- He then VOLUNTARILY said "I want to make a statement to you" In the opinion of the Court this was proof that the statement was voluntarily made and that the prosecution so proved and it was for the defence to disprove it, if they could in cross examination. Cr.A 8 and 9 of 1941 Vol.VIII p.66

(383) CONFESSION. A man may be convicted on his own confession alone, there is no law against it. The law is that if a man makes a free and voluntary confession which is direct and positive, and is properly proved a Court may convict him of any crime upon it. (Cr.A.19/38 V PLR 210) quoting from the Judgment in Rex v Sykes CAR Vol.VIII p 236-237)

Cr.A. 132/41 VIII 506



## CONFESSION

(384) The question whether a confession was free and voluntary is purely one of fact for the trial Court. Cr.A.54/42 IX 252

(385) Confession- unretracted Where there is an unretracted confession the trial Court will consider whether there is sufficient evidence apart from the confession itself to make it reasonably probable that the confession is in fact true. Cr.A.87/42 IX 388

(386) ACCUSED confronted with a person whom he, accused previously of committing the offence; accused said that he (accused) had committed the offence- thereupon what accused said was recorded, was cautioned and he made a statement incriminating himself- whether such confession admissible in evidence- HELD- having regard to Judges Rules- confession not free and voluntary and therefore inadmissible in evidence.

(2) a confession made by an accused to a Magistrate before whom he was brought for the purposes of a remand is admissible in evidence even although no CAUTION was administered. Cr.A.91/42 IX 406

(387) Failure to make a finding of fact that statement free and voluntary- omission- not fatal to conviction. Cr.A.154/43 XI-1

CONFESSION Confidential Communications - Confiscation

## CONFESSION (continued)

(388) Caution- Objection taken to the admissibility of a confession in evidence. Courts to be followed- No form of caution to be administered the deciding test to be applied irrespective of what form of caution was given or what was said, is whether the confession was a free and voluntary statement by the accused or not....It would be desirable when objection is made to the admissibility of a document, to come to a definite decision there and then whether the document in question is admissible or not and in the case of a confession it would be desirable to hear evidence in support of an objection raised as to the admissibility of such a confession; if the Court is not satisfied that there is strong PRIMA FACIE evidence as to the admissibility thereof. Cr.A.171/42 IX 704

(389) CONFIDENTIAL COMMUNICATIONS. Advocate and Client See No.43

(390) CONFISCATION See Salt Ordinance s.9(6)

(391) CONFISCATION OF Controlled Articles. See Defence (Amendment of Food Control Ord.) Regulations 1943 Cr.A.130/43 X 578

(392) Confiscation- Power of Magistrate to order. Cr.A.76/43 X 375

(393) Court has no power to order confiscation of money paid for the commission of an offence. Cr.A.40/44 XI 156

(394) Confiscation of goods Order of confiscation followed by a qualification..Test applicable for determining intention. Cr.A.163/43 XI 173



CONFLICT

CONSENT

CONSENT - Consideration- Consideration - construction- contempt

(395) CONFLICT OF DECISIONS Court of Civil Appeal bound by a previous decision of same Court- although that decision conflicts with English Authorities cited to the Court. CA 188/41 VIII 465

(401) CONSENT JUDGMENT Tenant cannot go back on. H.C.15/43 X 148

(396) CONFLICT OF JURISDICTION

If there is a conflict of Jurisdiction between an Arbitrator and the District Court, arbitration proceedings should be stayed pending determination of action in District Court. CA 247/41 VIII 618

(402) Consent Judgment and Private agreement ( See Land lord & Tenant.

(403) CONSENT- Ecclesiastical Courts

The consent in such matters which alone gives to the Ecclesiastical Courts Jurisdiction must be a definite consent BY THE PARTIES THEMSELVES- Consent may also be inferred. HC 79/40 VII 490

(397) CONSENT

Although "CONSENT" must be clear and beyond doubt and "a definite consent by the parties themselves in a proper case it is permissible for a Court to infer consent by conduct. HC 12/42 IX 215

(404) CONSENT Jurisdiction Consent to Jurisdiction of a Court does not vest that Court with jurisdiction unless jurisdiction is vested in it by Law. CA 279/42 X 96

(398) CONSENT JUDGMENT A.l.t. acc.

Where in a case for eviction a consent Judgment is arrived at by the parties, the question of alternative accommodation may be taken as having been considered by the Court, and the matter terminated by the consent Judgment between the parties. HC 95/43 X 610

(405) CONSIDERATION Onus of proving absence of lay on party alleging it. CA 31/42 IX 275

(406) CONSPIRACY. See Accomplices-

(399) Consent Judgment to effect that the tenant to leave premises after one year from date thereof- during that period (one year) Rent R.(B.P.) Ordinance 1941 made applicable to Municipal Area in which premises situate. HELD consent Judgment unenforceable. HC 95/43 X 610

(407) CONSPIRACY. To convict a fellow conspirator of conspiracy it is not necessary to obtain a conviction of conspiracy against all the conspirators so long as the conspiracy with others is proved. Cr.A.44/43 X 283

(400) Consent Judgment made an Order of Court in Mag.Court Subsequently on application of one of the parties, the Mag. varied the consent Judgment HELD the second Order by the Mag. a nullity because he was functus officio, at the time he made it. H.71/42 IX 452

(408) CONSTRUCTION- Rules of It must be assumed as a general rule of construction that where in the same Ordinance the legislature uses two different sets of words, such difference must have been intended and must be given effect to by the Court. CA 172/40 VII 547

(409) CONTEMPT OF COURT- Sharia Ord. s.3(2) Courts. not applicable to Sharia Courts HC 81/43 X 478



## CONTEMPT- Consumable Goods- CONTRACT.

(410)

CONTEMPT OF COURT Ordinance  
s. 4

Not ultra vires P.O.C. art 43  
s. 4 wider in scope than and  
not impliedly repealed by s.126  
C.C.O. HC.51/40 VII 431

(411) CONSUMABLE GOODS

No difference between requisition  
and acquisition in regard  
thereto. HC 29/43 X 150

(412) CONTRACT

CONTRACT- Advocate & Client  
for Advocate's fees.  
CA 74/40 VII 255

(413) Bilateral agreement

Terms of contract altered by  
unilateral act of one of the  
parties thereto: Held:-Party  
not entitled to claim under the  
contract he altered. Deposit  
would not be refunded.  
CA 257/42 X 14

(414) Breach of.

Breach of contract- direct  
damages- loss of profit -damages  
joint tort feasons- Party  
covenanting not to obstruct the  
performance of a subsisting  
contract- party covenanting in  
breach- party to original  
contract also in breach whether  
party covenanting is liable in  
damages, for the breach of the  
party to the original contract.  
CA 116/41 IX 281

(415) Export of currency

Contract for export of Polish  
currency and gold from Poland  
Negotiations for contract and  
money handed over in Poland  
Polish Law proper law of contra-  
ct- Export of Polish currency  
and gold prohibited by Polish  
Law- Courts in Palestine can-  
not entertain action on said  
contract CA 276/40 VIII 62

(416) CONTRACT- construction

The tendency of the Courts is  
against construing contracts  
as containing two independent  
promises. CA 240/40 VIII 149

(417) Construction

In construing a contract, a term  
or condition not expressly st-  
ated may, under certain cir-  
cumstances be implied, by the  
Court if it is clear from the  
nature of the transaction or  
from something actually found  
in the document that the cont-  
-tracting parties must have  
intended such a term or cond-  
-ition to be a part of the ag-  
-reement between them. (Halsbury  
Laws of England Vol.VII p.322)  
CA 287/44 XI 589

(418) Damages

for sale of land- limit of  
damages vendor entitled to  
in case of breach  
CA 202/43 XI 21

(419) Debts

Agreement for payment of out-  
-standing debt- by adding a  
certain percentage to new orders  
made- whether such agreement  
amounts to an abrogation of  
legal claim to the outstanding  
debt. CA 398/43 XI 286

(420) defect in performance

Where the defects in the perf-  
-ormance of a contract are ess-  
-ential, the position would be  
that -that there was non perf-  
-ormance of the contract in the  
manner stipulated.  
CA 126/42 IX 604

(421) Evidence-oral

Circumstances upon which writ-  
-ten agreement as a whole depe-  
-nded sought to be proved by  
oral evidence- whether permis-  
-sible. OC.C.P. Art.80 .  
CA 245/43 X 520



## CONTRACT

(422) Forfeiture  
Where the contract gives the vendor an express right of forfeiture on non performance of the contract or non observance of its provisions the right is exercisable when such non performance or non observance is finally ascertained that is at the date for performance or observance named in the contract if time is of the essence of the contract (Halsbury Heilsham Vol.29 para 516) CA 128/41 VIII 356)

(423) Frustration of contract  
When somebody leases premises and for some reason or other he is debarred from the benefit of those premises it has been held -he does not have to pay. CA 54/43 X 220

(424) Illegal contract  
If contract tainted with illegality then contract as a whole must be regarded as illegal. In such a case neither party can come to the Courts to ask for relief in respect of that contract, unless they are able to bring themselves within one of the exceptions provided by law making the party to the contract not in pari delicto. Before doing that, the matter that the parties are not in pari delicto must first of all be pleaded and be made an issue in the case. CA 356/43 XI 94

(425) Illegal contract  
Contract for sale of certain machinery Order by competent authority under Reg.46 of the Defence Regulations 1939 prohibiting removal of certain articles enumerated in Schedule thereto covered certain articles of the type sold- purchaser unable to perform contract Defence of illegality of contract raised in final address District Court found in favour of vendors in damages but dismissed action on ground of illegality of contract- whether correct view of the law? CA 148/43 X 310.

## CONTRACT

(426) Intention  
CONTRACT  
Where time not of the essence of a contract it is relevant to have regard in considering the intention of the parties to their conduct after the repudiation of the contract. CA 7/42 IX 247.

(427) Intention- void contract  
Contract declared by Supreme Court as null and void- Wrong to infer intention of parties from such contract. CA 187/43 X 615

(428) Land- sale of outside Land Registry  
Intention of parties to be inferred from wording of contract. CA 2/43 X 75

(429) Nominal parties-  
Action by Government against the holders of certain lands with a view to ascertaining the State Domains and the Forest Lands- During the proceedings a settlement was arrived at between the Government and one of the holders as to the extent of the miri interest of the holders against the state- whether such agreement binds the other holders- Whether it determines the rights inter-se of the holders. HELD The agreement or settlement arrived at between Government and appellant's testator, which was made an order of the Court in the action brought by Government against the appellant's testator in which action the respondents were nominal parties and to which agreement the respondents were not parties, did not decide the rights of the holders of the land in dispute inter-se, it did not determine the extent of the miri interest of the holders as against the State and that the question of ownership could not be held to be res judicata and that respondents were not estopped by that suit or order of the Court from claiming their rights in the lands in dispute. CA 246/41 IX 461



## CONTRACT

- (430) null & void contract  
No title flows therefrom.  
CA 38/44 XI 274
- 
- (431) Null & void contract  
party claiming under not entitled to any relief.  
CA 99/44 XI 553
- 
- (432) Repudiation of..  
A repudiation of a contract is a breach thereof entitling the injured party to elect whether he will sue for damages for the breach or insist on specific performance. ( See Chitty on Contracts 18th Ed.p.839  
(CA 162/40 VII 482)
- 
- (433) Repudiation of..  
If before the time arrives at which a party is bound to perform a contract he expresses an intention to break it, this, of itself entitles the other party at his election to act upon such expression of intention as a renunciation of the contract, to treat it as a breach forthwith. But if he does not treat the renunciation as a breach but continues to give the party renouncing an opportunity of performing his contract, then the latter will be discharged should anything subsequently occur to excuse its performance. Moreover only a definite refusal to perform a contract amounts to a renunciation. CA 162/40 VII 482
- 
- (434) If people do not like the terms of a contract they should not sign it.  
CA 169/41 VIII 438
- 
- (435) Unilateral act-DEPOSIT  
Terms of contract altered by unilateral act of a party there to. HELD such party cannot claim back the deposit made.
- 

## CONTRACTING-OUT - Conversion conviction- Coop.Societies

- (436) Contracting out-  
One cannot contract out of the provisions of s.4 of the Rent Restrictions (Business Premises) Ordinance 1941.  
HC 97/43 X 569
- 
- (437) CONVERSION  
Statutory conversion cannot be proved by Oral evidence.  
CA 55/40 VII 291
- 
- (438) Conversion of land from mulk to miri- CA 206/40 VIII 30
- 
- (439) CONVERSION see rate of Exchange
- 
- (440) CONVERSION of Turkish Gold Pounds into Palestine currency. CA 17/40 VII 191
- 
- (441) CONVICTION.  
Several persons suspected of having committed an offence some were tried and were acquitted rest who were at large surrendered, were tried and were convicted. HELD :  
CONVICTION IN ORDER.  
Cr.A.174/42 X 11
- 
- (442)  
COOPERATIVE SOCIETIES Ordinance s. 13(1)  
Amalgamation of Cooperative Societies- application by amalgamated Society for registration in its name of immovable property registered in the name of the original Society. HELD The true construction of Section 13(1) involves a transfer of the property of two original societies to the amalgamated Society, and therefore by virtue of the Land Transfer (FEES) Rules 1939, 3% of the value of the property is payable in respect of registration.  
HC 72/40 VII 462
- 
- (443) s 48(3)  
Liquidator to deal with priorities.  
CA 26/40 VII 346
-



## Corroboration - COUNTS - Colonial Courts - C O S T S

(444) CORROBORATION -See No.3

(445) COUNTS- Accused charged with more than one count-Mag. passed sentence of three months in respect of all counts-District Court raised sentence to two years -whether the District Court could do so. HELD a District Court in appeal to it from Mag. Courts is LIMITED IN ITS POWERS of punishment to those of a Magistrate's Court. This illustrates the necessity to pass sentence on each count, when an accused is charged with different offences in different counts- although sentence thereon may be ordered to run concurrently.  
Cr.A. 132/42 IX 613

(446) COUNTS- when different counts to be treated as one.  
Cr.A.76/43 X 375

(447) COLONIAL Courts of Admiralty Act 1890. Ad.8/40 VIII 15

(448) COSTS- in Court of Cr. Appeal- Not the PRACTICE to give costs -in..  
Cr.A.41/40 VIII 11

(449) COSTS- entirely in discretion of Court of trial.  
C. 103/40 VII 338

(450) COSTS - Execution  
Action for recovery of costs and expenses incurred in Execution proceedings with regard to mortgage.  
HELD A Magistrate has jurisdiction to deal with the claim for the costs and expenses of the execution proceedings incurred by the Mortgagee for the realisation of the mortgage debt.  
CA 128/42 IX 587

(451) COSTS- HIGHER SCALE  
Registrar  
Registrar has a discretion to award costs on the higher scale in absence of an order by the Court. CA 137/40 VII 387

(452) COSTS - Higher Scale  
RULE

There must be something in the nature and importance of the case, or there must be difficulty or urgency in it, and then there must also be special grounds arising therefrom for making the order.

CA 137/40 VII 387 and see Yearly Practice 1938 p.1484.

(453) COSTS- Judgment.  
Provisions as to costs simple but were intentionally made elastic so that Courts could deal with the question and that the parties both successful and unsuccessful should make any application they wish in connection with costs when Judgment is delivered.  
CA 137/40 VII 387

(454) COSTS Judgment  
An order awarding costs is not a Judgment against which an appeal lies.  
CA 358/43 XI 212

(455) COSTS Privy Council  
The Court of Civil Appeal is the proper authority to tax bills of costs in respect of costs incurred by the respondents to an appeal to the Privy Council between the time of the granting of conditional leave to appeal and the time the appeal stands dismissed for non prosecution.  
PCIA 16/40 X 417

(456) COSTS - Special grounds  
"Special Grounds" defined as Trial occupying considerable time, many witnesses, oral evidence of a special character large questions of the highest importance to both sides and also to others being involved. Yearly Practice 1938 p.1484)  
CA 137/40 VII 387-

(457) COSTS Security for by absent appellant -English Practice followed. CA 26/40 VII 134



## COSTS- COURTS

## COURTS

(458) COSTS- Security for costs of Appeal -Objection to. CA 90/40 VII 252.

(459) COSTS. When trustee personally liable. See Trustee.

(460) COSTS- in Interpleader applications. In the absence of any specified rules dealing with costs in Interpleader Applications under Rule 278 of the Civil Procedure Rules 1938 costs are in the discretion of the District Court. CA 105/42 IX 432

(461) COURTS- Appropriate Court meaning of.. Where in a District there are two District Courts application under the Arbitration Ord. may be made to either of them. (See CA 156/40) but when proceedings in connection with an arbitration have been before one of these Courts -subsequent proceedings should be brought in the same Court. CA 175/40 VII 454 at p.456)

(462) COURT of Appeal bound by its own decisions This principle applies to the High Court unless a distinction can be drawn between the two cases, or further arguments have been presented to the Court in the subsequent case which were not before the Court when it gave the first decision. HC 109/42 IX 715

(463) COURT of APPEAL bound to take point as to jurisdiction if Trial Court acted without Jurisdiction. CA 37/43 X 169

(464) COURT OF CRIMINAL APPEAL.  
Grant of costs by (See Costs)

(465) COURT of Criminal Assize.

The Court of Criminal Assize has jurisdiction to convict of non capital offences- such jurisdiction being conferred on it by s.52 of the Criminal Procedure (T.U.I) Ord. and a conviction on the offence of robbery not ultra vires. (2) Court of Cr.Assize has jurisdiction to convict a person charged before it with murder, of a lesser offence even though he is not charged with that offence; Cr.P. (T.U.I.) Ord. s. 52.  
Cr.A. 37/42 IX 207

(466) COURT - Addressing communications to..

Undesirable for an appellant to address communications to Court of Criminal Appeal after adjournment for consideration of Judgment.  
Cr.A. 27/41 VIII 169

(467) COURTS- Constitution of When an Ordinance has prescribed without reserve that a Court shall consist of two or more judges- it seems impossible that a rule should survive which prescribes that in a certain event the Court shall consist of two Judges and a non Judge- whether Magistrate or Qadi.  
PCA 21/40 VIII 181

(468) COURTS- of co-equal Jurisdiction

A District Court (Jerusalem) is bound by a previous Judgment of the District Court (Jerusalem) the Judgment having been given by a Court of co-equal jurisdiction - although not binding on the Court of Civil Appeal. CA 115/41 VIII 296



## COURT

## COURT

## COURT FEES.

(469) Application to Registrar for refund of... paid before the enactment of the Registrars Ordinance, 1933  
HC.16/40 VII 155

## (470) Court Fees. Counter-clerk.

Where an appellant complies with the financial demands of the proper ministerial Officer of the Court on its office or financial side with regard to the filing of an appeal, respondent to such an appeal cannot invite the Court of Appeal on the hearing of the appeal to say that the proper Court fees on filing the appeal have not been paid and Court of Appeal cannot at the hearing of the appeal interfere with the adjudication of the Counter clerk when he assisted the appropriate Court fees on filing the appeal. The person to decide what are the proper Court fees is the responsible Counter clerk at the Office of the Court or the Colonial Auditor when later on that official complains that the officer of the Court has not charged enough  
CA 34/44 XI 133.

## (471) Court fees - payable on institution of action.

Not dependent upon Judgment being given - and Government entitled to sue for the balance of Court fees which were payable on the

institution of an action if the plaintiff in the action refuses to pay the balance and can do so even if an under assessment is discovered during the course of the proceedings.  
CA 252/41 VIII 616.

## (472) COURT FEES RULES 1935 r. 19 EXEMPTION.

Application for exemption from payment of... In order to grant the application Court of appeal must be satisfied (a) That applicant is without means and the principle is the same whether person be a weak person or a lunatic, (b) that there is a

substantial point of appeal  
MA 28/40 VII 361.

## (473) r. 19(2)

Procedure under - not governed by the Civil Procedure Rules 1938 - therefore an application for exemption from payment of Court fees need not be by motion.

MA 37/44 XI 494

## (474) r. 19(2)

Affidavit by a number of would be appellants as to lack of means. No rebutting evidence as to lack of means by would be respondents. What must affidavit as to means or lack of means set forth - Court not bound to accept affidavit as to lack of means in the absence of rebutting evidence.

MA 9/42 IX 154

## (475) COURT - MAJORITY RULING of.

A ruling by a (two third) majority of a Court is A RULING BY THE COURT nothing illogical in a member of a Court although dissenting from the majority on the question of the admissibility of a document or statement, considering the contents of such document or statement and founding a verdict thereon, when his opinion as to its admissibility has been over ruled by the majority. Cr.A.18/42 IX 168

## (476) COURT MARTIAL.

Trial by..of members of Allied Forces. HJ 71/44 XI 355

## (477) COURT OF TRIAL

Sole Judge of facts and if it says that it believes the witnesses whom it hears an appellate Court should not interfere unless the take as told by the witnesses is so preposterous that no reasonable Court could possibly have believed it, (b) a Court of trial is not bound to give reasons why it believes or disbelieves its witnesses.

CA 226/41 IX -1.



## COURTS - COPYRIGHT

Conveyance- Corruption- Credit Bank  
CRIMINAL CODE ORDINANCE.

(478) COURTS ORDINANCE s.6  
VII-35

(479) Courts Ordinance s.7  
VIII 593

(480) s. 7(b) See Public  
Officers.

(481) Courts Ordinance s.7 (d)  
does not enable High Court to  
prohibit an enquiry being held  
Construction of...  
HC 129/44 XI 636

(482) s. 12(3)  
Appellant applied to the Regis-  
trar that the case be fixed for  
hearing. Case was then fixed  
for trial by Order of the Regi-  
strar, and appellant notified  
of the date. Subsequently and  
on the same date the responden-  
ts applied that the case be  
tried by the President sitting  
alone- The Registrar relying  
on s.12(3) refused the applica-  
tion on the ground that it  
was made late- When the case  
came for trial before the  
Court respondent applied that  
the case be tried by the Pre-  
sident sitting alone- Court  
granted the application. On  
Appeal HELD. The Registrar was  
right and Order of the Distri-  
ct Court was wrong. CA 237/40  
VII 609.

(483) COURTS - PRACTICE OF  
It is a well established prin-  
ciple that any Court of Appeal  
should be extremely reluctant  
to accept a proposition which  
entails the assumption that  
a consistent practice of the  
Courts over a number of years  
has NO LEGAL BASIS. CA 39/41  
VIII 144.

(484) COPYRIGHT. Application  
by motion for a declaratory  
Judgment in respect of publish-  
ing rights in anticipation of  
an infringement - Application  
refused as no infringement  
occurred. CA 232/43 XI 419

(485)  
CONVEYANCE OF GOODS Destruction  
of ..by servant's negligence.  
CA 59/40 VII 179

(486) COORUPTION - Official  
C.C.O. 106. Admission by  
accused of receipt of money al-  
leged to have been received by  
him as a bribe- accused explan-  
ation of transaction not believed  
by Trial Court- No corroboration  
of evidence of donor of money.  
Cr.A.77/40 VII 438

(487) CREDIT BANKS ORDINANCE  
Nothing in..giving power to the  
Chief Ex. Officer to give direct-  
ions as to how monies coming in-  
to a Receiver's hand should be  
dealt with. HC 56/42 IX 352

(488) CRIMINAL CODE ORDINANCE  
1936

Contains a list of Ordinance  
which were repealed including  
the Contempt of Court Ordinance, ..  
1930No mention is however made  
of s. 4 of Cap 23 (Contempt of  
Courts Ordinance) ; it should  
therefore not be assumed that this  
section has been impliedly repea-  
led. HC 51/40 VII 431.

(489) s. 14. See Insanity.

(490) s. 19

Criminal responsibility- justifi-  
cation-when a person not criminal-  
ly responsible for his acts, or  
omissions. Cr.A.38/44 XI 140.

(491) s. 21. See Autrefois con-  
vict. X 492

(492) s. 21. , 105. IX 782.

(493) s. 21. Criminal responsibi-  
lity- accused held twice responsi-  
ble for same offence. Cr.A 168/43  
XI 52.

(494) s. 23. does not create an  
offence but is explanatory /nas-  
much as it merely defines who can  
be charged as principal offenders  
and therefore unnecessary to  
join it in an information .  
Cr.A.143/41 IX -p.7.

(495) s. 23. - IX-46



## Criminal Code Ordinance

## Criminal Code Ordinance

(496) s. 23(1)(c) Circumstances in which accused held PRESENT within the meaning of Cr.A.83/41 VIII 267.

(497) s. 24. Omission to include s. 24 in the Information does not amount to a defect in the information. Cr.A.30/43 X 188

(498) s. 29(b) See Manslaughter.

(499) s. 31, 42(2) IX 468

(500) s. 37(e) binding over being a statutory punishment under s.37(e), when, under s. 46 of the Ordinance, the Court of trial binds over the accused, the Attorney General may appeal under s.67(c) of the Cr.P.Trial Upon Information Ordinance. Cr.A.98/41 VIII 351.

(501) s. 45. XI 81

(502) s. 46. VIII 351. & IX- 16.

(503) s. 81. -rioting. Persons assembling with the common purpose to demonstrate- When Police entitled to take action- Evidence to support view that assembly acted so as to intimidate or frighten reasonable people Cr.A. 69/40 VII 456  
See Pitchers v Surrey County Council (1943 2 KB 57 - at p.61.

(504) s. 105. IX 782

(505) s, 114 VIII 593

(506) s. 123. False statements made by accused to Police in course of ordinary investigation. Statement taken down by Police Officer in writing and signed by accused. S. 123 only applicable when information given with object of setting the Law in motion. Cr.A.64/40 VII 427

(507) s. 152(1) VII 15.

(508) s. 152. See corroboration

(509) s. 153. See Rape

Prostitution

(510) s. 163(b)

The gravamen of an offence under - is the permitting of the use and not the using of the premises for the purposes of habitual prostitution, and therefore where a woman is the occupier of a house which she uses for the purposes of her own habitual prostitution she cannot properly be convicted under s. 163(b) of permitting the premises to be used for the purposes of habitual prostitution.

Cr.A.67/41 VIII 223.

(511) s. 172 VII 151

(512) s. 212, 213 See Information

(513) s 214(b) the words "in cold blood" must be read without "immediate provocation" otherwise it would be next to impossible to convict anybody of murder. Cr. A 57/40 VII 359 and Cr.A.4/42 LX 44

(514) s. 214(b) Change of charge to Manslaughter. Cr.A.14/44 XI 65

(515) s. 214(d) The interpretation of the word "escape" in... cannot be confined to escape from lawful custody Similarly the interpretation of the words "avoidance of punishment" having regard to the words "when an offence has been committed" appearing at the beginning of the subsection cannot be confined to "avoidance of punishment consequent upon a legal conviction". Cr.A. 129/43 X 596

(516) S. 216 XI 57

(517) s. 218 VIII 478



## CRIMINAL CODE ORDINANCE , 1936

## (518) CRIMINAL CODE ORDINANCE

s. 218	VIII	478
s. 222	X	477
s. 222a	See attempt.murd	
s. 238	VII	218 er
s. 238	VII	285
s. 276b	see s. 311	
s. 285(1)	VII	329
s. 288(1)	VII	286
s. 288(1)	see Date of	offence.
s. 295a	VII	6
s. 297a	XI	9
s. 309	X	354
s. 310	X	354
s. 310	VII	605
s. 310	X	291
s. 311	VIII	69
s. 311	IX	255
s. 311	X	708
s. 311	XI	626
s. 337	VII	8
s. 340	VII	267

(519) s. 388 See Confiscation

(520) s. 285(1) Fraudulent appropriation of electric power- Seal necessary for tampering with electric metre accused had opportunity of access to seal- no corroboration of accomplice's evidence. (Cr.A.56/40 VII 329)

(520) s. 297(2) Breaking into building adjacent to a dwelling house and committing theft ACT amounting to breaking. Cr.A. 170/43 XI 9

(521) s.309, 310. "Receiving" in must be to "receive personally". Cr.A. 62/43 X 354.

(522) s. 310. Charge of receiving stolen property- plea of guilty by person charged with stealing the property- said person not called as witness by either prosecution or defence Evidence of said person wrongly admitted as it must have influenced the magistrate. Appeal against conviction allowed. Cr.A.107/40 VII 605

(523) s. 311. An accused person who has been acquitted under s. 311..cannot upon the same facts be convicted under s. 276(b) (Stealing as an agent) Cr.A.14/41 VIII 69

(524) s. 311. Necessary elements of offence. Possession and Reasonable suspicion of property being stolen. Cr.A.55, IX 255.

(525) s. 311. Possession of property suspected of being stolen. No evidence on record to show that person in possession or anybody else stole property- whether conviction can be made under s.311. Cr.A.151/43 X 708

(526) s. S. 311. Once an article has acquired the quality of being reasonably suspected of being stolen property then that quality attaches to the article during every stage of its journeying subsequent to the time of the suspected theft- It is sufficient to the prosecution to show that an accused person has had in his possession at any time subsequent to the suspected theft an article which has acquired the necessary quality of being reasonably suspected of being stolen property. (2) Open to the prosecution to proceed under s. 311 even in a case where suspicion that property has been stolen has ripened into knowledge. Cr.A.49/44 XI 221.

(527) s. 311. Property reasonably suspected of being stolen property..Prosecution may proceed under s. 311. or under s. dealing with receiving stolen property.

(2) Construction of words "reasonably suspected of being stolen property" in...

(3) Purport of this section. Cr.A. 141/44 XI 626



CRIMINAL PROCEDURE.

CRIMINAL PROCEDURE

(528) CRIMINAL PROCEEDINGS  
Conclusive evidence as between the same parties not only of the conviction and the same applies also to acquittals but also of the facts on which that conviction or acquittal was based. CA 143/40 VII 382.

(529) Criminal Procedure (Arrest and Searches) Ordinance s. 16. VII 35

(530) Criminal Procedure (Evidence) Ordinance s. 4.  
A Magistrate sitting holding a preliminary enquiry is a Magistrate's Court and the committal proceedings before a Magistrate Court within the meaning of s. 4. Cr.A. 144/41 IX 20.

To obtain a conviction under s. 4 an intention on the part of the witness to deceive either the Police Officer who took down his (the witness) statement or the Magistrate who took the witness's evidence must be established by the prosecution. Cr.A. 142/43 X 604

(531) s. 7(1) IX 469

(532) Criminal Procedure (Release on Bail) Ordinance  
s. 4 IX 186  
s. 3(7) IX 583  
s. 8 IX 186

(533) CRIMINAL PROCEDURE (T.U.I.) Ordinance

s. 28	XI	201
s. 28(5)	XI	376
s. 28(5)(a)	XI	452
s. 28(8)	XI	376
s. 31	VII	567
s. 31(5)	VIII	229
s. 32	XI	458
s. 35		
s. 34	VII	4
s. 36	XI	527
s. 37	XI	87
s. 39	VII	267
s. 39	IX	258
s. 41	VIII	478
s. 48	VIII	205
s. 51	IX	489

CRIMINAL PROCEDURE (T.U.I)

s. 51	XI	631
s. 52	LX	207
s. 67	VII	67
s. 67	IX	258
s. 67(1)(b)	VIII	403
s. 67(c)	VIII	351
s. 70	VIII	169
s. 71	VII	286
s. 71(1)(b) & (2)	VIII	220

(534) s. 16(2) See Statements to Police.

(535) s. 28(5)(a) No appeal lay from a Committal or refusal to commit by a Magistrate. Cr.A. 90/44 XI 452

(536) s. 31 as enacted in CR. Procedure (T.U.I.) (Amend) Ord. 1939 s. 12.  
Charge of being in possession of stolen goods, contrary to C.C.O. 1936 s. 309. accused alleged to have been found in possession of goods knowing same to have been stolen. Application by Prosecution for amendment of Information by substitution of word "received" for words "being in Possession of" HELD. Application improperly granted. Cr.A. 125/40 VII 567

(537) s. 31 (3) Where an information is amended a note of the Order of amendment shall be indorsed on the information- failure to do so fatal. Cr.A. 71/41 VIII 229.

(538) s. 36. Deposition of witnesses unable to attend trial owing to sickness read at the trial as evidence in the case- Evidence as recorded in the deposition must be strictly adhered to. Cr.A. 107/44 XI 527

(539) s. 41. The interpretation of s. 41 is not to be limited by the English Rule as to when a Judge may call a witness in a criminal case. (b) The words "at any time during the trial" contained in s. 41 cover the whole period up to the giving of the verdict, and the power to call a witness given by the section includes the power to recall him. Cr. A. 123/41 VIII 478



**CRIMINAL PROCEDURE**    **Crown Actions** - **Cross Appeal** - **cross Examination**  
**Criminal responsibility**    **Cultivation** - **miri** - **Custodian**

(540) **Criminal Procedure**  
(T.U.I.) Ordinance, S. 61  
See Judges Record.

(541) s. 52. Not ultra vires  
Art. 41 O.C. because art.  
41 confers not only exclusive  
jurisdiction to try capital  
offences but also a jurisdic-  
tion with regard to other offe-  
nces as may be prescribed by  
Ordinance. See also Court of  
Criminal Justice. Cr.A. 37/42  
IX 207

(542) s. 67 The duly aut-  
horised representative of the  
A.C. could sign appeals on be-  
half of the A.C. under s. 67  
such right of the A.C.'s re-  
presentative to sign appeals  
had not been abrogated by the  
subsequent amendments of 1939  
to the Ordinance.  
Cr.A. 48/42 IX 258

(543) s. 67(1)(b) A decision  
as to want of jurisdiction  
is not a decision as to irre-  
gularity of procedure under  
s. 67(1)(b) An appeal lies  
to the S.C. on the ground that  
the law was wrongly applied to  
the facts and "facts" has a  
wider meaning than "facts found  
by the Court of trial founded  
on the evidence" Cr.A. 111/41  
VIII 403.

(544) s. 70 The word  
"Judgment" in s. 70 means  
the Presiding Judge's record  
of the findings of fact which  
may be typed. Cr.A. 27/41. VIII  
169.

(545) s. 72(1)(c) See Police  
Files.

(546) Schedule to... para 4  
See Information.

(547) **CRIMINAL RESPONSIBILITY**  
accused held twice responsible  
for the same offence.  
Cr.A. 108/43 XI 52

(548) **CROWN ACTIONS ORDINANCE**  
in force despite repeal of  
Palestine Order in Council  
1922, Art. 50. A.A. 8/40-15

(548) **CRIMINAL TRIALS** adjournment  
of. See No. 19 Column 8.

(549) **Criticizing**- Advocate See  
Advocate Under No. 42 Col. 7.

(550) **CROSS APPEAL** No. provision  
in Palestine (Appeal to Privy  
Council) Ord. in Council for Cross  
Appeals. OLA 12/44 XI 455

(551) **CROSS EXAMINATION** & re-  
Examination. A party to High Court  
proceedings is entitled to re-  
examine a deponent on an affidavit  
made on behalf of that party and  
filed by that party, after the  
cross examination of that deponent  
by the opposite party has been  
completed. Such re examination  
must be restricted to questions  
which are asked with a view sole-  
ly to explaining matters arising  
out of the cross examination.  
HC 78/44 XI 449

(552) **CULTIVATION** of miri land  
Means regular cultivation- as  
is reasonably possible having  
regard to the nature of the land  
and the crops for which it is  
suitable. CA 65/40 VII 288

(553) **CULTIVATORS (PROTECTION)**  
Ordinance. See Execution of  
Judgments

(554) s. 18. VII 160  
s. 18 )  
s. 19 ) See Interpretation  
Ordinance  
s. 19(1) XI 248  
s. 19(1)d VII 60  
s. 19(2) XI 348

(555) **CURRENCY**- Export of  
(See Contract)

(556) **CUSTODIAN** of Enemy Property  
Application for joinder of... as  
defendant. No claim by plaintiff  
against Custodian. Third Party  
Procedure not invoked. Trading  
with the Enemy (Custodian (Amendm-  
ent) Order No. 4 of 1940 not rele-  
vant as no claim against custodian  
by plaintiff and third party  
procedure not invoked.  
CA 132/40 VII 352.



(557) CUSTODIAN of Enemy Property Sec (Trading with the Enemy Ordinance. CA 193/40 VII 499

(558) CUSTODIAN of Enemy Property. Action instituted by a foreign firm which became enemy- By consent proceedings were adjourned until after the war- The Custodian as representative of the Enemy Firm applied for the continuation of the proceedings which were ordered by the District Court to continue - whether good order: Held HELD: The Custodian is not bound by an act which had previously occurred, and therefore not bound by the consent given by the Enemy firm which he represented. CA 77/42 IX 403.

(559) CUSTODY " See Child.

(560) CUSTOM. Enforceability of - by Palestine Law- Evidence necessary to establish existence of. CA 5/40 VII 80

(561) CUSTOMS ORDINANCE s.26

Claim under for loss and damages to goods stolen from Customs Correct finding by District Court that goods could not have been removed without connivance and participation of some Customs Officer. Immaterial whether identity of officer known or not- absence of contract by Government to supervise and warehouse goods immaterial. CA 150/41 VIII 451

(562) s. 198 This Section would only apply to cases in which seizure of goods or of means of conveyance had actually taken place. HC 93/43 X 622.

(563) s 190(2) IX 567

CUSTOMS ORDINANCE s.190

(564) Smuggled goods- confiscation- Smuggled goods seized by Customs Department. Notice as required by s. 190(1)(a) of Customs Ordinance was sent to owner of goods- Owner compounded the Offence- subsequently instituted proceeding for the recovery of the goods. HELD One of the objects of the Customs Ordinance would be defeated if a member of the public whose goods were seized, were enabled after he had compounded the offence to institute proceedings for the recovery of his seized goods on the ground that, on the true facts, no offence had been committed. CA 143/42 IX 617

(565) s. 210(1)(b) In prosecutions under... when the possession of the goods by the accused person has been proved, the question then arises as to whether they are smuggled goods and s. 227 makes it quite clear that the onus is upon the accused to show that the duty has been paid. Cr.A.110/41 VIII 387

(566) s. 227. Under this section it is essential that a plaintiff in proceedings under s. 190 for the recovery of seized goods- must prove that the duties have been paid or that the goods had been lawfully imported. CA 196/40 VII 507.

(567) CYPRUS AND INDIA.

Cases decided in/on matters of Moslem personal status are not binding on the Courts of Palestine as they have no real application to the particular laws of Palestine as specifically laid down in the Order in Council, in respect of which matters the Sharia Courts have exclusive jurisdiction. HC 35/42 IX 275



## DAMAGES

## DAMAGES

--- D ---

(588) **DAMAGES.** See Admiralty Court's Jurisdiction to determine amount of.. (No. 29)

(569) **DAMAGES** See Arbitration

(570) **DAMAGES** Assessment of The correct basis for the assessment of damages where the defaulting party was the purchaser was the difference between the purchase price fixed in the contract and the value of the land on the date of the breach of the contract by the purchaser; This view would be wrong in cases where the vendor is the defaulting party. CA 69/42 IX 422.

(571) **DAMAGES** - Breach of contract

Where a vendor seeks to recover damages from a purchaser for breach of contract by the latter, the trial Court should have regard to the amount paid by the purchaser as deposit (a fortiori if it was a part payment of the purchase money) and the vendor will only be entitled to recover damages if the loss he suffered is in excess of the amount of the deposit. CA 11/43 X 54.

(572) **DAMAGES** Limit of Limit of damages vendor entitled to in case of breach.. CA 202/43 XI 21.

(573) **DAMAGES** to PERSON  
M Mejelle.  
Mejelle not applicable to. CA 113/40 VII 363

(574) **Damages- Negligence**  
English Common Law not applicable in cases of damages to the person through negligence. CA 129/42 IX 707.

(575) **DAMAGES** - Plaintiff's negligence  
CA 146/40 VII 382.

(576) **DAMAGES** Nominee  
When would be purchaser is not entitled to damages because he has suffered none, the nominee of that would be purchaser is not also entitled to damages. CA 88/43 X 202.

(577) **DAMAGES** O.C.P.  
When the Ottoman Code of Civil Procedure is applied to contracts "damages" will be taken to mean actual damages and art. 111 of that code will only apply to an agreement which represents a "genuine pre-estimate of damages but not to a sum fixed in terrorem covering breaches of contract of many varying degrees of importance the possible damages for which bear no relation to the fixed sum and which obviously have at no time been estimated by the contracting parties, and when there is such an agreed sum "no more and no less" can be awarded while if the Court, applying well known rules, has to conclude that the sum agreed was a penalty "whatever it may be called in the agreement, then the penal stipulation will not be enforced. PCA 30/39 VIII 116

(578) **DAMAGES** - Ready and willing.

A party claiming damages- whether he be a plaintiff on the main claim or a defendant seeking to establish a claim to damages on a counter claim must prove that he was WILLING AND ABLE to carry out his part of the contract CA 261/40 VIII 71.

(579) **DAMAGES** ready and willing

For a party to succeed in a claim for damages on account of a breach committed by the other party, he must satisfy the Court that he had performed or at all material times was ready and willing to perform his own obligations under the contract. CA 30/42 IX 360



## DAMAGES - Dangerous Drugs

Date of Offence  
DANGEROUS DRUGS

(580) DAMAGES Claim for-  
Ready & willing  
For a party to succeed in a claim for damages on account of a breach committed by the other party, he must satisfy the Court that he had been ready and willing at all material times to carry out his obligations under the contract  
CA 60/42 IX 372-

(581) DAMAGES Special & General.  
Doubtful whether the distinction between special and general damages obtains in Palestine.  
CA 113/40 VII 363.

DANGEROUS DRUGS ORDINA-  
(582) NCE- 1936

For the prosecution to succeed in obtaining a conviction under there must be evidence from which (1) GUILTY knowledge that the goods are dangerous drugs and (2) possession may be inferred; and although the Ordinance makes the mere unauthorised possession of dangerous drugs an offence the duty remains cast on the prosecution to prove the charge against the accused and it is not for the accused to prove his innocence.  
Cr.A.77/43 X 471

(583) DANGEROUS DRUGS ORD-  
-INANCE 1936, s. 4 & 7  
as amended by the  
Dangerous Drugs (amend)  
Ordinance 1941.

Charge of being in possession of and attempting to export dangerous drugs and of conspiracy to commit a felony and to export dangerous drugs  
Acquittal on third and fourth charges. Prosecution witnesses alleged by the defence to be accomplices. Question whether witness an accomplice primarily matter for trial Court if proper test applied. Accused must have guilty intent. Facts constituting attempt to export d. drugs-intention of accused not that of their agents material  
Cr.A.124/41 VIII 473

DANGEROUS DRUGS Ordinance 1936  
s. 7 & 8

(584) Charge of being in possession of cocaine - No specific words in former section creating an offence - wording of section obscure and matter extremely doubtful - accused entitled to benefit of the doubt.  
See. Dangerous Drugs (Am) Ord. 1940 Gazette 1082 of 6.3.41

(585) s. 16(1)(a)(b)  
Accused charged before the Chief Magistrate in first instance with offences against the Dangerous Drugs Ordinance 1936 and against s. 31 of the C.G.O. Accused elected trial before the District Court - whether the District Court has power to apply s. 16(1)(a) to a case remitted to it by a Magistrate.  
Cr.A.108/42 IX 469

(586) s. 17.  
The concluding words of s. 17 put the burden of proving the lawful possession of dangerous drugs upon the accused.  
Cr.A.145/42 IX 645

(587) DATE OF OFFENCE.  
It is essential to insert the date on which a crime charged is alleged to have been committed where time is of the essence of the offence.

A was charged on information with committing the offence on a particular night. The Prosecution failed to prove that the offence was committed on that particular night  
HELD Quoting from Hailsham V.9 p.133 " It is usual to insert the date on which the crime charged is alleged to have been committed, and it is essential to do so where time is of the essence of the offence. In such case, the day of the month or year, and sometimes the time of day when the alleged offence was committed must be alleged. In this case the date was not of the essence of the offence.  
Cr.A.35/41 VIII 143.



## DEBT

DEFENCE  
DEBTOR - Declaratory Orders

## (588) DEBT Assignment of

Amount assigned uncertain, and even if the amount assigned were certain such amount so assigned would be less than the amount due by assignor to assignee. Whether assignment valid in law or in equity  
HELD: Arrangement arrived at between the parties did not come within s. 3 of the Debt (Assignment) Ordinance- since the amount expressed to be assigned was entirely uncertain.  
(2) That even if Art. 600 et seq of the Mejlle had any application there was no assignment.

CA 96/42 IX 559

(589) DEBT (Imprisonment )  
Ordinance s. 3.  
See Assignment.

(590) DEBT (Imprisonment )  
Ordinance s. 2

When a person is arrested under ...he must, in all cases before being imprisoned, be brought before an Execution Officer with a view to showing cause why he should not be imprisoned- no matter how recently he may have promised to pay instalments and no matter how recently he may have failed to keep that promise.

HC 106/44 XI 465

(591) DEBT (Imprisonment)  
Ordinance s. 2

Notice to Judgment debtor to appear before the Chief Execution Officer to be examined as to his means- Service of Notice in Office and upon clerk of Judgment debtor.

HELD: Service not good in accordance with rules.

HC 60/40 VII 426

(592) DEBTOR Examination of as to his means. See Instalment.

(593) DEBT agreement to pay outstanding debt by instalments does not amount to abrogation of legal claim to..

CA 398/43 XI 286

(594) DECLARATORY ORDERS.

ROSE J. In the absence of some legislative provision I know of no inherent right in a Court to make a declaratory Order. In the Common Law Courts of England until the making of the Supreme Court Rules in 1883 no such thing was known as a Declaratory Judgment and even in the Court of Chancery Declarations of Right were only made within certain strict limits. A fortiori a Criminal Court could give no such Judgment and make no such Order. In my opinion, the position, in this respect as regards criminal Courts in Palestine is the same as it was in England prior to 1883 as far as I know still is at the present day ...It follows... that the Court of Criminal Appeal had no jurisdiction to order the forfeiture of the ship..  
Ad.2/40 VII 542.

(595) DECLARATORY JUDGMENTS  
See Judgments.

(596) DEDICATION AND DISPOSITION  
See Waqf.

(597) DEFENCE REGULATIONS

Signature of... by Chief Secretary by High Commissioner's command. Cr.A.62/43 X 354

(598) r. 2 and 48 Meaning of word "maintaining in..."

HC 73/44 XI 424

HC 58/44 XI 428

(599) r. 17 VII 617  
Words "Any particular person" include enemy aliens as well as Palestinians and others and that



DEFENCE REGULATIONS  
(Continued)

being so, the principle laid down in the case of *A.O. v. De Keyser's Royal Hotel Ltd.* (1920 AC 508) applies namely, that where the power of the Crown to interfere with the liberty of the subject has been directly regulated by legislation, the Executive must exercise the restrictions imposed by the legislation.  
HC 67/41 VIII 363.

(600) r. 17 B

Not ultra vires the powers conferred by sub section (1) and (2) of s. 1 of the Emergency Powers (Defence) Act 1939. H.C. 25/42 IX 237

(601) r. 17 B

This regulation gives power to the High Commissioner to detain enemies and to transfer them to a place of detention other than Palestine.  
H.C. 85/42 IX 517

(602) r. 24 A

The essence of an offence under... is not to receive military property but to receive that property without lawful authority or reasonable excuse- The omission of the words "or reasonable excuse" render a charge a nullity. (b) It is a defence to a charge under r. 24 A that the accused does not know that property was Military Property.  
CR.A. 57/43 X 291

(603) r. 24 A X 354

(604) r. 24 A X 506

(605) r. 24 A (1)(d)

provide for an alternative method of procedure that is to say, that an accused charged with an offence under the Regulation would normally be tried upon information but that notwithstanding the provisions in s. 3 of the Criminal Procedure (TUI) Ordinance he nevertheless may be tried summarily by a District Court (2) The Attorney General is entitled to appeal the Judgment of the D.C.

quashing the information and discharging the accused.  
CR.A. 16/44 XI 79

(606) r. 27.

In making an order under r. all that is necessary is for the High Commissioner to be satisfied that the order that he is making is properly made under the Emergency Powers (Defence) Act 1939, and that it is not necessary in every case to show that every thing done under the said Regulations must have been done for the purpose of the due prosecution of the war; all that is necessary is for the High Commissioner to be satisfied that the Regulations which he makes are necessary for the purposes enumerated in s. 1 (1) of the Act.  
H.C. 68/42 IX 450

(607) r. 46

Law prohibiting dealing in certain articles without licence - Dealing in such articles renders person liable to certain punishment and in addition to another sanction equal to three times the value of the articles. Plea of guilty to such offence - at what time evidence as to value of goods to be adduced?.. HELD After plea of guilty had been taken and before sentence was given.  
CR.A. 163/43 XI 173

(608) r. 46 See Contract-Illegal.

(609) r. 46 A XI 187

(610) r. 46 (1)A XI 119

(611) r. 48 requisition of flat for Government Medical Officer.  
H.C. 118/44 XI 574

(612) r. 48 - HC 73/44 XI 424  
HC 58/44 XI 428

(613) r. 48 Requisition of Premises for accommodating a Government Department.  
H.C. 90/44 XI 483

(614) r. 48 X 526



## DEFENCE

## DEFENCE

(615) r.51 Not ultra vires the Emergency Powers (Defence) Act 1939 or the Emergency Powers (Colonial Defence) Order in Council 1939 HC 29/43 X 150

(615) r.51 VIII 99

(616) r. 76 XI 119

(617) DEFENCE (AMENDMENT) REGULATIONS No.6 1942. r. 2 X 375

(618) DEFENCE (Amendment) Regulations No.8 of 1942 Regulation 24 A (1)(d) (See "making away")

(619) DEFENCE (Courts Applications) Regulations 1940 r. 2.

Specific and mandatory - non compliance with fatal. CA 73/42 IX 419

(620) r. 2. Failure to file a declaration as required by r. 2 fatal. CA 234/43 X 490

(621) r. 2. A declaration made before a person not authorised by law to have it made before him (Assistant Registrar Supreme Court) improper. CA 249/43 X 549

(622) Declaration under. r. 2. The question whether a declaration is defective in form or not is one for the Court before which the objection as to the defectiveness is raised and where the prescribed form is followed substantially with the necessary details given the mere verbal variation in the actual wording used does not amount to a non compliance with the requirement of r. 2. CA 249/43 X 549

(623) r. 2. Declaration signed by Advocate on behalf of his client - whether in order. HELD for the purpose of r.2 the term "representative" includes an Advocate duly appointed to act on petitioner's behalf. HC. 100/43 X 567

(624) DEFENCE (Control of Cattle Hides and Leather) Order 1942.

Para 20 must be regarded as pro non scripto for the reason that the competent authority that made the Order has no power to prescribe penalties - para 20 should not have appeared in the Order and any reference to regulation 76 of the Defence Regulations 1939 can be disregarded. Cr. A. 146/43 XI 119

(625) DEFENCE (Control of Cloth) Order 1942. Cr. A. 76/43 X 375.

(626) DEFENCE (Control of Cloth) Order 1942 para, 11 Allegation that Order made mala fide - Quantum of proof required from person complaining of such Order. HC 78/44 XI 471.

(627) DEFENCE (Control of Engineering, Building and Hardware Material) Order 1942 r. 6 & 7. Interpretation of "Article or thing" in r. 6.

(628) DEFENCE (Finance) Reg. 1940. Nothing in these regulations which make it incumbent upon the Controller of Foreign Exchange to deal affirmatively with any application for transfer of money to a Special account. HC 75/41 VIII 372.

(629) DEFENCE (Finance) Reg. 1940 r. 4 c(1)(b) Interpretation of the word "Payment" in CA 48/42 IX 258

(630) DEFENCE (Amendment of Food Control Ord. 1942) Regulations 1943. A Magistrate had no power to order confiscation of the proceeds of the sale of controlled articles. Cr.A.L30/43 X 578

NOTE. Consequent upon this decision the law was amended Sec r. 4 of the Defence (Amend) of Food Control Ordinance 1942) Regulations 1944 published in P.G. 1312 of 13.1.44 page 17 of Supt. 11.



## DEFENCE

## D E F E N C E

(631) DEFENCE (Entry and Dep. of Persons Order 1942. para 3 (1)(c) The Inspector General of Police is under no obligation to issue an Exit Permit as there is nothing in the Order requiring him to grant it.  
HC 68/42 IX 450

(632) DEFENCE (Immigration) Reg 1940 r. 3.

Meaning of the words "whether it came into those waters voluntarily or not" in... mean "in what soever circumstances it arrived there" or to put it more shortly "however it got there".  
Cr.A. 86/41 VIII 333.

(633) DEFENCE (Immigration) Regulations 1940 r. 3 & 4.

In order to obtain a conviction under r. 4 it is necessary that there should be a contravention of r. 3. The meaning of the words "whether it came into those waters in r. 3 voluntarily or not is" in whatever circumstances it arrived there or "however it got there".  
Cr.A. 28/41 VIII 138  
Cr.A. 119/41 VIII 442

(634) r. 3, 7

There being nothing in the Regulation to the contrary the presumption raised by r. 7 that the owner of the vessel on board of which there were prohibited immigrants knew that there were prohibited immigrants on board was rebuttable, and there is nothing in r. 3 to make the forfeiture of the vessel dependent upon a criminal prosecution against the owner, master or agent nor was there anything to say that the owner must be in Palestine, but if the vessel is forfeited under r. 3 the owner or master can take proceedings to have such forfeiture set aside if he can rebut the presumption raised against him by r. 7, so that proceedings for forfeiture may be brought ex parte.  
Cr.A. 119/41 VIII 442

(635) r. 7.

The mere fact that the master

had been acquitted of a criminal charge under r. 4 is not sufficient to rebut the statutory presumption in r. 7.  
Cr.A. 1/42 IX 29

(636) DEFENCE (Judicial) Regulation No. 2 /42 Not ultra vires s.1(1) of the Emergency (Defence) Act 1939.  
Cr.A. 30/43 X 188

(637) r. 3

Direction made by the C.J. under not an order within the meaning of s. 7 of the Interpretation Ordinance and need not therefore be published in the Gazette.  
PCA 66/43 XI 237

(638) DEFENCE (Judicial) Reg. No. 2 of 1942.

Constitution of Court of Criminal Assize in accordance with whether valid constitution. Whether reg. ultra vires.  
PCA 66/43 XI 237

(639) DEFENCE (Military Courts) Reg. 1937 Schedule to...

HC 97/44 XI 442

(640) DEFENCE (Moslem Awqaf) Reg. 1937

Director of Awqaf before suing must refer matter to Awqaf Commission.  
C.A. 319/44 XI 621

(641) Where the Commission appointed under... desires to delegate its authority, it must do so at a formal meeting of the commission and such fact must be recorded.  
CA 216/43 X 523

(642) DEFENCE (Municipal Tribunals) Regulations 1941 r. 6.

The High Court has no power to question any proceedings before a Municipal Tribunal.  
HC 44/42 IX 300.

(643) DEFENCE (Amendment) of Rent Restrictions (B.P.) Ordinance 1941. regulations No. 2 of 1944.

CA 78/44 XI 528.

(644) Do - r. 2

HC 105/44 XI 478.



(645) DEFENCE (Trade Disputes) Order 1942.  
See Strike.

(646) and see HC 25/44 XI 187

(647) DEMOLITION  
of buildings erected without licence.  
See Town Planning Ordinance s. 35 (1)(i) 1936-38.

(648) Demolition of wall built on mulk of another.  
CA 68/40 VII 224.

(649) DEPOSIT  
See Appeal.

(650) DEPOSIT - Payment of for candidate in Municipal Election. See Municipal Corporations Ordinance 1934.

(651) DEPOSIT - in Art. 105 of the Ottoman Law of Execution includes Bank Guarantee, personal or notarial guarantee.  
HC 43/43 VII 384.

(652) DEPOSIT - see forgetfulness.

(653) DEPOSIT - Notice of payment of. It is the duty of an Advocate for an appellant to an appeal or that advocate's clerk to see that the duplicate of the notice under r. 323(c)(ii) or of the notification of exemption under r. 328 A is completely filled in before the duplicate is served on a respondent to the appeal.  
Carelessness or negligence on the part of advocates or their clerks with regard to what might be called a "technical mistake" is not a good cause within the meaning r.333 of the Civil Procedure Rules 1938. CA 156/43 X 335.

(654) DEPOSIT - Notification of deposit paid not shown in document served on respondent - not good cause shown - omission fatal to appeal.  
CA 72/44 XI 325.

(655) DEPOSIT Refund of..  
See Contract

(656) DEPOSITIONS OF SICK WITNESS See Cr. P. (T.U.I.) Ordinance s.36 XI 527.

(657) DEPOSITION Discrepancy between witness's evidence and deposition.  
Cr.A. 23/40 VII 217.

(658) DEPORTATION.- Alien Enemy.

No power vested in the Executive to deport any alien enemy to any country outside Palestine.  
HC 97/42 IX 525.

(659) DETAINEES.  
No statutory duty or obligation in any law or regulation authorising or compelling either Inspector General of Police or the Superintendent in charge of Farm Labour Camp to grant rights and privileges to - detained persons and that such privileges which had been granted in the past, had been granted ex gratia and that it was entirely within the discretion of the Inspector General of Police to decide who should and who should not enjoy such privileges.  
HC 69/42 IX 425.

(660) DETAINEES.  
Where persons are detained it is desirable that they be told why they are detained and under what alleged authority in order that they may take any appropriate steps which may be open to them to test their position.  
HC 108/40 VII 617.

(661) DETAINEES Directions by H.Com.  
Directions by High Commissioner with regard to the treatment of detainees Whether direction a statutory obligation? Held: The direction by the High Commissioner under s. 17 (1)(b) of the Defence Regulations 1939 is not a statutory determination because it could be altered at any moment by the



DET

DIS

## DETAINEES (continued)

will of the High Commissioner  
It is more in the nature of  
a guide to the Officers in  
charge of the detention camps  
to enable them to determine  
the treatment which should  
be afforded to the detainees.  
HC 140/42 -& 141/42 X 114.

(662) **DETAINEES.** Directions  
with regard to the treatment  
of .. Whether detainees have  
a right to question such dire-  
ctions in Courts of Justice.  
HELD only remedy open to safe-  
guard from abuse of instruc-  
tions is by way of appeal to  
the Inspector General of Pol-  
ice and finally to the High  
Commissioner. HC85/43 X 480

(663) **DISCRETION.** The rule  
is that an appellate Court  
will not interfere with a  
discretion merely because that  
Appellate Court might have  
exercised that discretion  
in another way had that disc-  
retion been attached to it;  
but it will interfere if it  
is shown that the lower Court  
failed to take some material  
matter into consideration.  
CA 45/42 IX 289

(664) **DISCRETION** of Court  
of Trial to order taking of  
evidence on commission CA 62  
40 VII 244.

(665) **DISCRETION** interference  
with by Court of Appeal.  
CA 164/41 VIII 423. See  
Receiver appointment of

(666) **DISCRETION** should be  
exercised by the Court vested  
with the discretion.  
CA 92/42 IX 503

(667) **DISCRETION.** It is always  
difficult for a Court of Appe-  
al to decide when it should  
interfere with the exercise of  
a discretion by a Court or Judge

but there is authority  
for the view that an App-  
ellate Court could and in  
a proper case should, re-  
view the exercise of a dis-  
cretion as to the mode of  
trial of any cause or matter.  
CA 61/42 IX 428

(668) **DISCREPANCY** between  
witness's evidence and depo-  
sition. Cr.A.23/40 VII 217

(669) **DISPOSITION** means  
a disposal of ownership or  
possession a parcellation  
is not a disposition unless  
effect is given to it by  
legislation. CA 78/40 VII

(670) **DISPOSSESSION** -Recov-  
ery of Possession. Force-  
ful dispossession. A party  
alleging forceful disposses-  
sion must take action for  
the recovery of possession  
within a very short time of  
the occurrence; it is however  
impossible to lay down any  
hard and fast rule and each  
case must be decided upon  
its particular facts and the  
period of time must be a matt-  
er of degree depending upon  
those facts. CA 200/42 IX 776

**DISMISSAL OF CASE** on one  
issue only- undesirable  
practice. CA 118/40 VII 390

**DISTRICT COURT** (Jerusalem  
bound by a previous Judgment  
of the District Court (Jlm)  
the Judgment having been given  
by a Court of co-equal jurisd-  
iction although not binding  
on the Court of Civil Appeal  
CA 115/41 VIII 296

(673) **DISTRICT COURT**- Judgment  
A Chief Execution Officer has  
no power to say that a Judgment  
of a District Court is a null-  
ity. HC 55/42 IX 349



District Court-

DIVORCE

Diyet

Document

(674) DISTRICT COURT Sitting in Probate capacity See Certificate of Succession

(675) DISTRICT COURT (Summary Trials) Rules 1938 Rules 11 and 15 (intra vires) Cr.A.9/40 VII 67.

(676) r. 2 Observations with regard to compliance with the requirements of..

(677) r. 9. XI 342

(678) DIVORCE of Foreign Jews In the case of foreigners who are both Jews and who have been married in their national state and who subsequently came to Palestine and obtained a divorce in the Rabbinical Courts of Palestine a District Court can make an order declaring THAT SUCH DIVORCE IS VALID, only when it is satisfied by evidence of the following facts:  
 (a) as to there having been a marriage solemnized between the parties;  
 (b) as to such marriage having been dissolved according to Jewish Religious Law;  
 (c) that the national law of the parties recognises the validity of such divorce. ( See Pers. CA 184/43 X 415 ( Status)

(679) DIYET Articles 1, 171, and 182 O.P.C. do not confer a positive right to an award of diyet- they do no more than refer to the existence of Sharia rights.

(2) A diyet is awardable by Civil Courts. CA 39/41 VIII 145

(680) DOCUMENTS- Ancient Ordinary letters cannot be regarded as- This term refers to such documents as title deeds, public records or certified copies of public records.  
 CA 256/41 IX 160

(681) DOCUMENT- Photostat Copy of document not admissible in evidence.  
 CA 122/42 IX 550

(682) DOCUMENT -construction of,.. question of Law.  
 CA 139/40 VII 376

(683) DOCUMENT- Allegation that certain document in possession of other party to litigation- procedure to be followed before oral evidence adduced on such document.  
 CA 201/44 XI 556

(684) DOCUMENT Privileged

Document found on accused and admitted in evidence against him- accused contended that the document in question contained notes to enable his advocate to prepare his defence; Whether document was properly admitted in evidence-  
 HELD That having regard to the contents of the document itself, the only reasonable inference to draw was that it was made for the purpose of enabling the appellant's advocate to prepare his defence and that it was therefore improperly received in evidence.  
 (2) That the document in question was not in the nature of a confession, because at the time it was taken by force from the appellant it had already been completed and the basic principle underlying objections to statements or confessions on the ground that they were extracted as a result of any improper influence did not apply to the present case; and the subsequent forceable taking of the document could not, of itself render it inadmissible in evidence.



Document - Doubt Dying Declaration- Ecclesiastical Courts  
Elections

## DOCUMENT (continued)

(3) that writings by a person inculcating him are admissible in evidence, even in cases where such person (prisoner) was misled as to the destination of those writings which he had written with the intention of their being sent outside the prison. Cr.A. 144/42 IX 688

(685) DOUBT as to one acquitted accused not ground for quashing conviction against other accused. Cr.A. 29/40 VII 218

(686) DOUBT- Reasonable only applies in a criminal case and not in a civil case. CA 33/42 IX 378

(687) DYING DECLARATION There is no rule of law or of practice which requires the details of a dying declaration to be corroborated. Cr.A. 18/42 IX 100

(688) DYING DECLARATION Act of violence committed at about soon afternoon-statement by victim in afternoon of following day-whether statement admissible in evidence as being made by a person who was dying as a direct consequence of the act of violence. HELD The statement made by the deceased on the afternoon of the following day of the incident and which was admitted in evidence under the Evidence Ordinance s. 8 as being made by a person who "was dying as a direct consequence of the act of violence" was inadmissible as such an interpretation of s. 8 of the Evidence Ordinance is far too wide and would be utilised for letting in statements by persons possibly days or

weeks after being wounded which statements would be admissible as "dying declarations" Cr.A. 123/43 X 539

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ECCLESIASTICAL COURTS Consent to

(689) Nature of consent which alone gives jurisdiction to Ecclesiastical Courts must be a DEFINITE CONSENT by the parties themselves. CA 22/40 VII 125

(690) EJUSDEM GENERIS Rule See Interpretation

(691) ELECTIONS Petitions. Election petitions under r. 22 of the 4th Schedule to the Local Councils (Township of Naharya) Order 1940 presented to Magistrate's Court, Nathania - The petition was dismissed for want of jurisdiction. Appeal to District Court by leave of President under s. 11 (8) of the M.C. J. Ordinance 1939. Whether such appeal lies? HELD That no appeal lay from the decision of the Magistrate because sub section (1) to (7) of s. 11 of the M.C. J. Ord. which details the matters in which an appeal lies do not mention an election petition as one of such matters that are appealable- such matters that are appealable being those referred to in s. 3 of the Ordinance in question. CA 257/43 X 625

(692) ELECTRIC POWER Fraudulent appropriation of..see C.C. O. s. 285(1) CR.A. 56/40 VII 329

EMERGENCY POWERS (Colonial Defence Order in Council 1939)

(693) There is power vested in the Executive to deport any Alien Enemy to any country outside Palestine HC 97/42 IX 525



Emergency - Enactment - Enemy- English Law- Equitable Title

(694) EMERGENCY Powers (Defence) Act, 1939 in force in Palestine until repealed.  
HO. 115/44 XI 594

(695) EMERGENCY Defence Act Powers  
s. 1(4) X 375

(696) EMERGENCY Regulations Solitary confinement  
Application by petitioner that his son who is under arrest should not be in solitary confinement- whether entitled to such request.

Held. There is nothing in the Emergency Regulations which provide that prisoners should be kept in association.  
H.C. 51/42 IX 341.

(697) not ultra vires s.12 of the Prisons Ordinance, 1940  
H.C. 69/42 IX 425

(698) ENACTMENT & Promulgation are two different things "to enact" in reference to Regulations means "to decree" or "pass" whilst "to promulgate" means to publish or to make known to the public.  
Cr.A. 59/43 X 319

(699) ENEMY - Alien  
If an alien enemy is stated by the Executive Government to be detained as a prisoner of war, his detention is lawful and it is unnecessary to aver that he is hostile, nor is there any distinction to be made between a military and a civil prisoner of war.  
HC 82/41 VIII 429  
HC 67/41 VIII 363

(700) ENEMY alien cannot apply for writ of habeas corpus. This is the settled law both in Palestine and in England.  
HO 85/42 IX 517

(701) ENEMY subject. Allegation that Judge of Religious Court is..See Judges of Ecclesiastical Courts  
HC 103/42 IX 579

(702) ENEMY SUBJECT an Enemy subject who is entitled to the protection of Government and who is not stated to be a prisoner of war can only be detained under r. 17 of the Defence Regulations 1939.  
See H.C.82/41 VIII 429  
H.C.67/41 VIII 363

(703) ENGLISH LAW- imported in cases of libel.  
CA 113/40 VII 363

(704) ENGLISH COMMON LAW in the sense used in the Order in Council it means- Customary Law as opposed to Statute Law. It includes rules of law derived from decided cases and other authorities. The customary Law is the law founded on the customs and habits of the English People developed and extended over many generations but all the time based on their customs and their habits.  
CA 113/40 VII 363

(705) ENGLISH RULES OF PROCEDURE Art. 46 of the Palestine Order in Council cannot be invoked to authorise introduction of English Rules of Procedure which have not been embodied in the Rules. CA 66/40 VII 220

(706) EQUITABLE CONSTRUCTION Doctrine of- Advocates Ordinance cannot be extended under..  
CA 74/40 VII 255

(707) EQUITABLE Title Improvement entitling to.  
CA 302/43 XI 41.



Equitable Title

Establishment of Courts

Estoppel.

(708) EQUITABLE TITLE

To acquire an equitable title in land a purchaser must establish (a) that there is a contract for sale (b) that the consideration in respect of that contract has been paid in full (c) that he, the purchaser, has been let into possession of the property by the vendor, or for a considerable time though the time need not be equal to the period of prescription and (d) that nothing remains to be done other than the formal transfer of the land so sold into the name of the purchaser. CA 168/43 X 371

(709) EQUITABLE TITLE. Where there is a valid agreement for sale and purchaser has paid the whole of the purchase money and had been let into possession and at the time of action brought had been in possession for a considerable period though not exceeding the period of prescription this would give a good equitable title to the purchaser as against the vendor.

CA 195/40 VII 531

(710) EQUITABLE TITLE The doctrine of .. only applies between a purchaser and his immediate vendor.

CA 181/43 X 424

(711) ERROR in Judgment- See Judgment.

(712) ESTABLISHMENT OF COURTS ORDER 1937. s. 3.(c) Courts Ordinance 1940 s. 12(3)(a) not applicable by analogy. CA 236/41 IX 53.

(713) ESTOPPEL- Party's attorney accepted an offer on behalf of his client whether such party can go back on such acceptance and at what time should that party object? Held. Party estopped from refusing to accept offer accepted by attorney. The proper time to say he did not agree with the estimated value was the time when his agent asked that his share should be offered to the other co-owners. CA 1/43 X 81.

(714) ESTOPPEL by behaviour CA 39/40 VII 167

(715) ESTOPPEL Sleeping on one's rights- Bankruptcy- verification of debts- debt expressed to be in Turkish Gold Pounds - debt approved, verified and converted into Palestine currency- no objection raised- creditor received dividends on account of debt and received balance of the verified debt and gave a receipt therefor- Subsequently creditor brought an action for a certain sum alleging it to be the balance due- whether he could succeed in his action. HELD Respondent was estopped from claiming the amount he claimed on two grounds (1) That the verification was never objected to in the first instance when the debt was calculated and approved in Palestine currency and (2) that he slept on his rights for three years after he received the final dividends, his receipt of which acknowledged that it was the balance of his approved claim.

CA 113/42 IX 453

(716) ESTOPPEL- Admission that debt due from principal does not debar an action against guarantor. CA 13/42 IX 225.

(717) By applying for an order postponement of two months of an order of eviction made by the Chief Execution Officer, a petitioner is estopped from challenging that order by alleging it was invalid or contrary to Law. HC 15/43 X 148

(718) ESTOPPEL- Expropriation /Admission in Land Registry as to value of land- whether such Admissions amount to estoppel on part of those making them HELD no real estoppel - Appellants not estopped from denying the truth of their admissions as to the value of the plots to be expropriated which they made in the Land Registry CA 123/42 IX 565



Estoppel

Ethiopia-

EVIDENCE

Evidence

(719) ESTOPPEL Where for nearly 30 years Government had treated land as taxable property of the appellants or predecessor in title and had collected Werko and rural property tax from them on that basis, it was estopped from denying Appellants ownership of the land in question.  
CA 278/40 VIII 110

(720) ESTOPPEL See Personal Status.

(721) ETHIOPIA Effect of withdrawal of the de jure recognition of Italian Conquest, of.  
CA 157/40 VII 597

(722) EVICTION See Landlord & Tenant.

(723) EVICTION See Consent Judgment.

(724) EVICTION See Waiver to the right to.

(725) EVIDENCE. After trial

Before Court of Criminal Appeal will take action on evidence adduced after the trial it must be satisfied of two things

First that the evidence would not have been available at the trial to the defence, even if it had exercised reasonable diligence, and secondly, that the evidence is of such importance that it must have had a pronounced effect upon the mind of the trial Court.  
Cr.A. 10/42 IX 49

(726) EVIDENCE - Appreciation The question of the appreciation of the evidence and of the weighing of contradictions matter for trial Court alone.  
Cr.A. 163/42 IX 663.

(727) EVIDENCE- Availability Not available during hearing of action but becoming available after Judgment and before the determination of the Appeal The course to be followed in such instance is to remit the case to the trial Court to consider that piece of evidence and to give a fresh Judgment in the light of it. CA 18/44 XI 256.

(728) EVIDENCE - Character Evidence as to character of accused. Where an accused had been found as a fact to have thrown a bomb and fired a rifle, illegally, the circumstances that he was a leader of rebels was a relevant consideration in deciding what sentence should be imposed.  
Cr.A. 20/42 IX 163

(729) EVIDENCE- Circumstantial.

In the absence of EYE witnesses evidence must necessarily be circumstantial.  
CR. A 18/42 IX 168

(730) EVIDENCE- Co-accused. A Co-accused gave evidence on his own behalf implicating the other co-accused- Held- Such evidence needs no corroboration.  
Cr.A. 145/42 IX 645

(731) EVIDENCE On Commission Direction of Trial Court to order the taking of.  
CA 62/ 40 VII 244.

(732) EVIDENCE -uncontradicted That means that it must be either denied in pleadings or that it must be contradicted by other evidence - A mere statement by Counsel that evidence is not accepted is not sufficient to contradict it. CA 85/40 VII 304

(733) EVIDENCE -admissibility of document signed by deceased person partially against his proprietary interests admissible in evidence. CA 233/40 VIII 20

(734) EVIDENCE - Different Magistrates. One Magistrate heard evidence and said he was now satisfied with it. Case completed by another Magistrate who said that he did not believe that evidence heard by the first Magistrate HELD Second Magistrate entitled to do so. (M.C.P.R. 1940 r. 147) CA 215/42 IX 737



## Evidence

(735) EVIDENCE- Dangerous to rely on oral evidence of oral contract when one alleged party dead. CA 233/40 VIII 20  
CA 233/40 VIII 20

(736) EVIDENCE Experts  
Technically experts must be heard It is not sufficient to put in their reports.  
CA 393/43 XI 305

(737) EVIDENCE of Criminal Acts other than those covered by the Information.  
It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment for the purpose of leading to the conclusion that the accused is a person likely from his conduct or character to have committed the offence for which he is being tried. Where it is established that evidence has been wrongfully admitted the Court will quash the conviction unless it holds that the evidence so admitted cannot reasonably be said to have affected the minds of the jury in arriving at their verdict and that they would or must inevitably have arrived at the same verdict if the evidence had not been admitted. (Archbold's Cr.P. 28th Ed p.340 and 366. Cr.A.14/42 IX 63.

(738) EVIDENCE -Interrogatories  
Circumstances in which answers to interrogatories may be relied upon although not put in evidence. CA 62/40 VII 244.

(739) EVIDENCE - Oral.  
May not be led to contradict an admission made in the Land Registry except in certain circumstances e.g. fraud.  
CA 389/43 XI 214.

(740) EVIDENCE- Map prepared by Dept. of Surveys produced in evidence -not necessary to have it formally tendered by an Official of the Dept. of Surveys  
CA 44/44 XI 577

## Evidence

(741) EVIDENCE ORDINANCE  
s.6. What evidence sufficient to satisfy requirements of.. CA 298/43  
XI 59

(742) s. 7 VII 218  
(743) s. 8 See Dying Declaration  
(744) s. 8 IX 168

(745) s.9. Complaint by accused against victim tendered in evidence whether admissible. Cr.A.26/44  
XI 87

(746) s. 14. Calling party.  
Under s. 14 a party to a civil action could be called as a witness, that was the practice of the Courts of Palestine which was followed for many years after the enactment of the Evidence Ordinance in 1924 until the decision in *Blumenfeld v Imperial Chemical Industries (Levant) Ltd* CA 87/37, was given and that that practice of calling a party as a witness was not in any way in conflict with the strict application of Art. 80 of the O.C. of C.P. because by giving a Judgment based on the evidence of that party, the Judgment itself would not be based on the oral evidence but on the admission of the party. CA 89/42 IX 439

(747) EVIDENCE -- objection to

Where a party in a civil case including a land case objects to the reception of any evidence he should raise objection when that evidence is tendered and should invite the Court to record that objection under r. 200 C.P.R.  
CA 3/41 VIII 93



## Evidence

## Evidence

748

**EVIDENCE discrepancy in**  
Cr.A.23/40 VII 217

(749) **EVIDENCE**- Where an actual payment is not disputed but a question arises as to what matter the payment related to, the Court may and in fact SHOULD hear such oral evidence as the parties choose to adduce as to the facts.  
CA 115/40 VII 414.

(750) remote parties  
Oral evidence of.. admissibility of..CA 253/41 IX 141

(751) sufficient to create presumption that property belonged to War Department - no counter allegation made by defence and no contrary evidence called. The evidence was that the property was contained in a Base Ordnance Depot under the British Army Authorities's Control. **HELD** Prosecution sufficiently proved property belonged to H.M.'s War Dept.  
Cr.A.62/43 X 354

(752) **EVIDENCE** -Privilege- Issue of summons for production of a file- Claim of privilege- Proper procedure to be followed  
CA 166/43 XI 74

(753) **EVIDENCE**-registered title Practice of Courts not to accept evidence (oral) in defiance of a registered title .Tapou Register is evidence as to character of land. CA 55/40 VII 291.

(754) **EVIDENCE** Party not naming witnesses whom he proposes to call is not good reason to decline to hear the evidence of that party if that party is ready to adduce evidence on the day and time when the case is set down for determination.  
CA 191/42 IX 710

(755) **EVIDENCE**- conversation between a person acting on behalf of another and a third person -admissibility of such conversation in evidence.  
Cr.A.18/44 XI 101

(756) **EVIDENCE**- Supreme Court sitting as a Court of Criminal Appeal hearing evidence of main witness who went back on the evidence he gave before the Court of Criminal Assize Held: conviction must be quashed.Cr.A.42/42 IX 222.

(757) **EVIDENCE** by witness upon Affirmation. See Affirmation.

(758) **EVIDENCE** Weight of.. See Witnesses.

(759) **EVIDENCE** Weight of Weight of evidence does not mean a superior number of witnesses . This is a matter for the trial Court to assess the value to be attached to the evidence of witnesses and if the Court finds that the evidence of three or four witnesses called by one side should be believed in preference to the evidence of say ten, twenty or fifty witnesses called by the other side, it could not be said the Judgment of the Trial Court is contrary to the weight of evidence. CA 33/42 IX 378

(760) **EXAMINING MAGISTRATE**

It is not the function of an Examining Magistrate to determine whether a certain witness is or is not speaking the truth his only duty is to record the evidence and if, having regard to the prosecution's evidence alone, he reaches the conclusion that a prima facie case has been established then, whatever defence may be put before him it is his duty to commit the accused for trial, leaving to the Court of trial to weigh the evidence of the Prosecution and that of the defence.  
HC 14/43 X 127



**\*Execution\*****Execution**

(761) EXECUTION - Attachment  
See Attachment.

(762) Assistant Ch.E.O.  
Powers of ..are delegated to  
him by the Chief Execution  
Officer, but when so delegated  
he acts independently and the  
Chief Execution Officer is not  
an Appellate Court from him.  
HC 92/40 VII 550

(762) Chief Execution Officer  
cannot interfere with Judgments  
clear in their terms.  
HC 126/44 XI 646

(763) C.E.O. has no power to  
vary an Order given by a Court  
HC 48/40 VII 379

(764) C.E.O. has no power to  
say that a Judgment of a  
District Court is a nullity.  
HC 55/42 IX 349

(765) C.E.O. not the function  
of. to tell a Court that it was  
wrong in law or wrong in its  
facts when the Judgment of  
that Court was put in execut-  
ion. The High Court has no  
powers other than those given  
to a C.E.O. HC 103/42 IX 579

(766) C.E.O. not a Court  
Not the function of..to enquire  
whether a Court acted within  
its jurisdiction, because a  
C.E.O. is not a Court of Appel-  
al from such Court.

(2) Execution Officer, cannot  
enquire whether Magistrate  
acted correctly.  
HC.97/45 X 569

(767) C.E.O. cannot make ex  
parte Orders without hearing  
other side except where the  
ex parte orders applied for  
are purely formal or where  
there are reasons showing that  
they are of a specially urgent  
nature. HC 88/43 X 494

(768) EXECUTION (Continued)  
C.E.O. - Discretion- Sale.  
a C.E.O. with regard to an E.O  
attachment has a discretion  
whether he will proceed with  
the sale of the attached goods  
or not.

(769) C.E.O. not Court of  
Appeal from Courts whose Judg-  
ments are put in execution,  
and in eviction cases where the  
the competent Court had taken  
into consideration the question  
of hardship to the tenant and  
was satisfied that there were  
sufficient reasons for ordering  
eviction, it is not for the  
Ch.Ex Officer to substitute  
his own opinion for that of  
the Judicial Officer.  
HC 88/43 X 494

(770) C.E.O. not appellate  
Court from an Ass. C.E.O.  
HC 92/40 VII 550

(771) EXECUTION OF JUDGMENT  
The mere fact that a dispute is  
pending under the Cultivators  
(Protection) Ordinance does not  
constitute a bar to execution  
of a Judgment of possession  
granted by a competent Court.  
HC 57/44 XI 260

(772) EXECUTION LAW  
Ar. 36.

See Jurisdiction . Judgment  
given by District Court for L.P  
750 put in execution. Judgment  
Debtor alleged satisfaction by  
settlement- difference between  
amount of Judgment and amount  
per settlement being within  
the Jurisdiction of Magistrate's  
Court- HELD the determination  
of such a dispute falls within  
the jurisdiction of the District  
Court- the real matter in disp-  
ute being whether the "Judgment  
debt for L.P. 750 has been  
satisfied. CA 273/42 X 69



E X E C U T I O N

E X E C U T I O N

(773) EXECUTION LAW

Art. 36 VIII 105

(774) Art. 43 VIII 298

(775) Art. 43 The first two sentences of art. 43 are not to be read together with the last sentence. It is entirely independent of them and deals with a separate set of circumstances, so that if an order for the eviction of a tenant from certain premises is made his sub tenant must vacate the premises. HC 59/41 VIII 353

(776) Art. 43. Interpretation of.. The words "residing in the place which is to be vacated" appearing in the second part of art. 43 mean "residing at the place at the time it is to be vacated .i.e. at the time the Judgment had been given or executor issued thereunder. CA 2439/42 X 30

(777) Art. 47 XI 327

(778) Art.77 May be invoked in appropriate cases by a Judgment debtor. HC 76/43 X 482

(779) Art.77- Attachment Certain property of Judgment debtor attached and delivered to third party for safe custody Third party disposed of property attached to his own benefit- other property of Judgment debtor attached. REMEDY open to Judgment Creditor: HELD that the remedy of the Judgment creditor was to proceed against the third party in whose hands the property attached was and of which he disposed, in accordance with art. 77 - and not by levying a fresh attachment on other properties of the Judgment debtor. HC 112/43 X 637

(780) Art.81 XI 249

EXECUTION (continued)

(781) Art. 105- 109

"Deposit" int this art. includes a Bank guarantee and even an undertaking- such as a personal or a notarial guarantee. HC 43/40 VII 384

(782) Art. 107 VII 121 VIII 482

(783) Art. 110 and 111 have no application to partition proceedings; They are confined to sales of property belonging to debtors. HC 74/43 X 467

(784) Art. 111. The meaning of this art. is that if the bidder pays the purchase price and the property is not then transferred to him within a month, he may withdraw his bid. HC 26/41 VIII 187

(785) Art. 112.

The effect of art. 112 is that if there is any dispute about the condition of the property at the time of its transfer, that dispute is determined by reference to its state at the time of taking possession- remedy of bidder to withdraw bid after becoming aware of damage. Bidder by purchasing after damage deemed to have consented to taking property in damaged condition. CA 255/40 VIII 46

(786) Art. 114 Abandonment of proceedings for about four years Order of C.E.O. annulling previous proceedings, correct. HC 126/43 XI 539

(787) Art. 114 Stay of execution VII 574.

(788) Art. 118, 143 VIII 607

(789) Art. 123. Attachments What must attachors subsequent to first attachors prove to be able to participate with first attachor in proceeds of attached property. HC 13/43 X 63



## EXECUTION

## EXECUTION

## EXPERT

(790) EXECUTION Law  
ar. 123

The object of this article is to prevent collusion which would diminish the rights of legitimate Judgment creditors. Suspicion of collusion is a question of fact which the C.E.O. should himself determine. H.C.100/40 VII 581

(791) Art. 123. raises a presumption of collusion against a later Judgment debt. HC 65/41 VIII 379

(792) Art. 123. Necessary that the dates of the documents produced should be officially authenticated. HC 13/43 X 63

(793) Art. 123. ruling factor in cases said to come under, is the question of collusion between a later attachor and the Judgment debtor to the detriment of an earlier attachor.

(2) Money in hand of a receiver are amounts recovered from a Judgment debtor and therefore subject to the provisions of Art. 123 just as any other property belonging to the Judgment debtor. HC 65/41 VIII 379

(794) EXECUTION Acceptance  
of new bid

Acceptance by the C.E.O. of new bid after the final 3 days notice- covered by s.14 (1)(b) of the Land Transfer Ordinance as amended. HC 47/40 VII 355

(795) EXECUTION Officer  
Reversal of Executed Order  
by Execution Officer improper  
HC 4/40 VII 74

(796) Execution Officer-  
discretion under s. 14 of the  
Land Transfer Ordinance.  
HC 19/40 VII 206

(797) EXECUTION Officers  
should be careful and should  
check up their notices of sale  
with the actual description  
of the property  
HC 94/40 VII 574

(798) EXECUTION Sales  
Goods sold through Ex Office  
ownership in goods sold passed  
from original owner before  
attachment and sale of goods  
in question. Purchaser from  
E.O. bought in good faith  
HELD Sale void ab initio  
CA 46/43 X 184

(799) EXECUTION Stay  
A Chief Execution Officer has  
an entire discretion to grant  
or to refuse a stay of execution.  
That, action was afterwards  
dismissed does not in any way  
affect the validity of the stay  
which was given.  
HC 94/40 VII 574

(800) EXECUTORS.  
Money due under a promissory  
note paid by Administrator of  
Estate to holder thereof-  
Promissory note prescribed.  
Whether payment in order -  
HELD An executor is entitled  
to pay a debt except against  
the unqualified wish of his  
co- executors or unless it has  
been finally declared to be  
statute barred.  
CA 202/42 X 85

(801) EXPERT EVIDENCE  
There is no principle of  
law or of practice which lays  
down that the evidence of an  
expert must be, or should be  
accepted by a trial Court in  
preference to that of other  
persons and the fact that a man  
is an expert is an element which  
the trial Court will take into  
consideration in weighing his  
evidence, but the degree of  
credibility attaching to an  
expert's evidence must remain  
for the trial Court.  
CA 71/42 IX 366.



Expert- Expropriation - Extenuating Circumstances-Extradition

## (802) EXPERT-

An Expert's business is to give evidence on what the subject he is called shows. He is really only in the position of an adviser to the Court and the Judgment is that of the Court and not of the expert. That is not to say that a Court is entitled to disregard the evidence of experts entirely when there is nothing to contradict them without giving reasons for so doing.

CA 84/42 IX 417

## (803) EXPROPRIATION See Appeals.

## (804) EXPROPRIATION.

Claim for compensation in respect of land taken for the making of a street brought in the Land Court-Formalities as to expropriation were not gone into. Held Land Court not seized with the action.

CA 250/42 X 32

## (805) EXPROPRIATION.

Land expropriated for public purposes- failure to come to agreement as to price.

Land(Expropriation) Ord.s.10  
CA 284/43 XI 26.

## (806) EXTENUATING CIRCUMSTANCES.

The fact that an accused was a supernumerary Police Corporal is not an extenuating circumstance but makes the offence worse.

Cr.A.148/41 IX 10

## EXTRADITION

(807) from Palestine to Egypt- proceedings governed by Provisional Agreement between Palestine and Egypt. Questions with regard to minority of persons charged and prescription of offence -are for Egyptian Courts not Palestinian High Court to decide. HC 52/41 VIII 253

## EXTRADITION (Continued)

(808) Where there is an extradition agreement between two countries and a request for extradition is made, the Government to whom the request is made must satisfy themselves that the formalities of the agreement have been complied with. It is a matter for them and not for the Government which is making the application. (b) Where the accused is brought (by kidnapping) or by other irregular means and not under an extradition treaty, he cannot although an extradition treaty exists between the two countries set up in answer to the indictment the unlawful manner in which he was brought within the jurisdiction of the Court. It belongs exclusively to the Government from whose territory

he was wrongfully taken to complain of the violation of its rights.

Cr.A.14/42 IX 63

(809) EXTRADITION- Change in form of Government (See International Law) IX 683

(810) EXTRADITION Ordinance s.23  
HC 25/40 VII 162

(811) EXTRADITION - Transjordan. If the Government concerned is satisfied that the provisions of Art. 4, 5, and 6 of the Extradition Agreement made in 1934 between Palestine and Transjordan have been carried out the Courts of Palestine cannot entertain an objection that the extradition proceedings were improper and that therefore they had no jurisdiction to try the person extradited for an offence different from that on which his extradition was obtained.

It is unnecessary to forward with the request for extradition all the evidence available against the accused. Evidence not improperly admitted at trial because not forwarded with the request for extradition.

CR.A 2/41 VIII 43.



Forgery - Facts- False pretence  
Final Sale

FINDINGS

(812) FORGERY & Uttering false Document. (818)

Evidence of forgery. Cr.A.73/39 VII -8

FINDINGS OF FACT

Failure to make finding of fact in Judgment on a ground relied upon by plaintiff in trial Court Whether failure warrants remittal of case to Trial Court to make finding. CA 350/43 XI 84

(813) FACTS- Trial Court sole Judge of. See Trial Court CA 226/41 IX -1.

(819) FINDING OF FACT

Failure to make a finding that a statement was free and voluntary (See Confession)

(814) FALSE PRETENCE C.C.O.301 To establish the offence of false pretences the prosecution\* each and every one of the ingredients of the offence. Cr.A.15/42 IX 165

(820) FINDINGS OF FACT

Interference by Court of Civil Appeal with. CA 237/41 VIII 630

(814) FALSE PRETENCES. The necessary ingredients of the offence of false pretences are four: (a) A false pretence of a matter of fact. (B) Knowledge by the accused of its falsity (c) an obtaining of money or money's worth by means thereof and (d) an intent to defraud. Cr.A 146/41 IX 33

(821) FINDINGS OF FACT -Interference

A Court of Appeal should not ordinarily interfere with findings of fact made by a Trial Court if such findings were supported by evidence and were not clearly wrong even though the Appellate Court if it had been trying the case might not have come to the same conclusion. CA 110/42 IX 437

(815) FINAL SALE -if stayed before payment of transfer fees- proceedings can be reopened. HC 1263 HC 126/43 XI 539

(822) FINDINGS OF FACT. Not function of an appellate Court to interfere with the findings of fact of a Trial Court unless those findings were clearly wrong or there was no evidence to support them CA 99/42 IX 443

(816) FINDINGS OF FACT by Criminal Courts are only conclusive in a subsequent civil action where the parties are the same. CA 113/40 VII 363

(823) FINDINGS OF FACT

A Court of Appeal should rarely interfere with the findings of fact of a Trial Court and in cases where it intends to interfere, it must in order to reverse the decision of the trial Court not merely entertain doubts whether the decision of the Court below was right but be convinced that it was wrong (Following the dictum of Lord Kingsdown in the case of "The Julia" referred to by Lord Sumner in the case of S.S Honkestrom 1927 A.C. 37 at p. 47) CA 93/42 IX 554

(817) FINDINGS OF FACT made in a Criminal action - Magistrate bound by Settled Law. Criminal proceedings are conclusive evidence as between the same parties not only of the conviction and the same applies also to acquittals but also of the facts on which that conviction or acquittal was based. VII 382

\* must prove



FINDINGS Firearms

Food Control

(824) FINDINGS OF FACT-record  
The Presiding Judge is not relieved of his obligation under s. 51 of the Cr.P. (T.U.1) Ordinance of recording upon his notes of the proceedings the findings of fact upon which the conviction was based because he disagrees with the majority of the Court to an amendment of the charge.

(825) FINDINGS OF FACT  
of a Court in a previous action between same parties conclusive on all facts on which the decision of that Court based.  
CA 159/43 X 338

(825) FINDINGS OF FACT -  
Settlement Officer  
relied on his own inspection rather than on evidence. Since in practice it is not unusual for settlement Officers to rely in part at least on their own observation and it has not been the practice of Supreme Court to interfere, the Supreme Court will therefore not interfere.  
CA 237/42 X 84

(826) FINDINGS OF FACT  
Circumstances in which a District Court may intervene and upset a finding of fact made by a Court of trial.  
CA 305/44 XI 613.

FIREARMS ORDINANCE

(827) In prosecutions under the Firearms Ordinance the Prosecution must prove that the accused person has no licence or they must prove some admission by him making other proof unnecessary.  
Cr.A.76/40 VII 437

(828) s.2  
Firearm includes every part of a firearm and not only that part thereof from which any shot, bullet or any other missile can be discharged  
Cr.A.160/44 XI 633

(829) FOOD and Essential Commodities (Control) Ordinance s. 4(1)  
"Wholesale" means a sale of specific articles to be re-sold as such.Cr.A.120/41 VIII 456

(830) FOOD CONTROL ORDINANCE s. 8

High Court will not question acts of Food Controller- provided his acts were within the four walls of s. 8 of the Food Control Ordinance and provided there was no mala fide on his part.  
HC 119/43 XI 12.

(831) FOOD CONTROL ORDINANCE Exposing for sale

Accused charged with exposing for sale of a controlled commodity. Order under which accused charged provides "any person who shall sell..whether accused properly charged with exposing for sale. HELD That as the Interpretation Ordinance which contains a definition of the words "sale" and "sell" and which are defined as "include exchange, barter and offering or exposing for sale" was applicable to the Food Control Ordinance 1942 and Orders made thereunder, the accused was properly charged with "exposing for sale" and charge properly framed. Cr.A.71/43 X 434

(832) FOOD CONTROL ORD. 1942 s. 8(1) (b)

Food Controller has no power under s. 8(1)(b) to fix the price or to say to whom the goods should be handed over for the purpose of selling them on the open market and therefore a Notice by the Food Controller to a merchant to sell certain controlled articles to certain persons named in the notice would be outside the powers given to him in the section.  
CA 176/43 X 425



Food Control - Foreign - Forest - Forgery - Forgetfulness  
Forfeiture

(833) FOOD CONTROL (Slaughter  
Stock Sale Restriction) Order  
1942. para 4A  
Cr.A.75/44 XI 295

(834) FOREIGN Advocates  
Examination See  
Advocates.

(835) FOREIGN COMPANY  
Payment by...of excess profit  
tax- whether entitled to de-  
duct such amount when calcul-  
ating its income for purposes  
of Palestine Income Tax.  
ITA 25/43 XI 229

(836) FOREIGN CURRENCY  
A promise to pay a sum exp-  
ressed in foreign currency  
made in Palestine, is a prom-  
ise to pay in a currency even  
though it is not that of the  
Country where the note  
is made or payable; but in  
proceedings initiated to  
enforce payment the debt  
being expressed in foreign  
currency must be translated  
into the corresponding amount  
of the local currency if  
Judgment is to issue.  
PCA 1/42 X 271

(837) FOREIGN JUDGMENT  
Application for registration  
of ..and for provisional at-  
tachment- application so hea-  
ded but nowhere in the body  
thereof was any prayer  
for the registration of the  
foreign Judgment;  
HELD: The proper document  
to be filed should have been  
an application under s. 3 of  
the Judgments (Reciprocal En-  
forcement-Egypt) Ordinance  
which would have come as a  
case before the District  
Court and in the ordinary  
course of events an order  
would have been made ex parte  
for the registration of the  
foreign Judgment. (See CA 121  
30 1 PLR 589 )  
CA 230/41 IX 86

(838) FORESTS ORDINANCE  
s. 3, 5, and 17  
Allegation by accused that  
alleged to be forest reserve  
owned by them- ONUS on pros-  
ecution to show that land  
properly included in the  
Proclamation made under s.  
3 of the Forests Ordinance  
Cr.A.136/40 VII 607

(839) FORESTS ORDINANCE  
s. 5 (e) 5(i) 13,17(6)  
The use of unassigned pas-  
turage does not create a  
right which was preserved by  
the Forests Ordinance.  
Cr.A.65/40 VII 421

(840) s. 17(9) See Grazing  
rights

(841) FORESTS (Amendment) Ord  
1942 s. 27  
placed the burden of proving  
that the land was a private  
land on the accused.  
That the provisions of s. 27  
are retrospective and retro-  
active. Cr.A.123/42 IX 548

(842) FORGERY.  
The mere circumstance that  
a document contained untrue  
or fraudulent statements of  
fact did not of itself make  
that document a forgery if  
the document was in other  
respects what it purported  
to be.  
Cr.A. 17/42 IX 240.

(843) FORGETFULNESS.  
of Advocate to pay deposit  
sent him by his client not  
good cause for granting  
application for extension  
of time within which to  
pay. (See Advocate)  
CA 291/44 XI 506

(844) Forfeiture of Ship  
See Declaratory Orders.  
Ad. 2/40 VII 542

(845) FORFEITURE OF SHIP  
to Government automatic on  
conviction of master of an  
offence under the Immigration  
Ordinance.



## FORFEITURE

## FRAUD

(845) (Continued.)

Question whether owners there of did or did not know of Masters' use immaterial.  
Ad.2/40 VIII 339

(846) FORFEITURE OF SHIP

Application for forfeiture under Reg. 3 of the Defence (Immigration) Regulations must be made by the Attorney General himself.

Cr.A.119/41 VIII 442

(847) FORFEITURE OF SHIP

An application for forfeiture is in the nature of quasi criminal proceedings since forfeiture is a penalty for an infringement of the law prohibiting ships carrying prohibited immigrants from being found in the territorial waters of Palestine.

Cr.A.119/41 VIII 442

(848) FORFEITURE -Goods

See Import , Export and Customs Powers (Defence)Ord. 1939

(849) FRAUD

In absence of ..Court will not re-open a settled account.  
VIII 536

(850) FRAUD- Damages.

Claim of damages for fraudulent misrepresentation- elements necessary to prove are that there was a representation which was false to the knowledge of defendant, or which was made recklessly without caring whether it was true or false and that the party relied upon this representation.

(851) FRAUD Issue.

Court of Appeal will not listen to a plea of fraud not specifically pleaded in Court below or an issue framed on the point. CA 26/40 VII 346

## FRAUD

(852)

FRAUD See Misrepresentation of Law.

An allegation of fraud must be specifically pleaded in the most unambiguous terms  
CA 153/42 IX 635

(853) FRAUD ONUS

The question whether or not there has been fraud is eminently one for decision by the Court of First instance and the onus is always upon the party alleging that there has been fraud.

CA 168/41 VIII 563

(854) FRAUD Onus

Ordinary rule is that fraud must be established by party alleging it.

CA 9/43 X 102

(855) FRAUD See pleadings

(856) FRAUD - Judgment-setting aside of

Before a substantif Judgment of a Court can be set aside on the ground of fraud the Court requires a strong case to be established by specific pleadings and evidence in support thereof; there must be the strongest evidence going to the root of the Judgment. CA 144/43 X 407

(857) FRAUD- The question of fraud or no fraud one for the trial Court and a Court of Appeal would be most reluctant to interfere with a finding of fact on such a matter unless it could be satisfied that the trial Court did not apply its mind to the proper considerations.

CA 34/42 IX 289

(858) FRAUD Yoklama

Where fraud is alleged as the ground for disputing a Yoklama registration, that fraud will have to be proved. Circumstances in which fraud will not be inferred. CA 214/40 VII 564 with



(145)

Frontier -- Functus officio-

(146)

Gazette- Gift- Gold- Government  
Garage Official

(859) FRONTIER CONTROL  
AUTHORITIES

Directions imposed by..are  
valid directions.  
HC 54/42 IX 342

GARAGE See Bus Co.

(861) GAZETTE. Non gazetting  
appointment of A/Judge.  
Cr.A.158/44 XI 631

(860) FUNCTUS OFFICIO  
Jointly owned property (Immov)  
incapable of partition sold  
by Public Auction Payment out  
of money realised from sale  
to joint owners. Application  
by one of the joint owners  
for re-opening of sale proce-  
edings. Chief Execution Of-  
ficer orders re-opening of  
proceedings- Whether Order  
correct.

HELD The Chief Execution  
Officer after the order which  
he made ordering the payment  
out of the money realised f  
from the sale of the propert-  
ies to the respective heirs  
became functus officio and could  
not, therefore, entertain the  
application made for re-open-  
ing the sale proceedings.  
HC 74/43 X 476

(862) GIFT -- To vitiate a  
gift it must be established  
that the donor was of unsound  
mind at the time he made the  
gift.  
CA 281/42 X 64

(863) GIFT is a transfer with-  
out consideration. Miri land  
can be transferred by way of  
gift.  
CA 281/42 X 64

(864) GIFT - Miri land  
Nothing to prevent a gift or  
in other words a transfer with-  
out price being made of miri  
land during the lifetime of  
the transferor.  
X 64)

(865) GOLD. The word Gold  
in a Promissory note imports  
a special standard or measure  
of value, but does not import  
an obligation to deliver gold  
or pay in gold.  
FCA 1/42 X 271

(866) Gold Pounds. See Conv-  
ersion.

(867) GOVERNMENT INSTRUCTIONS  
High Court will not interfere  
to enforce compliance with  
Administrative instructions.  
The safeguard against the  
abuse of such instructions  
are an appeal to the Inspector  
General of Police, the Distr-  
ict Commissioner and finally  
to the High Commissioner.  
HC 74/44 XI 302

(868) GOVERNMENT OFFICIAL.  
Tenant being a Government Of-  
ficial- There is not one  
law for Government Officials  
and another one for others.  
CA 170/43 X 432.



Government - Grazing Grievous harm Guarantee GUARDIAN

(869) GOVERNMENT SERVANT  
Defalcation of Government  
money by...HC 78/39 VII 35

(870) GRAZING RIGHTS  
Although grazing and wood cut-  
ting were rights recognised  
by law, their exercise does  
not give any right to the land  
itself.  
CA 125/40 VIII 165

(871) GRAZING RIGHT does not  
include right to damage trees  
which is not a necessary part  
thereof.  
Cr.A.2/43 X 90

(872) GRIEVOUS  
Plea of guilty to charge of  
causing of...C.C.O.238  
Cr.A.42/40 VII 285

(873) GUARANTEE Own branch  
A Bank cannot guarantee its  
own branch.  
PCLA 1/43 X 95

(874) GUARANTEE Consent  
Offer made by debtor to settle  
debt- Creditor accepted offer  
conditionally- both offer and  
conditional acceptance made  
without knowledge or consent  
of guarantor- Guarantor not  
prejudiced by the offer-  
Whether guarantor discharged.  
HELD Immaterial whether  
English or Palestine Law appl-  
ied as under both laws if  
the offer and the acceptance  
did not prejudice ~~whom~~  
to the guarantee still subs-  
isted and the guarantor would  
be liable thereunder.  
CA 23/42 IX 321.

(875) GUARANTORS of a P.Note  
stand in the same position as  
the maker thereof and their  
liability commences at the  
same time as his liability.  
CA 209/40 VII 569.

(876) GUARANTEE When an over  
draft is exceeded without the  
knowledge of the guarantors-  
guarantors are thereby released.  
CA/41/41 VIII 152.

(877) GUARANTEE - release of  
one of co-guarantors- effect  
of.  
CA 61/44 XI 352

(878) GUARDIAN Advocate acting  
as guardian ad litem- entitled  
to his instruction fee.  
CA 99/41 VIII 269 See No.51

(879) GUARDIANSHIP AND CUSTODY

A distinction can be drawn bet  
ween guardianship and custody  
and although they may be combin  
ed they can also be entirely  
separated and distinct.  
CA 60/43 X 241

(880) GUARDIAN - Minors.  
Appointment of guardian to  
minors by Greek Orthodox Eccl-  
esiastical Court- consent of  
all parties not present-  
appointment invalid.  
PCA 41/42 X 328

(881) GUARDIANS - Natural-  
Art 52 of the Ottoman Land  
Code clearly restricts the  
powers of natural or appointed  
guardians to dispose of the land  
of their wards.  
See Ottoman Land Code Art.52

(883) GUARDIAN AND MINORS.  
Although the appointment of  
the father as guardian to the  
minors by the Rabbinical  
Court is invalid owing to the  
absence of consent to the  
jurisdiction by the minors  
t Yet , such appointment as  
guardian was unnecessary since  
the father was the natural and  
lawful guardian of the minors  
according to the Mejlle.  
Obiter- GORDON SMITH C.J.  
There is no reason to prohibit  
a guardian from selling prop-  
erties belonging to minors  
if, from the sale the infant  
gains benefit in the same



GUARDIAN

GUARDIAN

GUILTY

way as a guardian can purchase land to an infant is if such purchase is for the benefit of such infant.  
CA 236/43 X 542

(883) GUARDIAN See Minors.

(884) GUARDIANSHIP- Agreement signed on behalf of minor children by their mother guardian previously appointed guardian of children by Religious Court- No consent of children to Jurisdiction of Religious Court. HELD appointment by Religious Court invalid and children not bound by that agreement.  
CA 40/40 VII 411.

(885) GUARDIANS AND MINORS. Contract- Validity of. Legal guardian executing contract on behalf of minors- authority of legal guardian limited to looking after and preserving the property of minors -No authority to sell- Vendors domiciled in Syria- Contract executed in Syria- subject matter of contract- land situate in Palestine- occupied and cultivated by or on behalf of vendors- Submission that Syrian law applicable- submission that contract was not a deed of sale but an agreement to sell and that any consent of the Sharis Law could be obtained later.OTT. Land Code Art. 52. On Appeal. HELD That there was no binding contract between the parties and that the execution of the contract by the mother on behalf of the minors was not only voidable but void and that the contract was therefore unenforceable against any of the vendors.

(b) That the law applicable to the contract was the law of Palestine since the subject matter of the contract was land situate in Palestine which was to be effectively transferred into the name of the appellant in accordance with the Law of Palestine

(886) GUARDIAN - Natural- Sale of property belonging to minors by their father- Purchase in good faith. Minors on coming to age questioned sale. Whether valid transaction. HELD: since purchasers purchased in good faith from the father of the minors, the natural and lawful guardian their title could not be challenged.  
CA 236/43 X 542

(887) GUARDIANSHIP See Custody of Child.

(888) GUARDIANSHIP a matter of Personal status by art. 51 Palestine Order in Council. and it falls under Art. 54(ii) thereof.  
HC 24/41 VIII 174

(889) GUARDIAN- Appointment of is a formal act of a Court and must be proved by a certified extract of the Court records- not by oral evidence.  
VIII 226

(890) GUARDIANSHIP Sharia Law The Order in Council especially confers jurisdiction on the question of personal status on the Sharia Courts. They have exclusive jurisdiction in these and other matters- Guardianship is one of these matters as defined in Art. 51 Whether a person has or has not attained full majority so that he can deal with his property is a question for the Sharia Court and not one for the High Court. It is for the Sharia Court to say whether the guardianship should continue or should cease.  
HC 33/42 IX 275

(891) GUILTY- Plea of Accused's plea of guilty recorded by trial Court- thereafter evidence heard and Judgment given Whether Trial Court complied with the procedure laid down by law.  
Cr.A.76/43 X 375



GUILTY

(892) GUILTY - Knowledge on the part of the accused must be proved by the prosecution in order to obtain a conviction under s. 310 of the Criminal Code Ord. Cr.A.57/43 X 291

(893) GUILTY - KNOWLEDGE on the part of an accused which must be proved by the prosecution is an element which cannot always be proved scientifically or by direct evidence. In the vast majority of cases it is a matter of inference from surrounding circumstances. Cr.A. 28/44 XI 554

(894) GUILTY Plea of ends matters. Where a person pleads guilty to a charge and the prosecution accepts that plea that ends the matter- It is not for the Court to say that an accused person should not have pleaded guilty to a particular charge because that Court is of the opinion that that accused is guilty of a more serious offence; more particularly this is so when that accused had been charged with a higher offence but with the consent of the prosecution, the charge was reduced to a lesser offence. As in so acting the Court will be taking the part properly belonging to the prosecution which is not its function. Cr.A.21/43 X 132.

(895) GUILTY plea of not recorded - Accused pleaded guilty. Neither plea nor conviction were recorded- procedure irregular. Cr.A.12/43 X 77

GUILTY

Habeas corpus.

(896) GUILTY- Plea- Unrepresented accused. Where an accused is not represented it is important that the Court of Trial should be satisfied that he understood what he was doing when pleading guilty. It is also desirable that a suitable note to this effect should be put on record. Cr.A.42/40 VII 285

(897) HABEAS CORPUS. See Extradition. High Court cancelling Warrant by High Commissioner to arrest a person for the purpose of extradition to Transjordan. HC 25/40 VII 162

(898) HABEAS CORPUS Writs. It is clear that applications for writs of Habeas Corpus may be made successively to Judges of the Supreme Court in England - but the position is different in Palestine. By the Order in Council and the Courts Ordinances, the jurisdiction is vested in the High Court and the High Court consists of not less than two Judges as the Chief Justice may appoint- provided that at least one Judge shall be a British Judge- We cannot admit that an applicant has the right to choose the Judges who shall sit upon any particular case but no doubt he can apply for a writ to the High Court as it may be constituted, but it may also be that repeated applications based upon the same facts might amount to an abuse of the process of the Court. HC 1/41 VIII 2

(899) HABEAS CORPUS. An applicant is entitled to come again to the High Court and successive writs of Habeas Corpus might be issued. There is however an inherent power in the High Court to prevent the abuse of its own process. HC 7/43 IX 126



Habeas Corpus- HALIZA-  
Haq Qarar - Hebron

Heirs- Highest bidder  
HIGH COURT

(900) HABEAS CORPUS. Alien

A Writ of Habeas Corpus will not be granted in a case of a prisoner of war, and therefore it will not be granted in the case of an alien enemy resident in Palestine, who, in the opinion of the Executive is a prisoner hostile to the welfare of Palestine and is on that account interned, because such a person may be properly described as a prisoner of war although not a combattant or a spy.

HC 67/41 VIII 363.

(901) HABEAS CORPUS. Alien

It is settled law i not only in Palestine but also in England that an Alien Enemy cannot apply for a Writ of Habeas Corpus, and if an application is made the Court will not entertain it.

HC 88/42 IX 516

(902) HALIZA

Action by widow in Rabbinical Court against her brother in Law for monthly payments until relief in the form known as H A L I Z A is obtained- Whether Haliza can be regarded as divorce.

HELD It cannot be so regarded because as there had never been a marriage between widow and brother in Law there could be no divorce.

HC 12/42 IX 213

(903) HAQ QARAR or prescription - A tenant is not entitled to.

PCA 57/38 VII 261

(904) HEBRON Allegation  
Hebron town not a village

HC 70/44 XI 372

(905) HEIRS -Possession  
Rebuttal of presumption that possession of certain heirs on behalf of all co-heirs. CA 22C/41 IX 14

(906) HEIR (See Letters of Administration.

(907) HIGHEST BIDDER. can be prevented from obtaining the property for which he has bid in a sale by the Execution Officer not only by payment of the Judgment debt by the Judgment debtor or by a transfer of the property by consent, but also by a termination of the execution proceedings by other means to the satisfaction of the creditors.

HC 96/41 VIII 559

(908) HIGH COURT Act executed.

Too late to come to High Court for an order to set aside Orders of final sale and of registration after execution has been completed.

HC 88/41 VIII 489

(909) HIGH COURT- British Subject

Fetitioner has come to the High Court asking for a declaratory Judgment that he is a British Subject.

HELD. There is nothing in the Courts Ordinance which entitles the High Court to grant a declaratory Judgment of the nature as prayed for. Declaratory Judgments of this kind are within the province of District Courts who have the residuary jurisdiction which is not vested in other Courts.

HC 51/41 C VIII 319

(910) HIGH COURT- Chief Magistrate- When will High Court order the removal of criminal proceedings from the jurisdiction of a Chief Magistrate. See VENUE. HC 34/43 X 157

(911) HIGH COURT Will not turn itself into a Court of Criminal Appeal on an Interlocutory point in a hearing in a Criminal case.

HC 20/43 X 116



High COURTHIGH COURT

(912) HIGH COURT- Cross Examination  
Party to High Court application called for cross examination That party's advocate entitled to re-examine.

(913) HIGH COURT - Delay  
A petitioner could object to a Court and refuse to attend or he could attend under protest and that in either event he could still come to the High Court when the question of execution arose.  
HC 96/42 IX 589

(914) HIGH COURT Discretion C.E.O.  
High Court will not interfere with discretion of C.E.O. when that discretion has not been exercised improperly.  
HC 19/40 VII 206

(915) HIGH COURT Discretion  
When will High Court exercise its discretion.  
Before granting relief the High Court must be satisfied not only that there is no alternative remedy and that there is a legal obligation on respondent to do or refrain from doing the subject matter complained of, but also that the matter of the complaint is necessary to be decided for the Administration of Justice.  
(2) The question whether a party to proceedings should be plaintiff or defendant is not a consideration for the exercise of the powers of the High Court.  
HC 129/42 IX 771.

(916) HIGH COURT- Discretion  
In petitioning the High Court for the exercise of its discretionary powers - a full disclosure of the relevant facts by the party petitioning is essential. HC 15/43 X 148

(917) HIGH COURT Discretion  
Before the High Court decides to exercise its discretionary powers it must be satisfied that its intervention is necessary for the proper administration of Justice, and, in deciding the question it will consider whether the normal channels of Justice can reasonably and substantially dispose of the matters at issue between the parties.  
(b) A mere allegation of a technical violation of a right is not sufficient to move it to exercise its discretionary powers.  
HC 147/42 X 7.

(918) HIGH COURT Discretion.  
The High Court would interfere in a case of discretion if it were satisfied that the discretion had not been exercised in good faith or that there was any personal animosity against the petitioner or that the officer, in whom the discretion is vested by Law had not directed his mind to the case and personally considered it.  
HC 92/43 X 513.

(919) HIGH COURT - Ecclesiastical Court  
High Court not a Court of Appeal from the Ecclesiastical Court.  
HC 100/41 IX 121

(919) HIGH COURT- Execution  
Certified copy of Order objected to must be filed- omission fatal.  
HC 123/42 IX 735

(920) HIGH COURT Jurisdiction  
Principles upon which High Court jurisdiction exercised.  
HC 78/39 VII 35



## HIGH COURT

## HIGH COURT

## HIGH COMMISSIONER

(921) HIGH COURT will not interfere where another Court had or would have had jurisdiction.

HC 55/42 IX 349

(922) HIGH COURT Powers  
The Powers of the High Court in Palestine are much narrower than those of the High Court in England and are contained in s. 7 of the Courts Ordinance, 1940 with a residuary jurisdiction mentioned in Art. 43 of the Palestine Order in Council. HC 104/41 VIII 593. (For a contrary decision see. HC 78/39 VII PLR. 35 at p.e 41

(923) HIGH COURT- Spiritual act done by Head of Religious Court- High Court has power to question that act.  
HC 14/44 XI 191

(924) HIGH COURT would interfere where a Religious Court had acted without jurisdiction; in other words where a religious Court gave a Judgment which, under the Order in Council, it had no jurisdiction to give, or where the Judgment so given was contrary to natural Justice. HC 103/42 IX 579

(925) HIGH COURT will not interfere where another remedy exists. HC 69/44 XI 371 - HC 62/42 IX 430

do HC 29/43 X 150.

(927) HIGH COURT setting aside own orders. Nothing in Law to prevent High Court from setting aside an order made by it, in absence of a respondent. If the High Court Rules 1937 are defective in this respect, then the High Court must fall back on the English Practice under Article 46 of the Palestine Order in Council. HC 40/44 XI 226.

(928) HIGH COURT Rule nisi. To succeed in having a rule nisi made absolute, a Petitioner had to show that there was a statutory duty on the other party to grant the licence applied for, that in his refusal to issue him (the petitioner) with a licence the other party had failed to exercise a proper discretion and that the refusal was made mala fide.  
HC 110/43 X

(929) HIGH COURT Review of own decisions. The High Court entitled to review its own decisions and express contrary views subsequently- although the adoption of such course may be undesirable.  
HC 7/42 IX 126

(930) HIGH COURT Party petitioning High Court must satisfy that Court as to the truth of the facts alleged in Petition  
HC 19/44 XI 115

(931) HIGH COURT Successive applications to amounting to the abuse of the process of the Court.  
HC 1/41 VIII 2.

(932) HIGH COURT RULES 1937

r. 30  
The term "Petitioner" includes his advocate but not "his advocate's clerk" Careless and bad practice for Advocates clerks to sign such documents and practice to be discontinued.  
HC 64/40 VII 474

(933) HIGH COMMISSIONER-

Prerogative.  
The High Commissioner of Palestine cannot exercise on behalf of H.M.'s Government any Prerogative of the Crown in the sense in which the term is used in the Text Books; unless the power so to do was expressly delegated to him, and that there may be prerogatives of the Crown, of a personal nature exercisable personally by the Crown which



Hire-Purchase Holder- Holy - Place- Hostile witness HUIJJE  
 Husband & Wife

may have been delegated to the High Commissioner by implication and by virtue of his Commission and by being the personal Representative of H.M. in Palestine. HC 7/42 IX 126

(934) HIRE PURCHASE AGREEMENT  
 When an agreement is one of...  
 and not for sale.  
 CA 212/40 X 587

(935) HIRE PURCHASE- Determining factors in deciding whether an agreement is one of Hire purchase or one of sale. Where agreement contains a clause conferring upon the hirer an option to determine the hiring by returning the goods, agreement is one of hire-purchase; where no option is conferred, the agreement is one of sale.  
 CA 330/43 XI 170

(936) HOLDER in due course. The definition of holder in due course with all the rights it vests in a holder of a bill does not apply to assignees of mortgages. Such persons are in the position of assignee of debt and it is a well known rule that the debtor may raise against an assignee all arguments he may have against the assignor.  
 CA 257/41 IX 70

(937) HOLY PLACE. When cemetery a Holy Place.  
 CA 28/40 VII 242.

(938) HOLY PLACE See Palestine Holy Places) Order in Council 1924 CA 55/40 VII 291

(939) HOSTILE WITNESS See Witnessa.

(940) HUIJJEH Action based on All signatories to which except writer thereof who signed it-dead - evidence sufficient to establish authenticity of.  
 CA 289/43 XI 43.

(941) HUIJJEH For most practical purposes a Hujjeh is in the same position as a Judgment of the Sharia Court. A Hujjeh should be treated genuine although not signed if found in the duly kept registers of the Sharia Court.  
 CA 68/41 VIII 575

(942) HUSBAND AND WIFE. Wife living in husband's property without husband's consent- wife ordered to vacate the premises- Wife's remedy to invoke the provisions of Art. 43 of the Ottoman Law of Execution.  
 HELD That under the Civil Law of Palestine a wife has no rights apart from those which her husband may allow her to exercise in her husband's property.  
 HC 26/42 IX 217

(943) HUSBAND & WIFE. Marriage between a Moslem husband and a Christian wife celebrated according to Moslem rites- Divorce followed- Claim in District Court for custody of children issue of marriage- Dismissal of claim on ground of non recognition of marriage by District Court  
 HELD That in the absence of any personal incapacity on the part of the wife to contract the marriage- an example of such incapacity is where her personal law prohibits absolutely her marriage with a Moslem- the marriage which was celebrated according to the Sharia Law and with the consent of the wife was a valid marriage according to that law, because where two persons voluntarily contract a marriage according to the rites of a particular religion unless there is a personal incapacity in any of them to contract that marriage such persons must be assumed to have consented to the application of the law of that particular religion and to be bound by all its principles and the



Husband & Wife- Identity- Identification- Immigration

consequences arising out of that marriage, and such a contract of marriage which had been entered into under one set of laws could not be interpreted or varied or annulled under another set of laws. CA 161/43 X 367

(944) HUSBAND & WIFE.

No reason in law why a husband cannot hold possession of property belonging to his divorced wife on behalf of that divorced wife.  
CA 125/44 XI 502.

(945)

IDENTITY of accused. Evidence as to what occurred at previous instances admitted to show identity of accused. Whether such evidence properly admitted.  
HELD: That the evidence as to what had taken place at the two places prior to the incident in respect of which appellants were put on their trial was admissible as to their identity even though it tended to show the commission of other crimes and the evidence objected to was not only admissible on the question of the identity of the appellants, but also was admissible on the further ground of design, course of conduct, system and criminal intent, within the ruling in the case of *Makin v A.G. of New South Wales* (1894) AC 57

(946) IDENTIFICATION PARADE  
Failure by witness to identify accused at...  
Explanation by witness for such failure- evidence of cumulative character justifying conviction  
Cr.A. 24/41 VIII 125.

(947) IMMIGRATION - Deposit three months stay in Palestine granted by Government Persons entering did not leave Palestine by stipulated time- After expiration of period Government extended time as a matter of grace Bond forfeited- Whether sum forfeited under bond could be recovered by person entering into that bond. HELD as from expiration of the period of three months appellants parents were illegally in Palestine and that the permission to stay in the Country until July 25, 1939 did not affect the condition of the bond.  
CA 245/42 (IX, 792)

(948) IMMIGRATION Discretion of Commissioner for Migration with regard to Immigration Certificates not interfered with  
HC 35/42 IX 230

(949) IMMIGRATION Ordinance  
There being no provision in the Immigration Ordinance for the condemnation of ships or boats not exceeding 1000 tons registered tonnage which were knowingly used by the owner agent or master thereof, in the aiding and abetting of any person contravening the Ordinance, the forfeiture of such ships followed automatically upon the happening of the appropriate facts and did not depend upon an order of the Court, and the property in the said ships or boats seized under the Ordinance was divested out of the owner by the forfeiture itself although there had been no condemnation  
Adm. 2/40 VII 542

(950) IMMIGRATION Ordinance  
Forfeiture of ships.  
Adm. VIII/40 VIII 15



## IMMIGRATION

Immigration - Imperial  
Import

## (951) IMMIGRATION ORDINANCE

The expression "registered tonnage" in... Means "net tonnage."

Ad 2/40 VIII 339

(952) s. 4 (1) (e)  
IX 308

(953) s. 5, 12(3), 12(c)  
Charge against Captain of ship of aiding and abetting persons in contravention of..  
Cr.A.10/40 VII 114

(954) s. 7, 9 VIII 327

(955) s.12(3) (11) VII 542

(956) s.10(1)(f) XI 115

(957) s.10 XI 431

(958) s. 12(3) Charge of Aiding and abetting- no offence unless aiding and abetting within territorial limits of Palestine.  
Aiding and abetting within the meaning of...an offence per se.  
Cr.A.63/39 VII 1.

(959) s. 12(3) VII 114

(960) IMMIGRATION RULES  
1. r. 2(1)(b) Not ultra vires and not repugnant to art. 7 of the Mandate.  
HC 62/44 XI 337

(961) IMMIGRATION (Amendment) Rules No.3 of 1939- r. 2(1)(b) in the Schedule to...not ultra vires on the ground of its being contrary to the terms of the Immigration Ordinance. As s. 7 & 9 of that Ordinance contemplate that a traveller may remain in Palestine and impose certain obligations upon him if he is permitted to do so but do not give him any statutory right to do so. HC 55/41 VIII 327

## (962) IMMIGRATION ORDINANCE

By marriage to a Palestinian citizen the latter's wife does not become a Palestinian citizen as under Art. 12(2) of the Palestine Citizenship Ord. or in Council as amended in 1939, she could not be deemed to be a Palestinian Citizen  
(b) That the Commissioner for Migration and Statistics could not be commanded to endorse the passport of the wife to the effect that she was exempt from the provisions of the Immigration Ordinance because she had no valid passport in her possession.  
(c) That the issue of an Immigration certificate in category D was one entirely in the discretion of the Commissioner and the latter could not be directed to issue such certificate because the High Court is not an Immigration Office.

The Immigration Ordinance must be read as a whole and petitioner's wife could not be exempt from the provisions of the Ordinance because of the provision contained in s. 4(1)(e) thereof. HC 45/42 IX 308

(963) IMPERIAL TRADE  
ON THE LEASING OF Immovable property of 1299 as amended by the Provisional Law by of 1332 arts. 1 & 18  
CA 138/41 VIII 412

(964) IMPERIAL INSTRUCTIONS concerning Drawing Up of Sharia Documents 1296  
CA 147/40 VII 464

(965) IMPORT, Export and Customs Powers (Defence) Ord. 1939

Attempt to import goods to or export goods out of, Palestine does not entail forfeiture  
Words "Other Place" in s. 5(1) (b) must refer to some place near, or close to, or part of a water side and do not mean any place of land.  
CA 290/44 XI 602



## IMPRISONMENT INCOME TAX

## INCOME TAX.

(961) IMPRISONMENT Order in execution matters should be given only after evidence or proof concerning the ability of the debtor to pay has been taken. HC 22/41 VIII 167

## INCOME TAX Appeals

See Case stated.

## (968) INCOME TAX ORDINANCE Appeals

An appellant under... must be ready at the first hearing with the evidence, both oral and documentary, contemplated by r.189(1) of the Civil P. Rules 1938.

(b) The onus of proof in appeals under the Income Tax Ord. lay upon the appellants vide r.9(a) of the Rules of Court (Income Tax Appeals) 1941.

(c) Rule 82 of the Civil Pr. Rules 1938 does not apply to appeals under the Income Tax Ordinance.

ITA 13/42 IX 611.

## (969) INCOME TAX APPEALS Case stated

Practice to be followed in applying for a case to be stated for the opinion of the Supreme Court sitting as a Court of Civil Appeal in Income Tax Appeals. CA 207/43 X 419

## (970) INCOME TAX

Rules in Brown's Case (Brown v The National Provident Institution 1921 2 A.C. 222) do NOT apply to Palestine.

These are to the effect that there must be in the year of Assessment a source of the same kind as in the preceding year and that there must also be in the year of Assessment some income received from that kind of source in order to render a person liable to income tax although the source (of the preceding year) itself may have stopped.

CA 345/43 X 678

## (971) INCOME TAX Ordinance

s.6

is also a charging section and not merely a measuring section. Section 5 of the Ordinance merely enumerates the classes or categories of sources of income on which tax has to be paid.

(b) Section 6 as amended in 1942 imposes an absolute direct charge on the Income of the year prior to the year of assessment and not a charge on the income of the year of assessment only where such income is itself chargeable under s. 5 the ascertainment of which to be computed on the basis of the income of the previous year. CA 345/43 X 678.

## (972) INCOME TAX ORDINANCE.

Assessing Officers to be afforded the necessary details.

It would strike at the whole framework and foundation of... if assessing Officers were to be restrained from obtaining the necessary details of income on which they could make an assessment and from saying whether all or any part of such income was chargeable or not. HC 13/42 IX 93

## (973) INCOME TAX - Estoppel

Government not estopped for the purposes of Income Tax from maintaining that the difference between either the Back value or purchase price of lands sold during the year preceding the year of assessment and the amount realised from the sale of such land during the year was chargeable income accruing to the appellants during the year preceding the year of assessment.

(2) The Crown is not entitled to take a mere bookkeeping entry as conclusive evidence of the existence of a profit, neither by parity of reasoning can the subject rely for the purposes of Income Tax on an assessment made by the Government, of the capital value for the purposes of an entirely different tax. ITA 10/42 IX 649



## INCOME TAX.

## INCOME TAX ORD. s. 6

(974) Attempt to tax income of the same year twice.. ITA 16/43 XI 160

(975) s. 11(1) Reduction of tax.. ITA 5/44 XI 362

(976) s. 13(g) XI 229

(977) s. 40 Abstracts of returns furnished by assessee to Municipality sought to be produced in evidence. Originals destroyed. HELD Abstracts admissible. ITA 19/43 X 487

(978) s. 45.

The effect of this section is that each partner of a firm is taxable individually as if he were a single trader irrespective of whether the firm has ceased to exist by dissolution or otherwise or is still being carried on and irrespective of any agreement between the partners as to the disposal of the profits of such firm whether by capitalising or otherwise. ITA 18/42 X 342

(979) s. 45

Assessee partner in an unregistered partnership Registration of partnership effected in year of assessment based on income from the unregistered partnership accruing in year immediately preceding year of assessment HELD: Appellant was liable to income tax and that it was immaterial that the partnership which was not registered in the year of income was subsequently registered. ITA 20/43 X 532

(980) s. 45.

The effect of this section is to tax the partners individually as if they personally earned the profits made

## INCOME TAX

by the partnership and not merely to render the partners liable to satisfy the partnership's liability to pay the tax. CA 345/43 X 678

(981) s. 45.

The further effect of this section is to impose a tax on a partner of a partnership which has been dissolved in the year preceding the year of assessment in respect of his share in the income profits and gains of the partnership in such preceding year .. this, irrespective of the interpretation of s. 6 of the Income Tax Ordinance and irrespective of the rules in Brown's case and in the cases following Brown's Case.

CA 345/43 X 678

(Brown's Case 2 A.C. 222- and See No. 970 column 165)

(982) s. 53(1) X 134 ITA 20/42

(983) s. 53(1)

Duty of Judge sitting in pursuance of.. analogous to those of the Commissioners For the Special Purposes of the Income Tax Acts- Onus of proof that assessment wrong on appellant in Appeals subsequent to The Income Tax (Amendment) Ordinance 1944.

CA 19/44 XI 373.

(984) s. 53(3) The intention of the legislation in enacting this section is to enable the Court to substitute its own assessment for that of the Assessing Officer. ITA 7/43 X 307

(985) s. 53(5) No provision in... whereby a dissatisfied party might move the Judges determining an appeal to state a case for the opinion of the Supreme Court sitting as a Court of Appeal. The words "if he desires" in the first proviso to s. 53(5) means that



## INCOME TAX

## Inference.

## INFORMATION.

(985) Continued.

the Judge might of his own motion state a case for the opinion of the Supreme Court if he himself found the matter in issue to be difficult to decide and was not altogether certain of the correctness of his decision.

ITA 10/42 IX 743

(986) s. 53(5) Case  
Stated

A case may be stated on a question of law for the opinion of the Supreme Court sitting as a Court of Civil Appeal in an appeal under s.53 of the Income Tax Ordinance 1941 by the Judge of his own motion after he has decided all questions of fact and even all questions of law; in other words, after he has in fact completely adjudicated on the appeal. ITA 9/42 IX 447

(987) Source of income ceased on 31.12.40 Money from that source received in 1941/1942 Attempt made to include the money so received in chargeable income of assessee for year 1941/42 - When such money can be so included.  
ITA 9/42 X 255

(988) INFERENCE.

In a case where there are two alternative inferences to be drawn Court of Appeal will not draw an inference when the Trial Court has not drawn one. But where there is only one possible inference to be drawn on the proved facts, and the trial Court has not specifically made a finding as to that point, Court of Appeal will not be precluded from drawing that only possible inference.  
Cr.A.39/43 X 212.

(989) INFORMATION. Additional Offence.

Service of Information on accused. Replacement of, by new one charging accused with an Offence in addition to one for which accused committed. Not necessary to have committal Order by A.G. under s. 28(5) of the Cr. Procedure (T.U.I) Ordinance, or by Magistrate.  
Cr.A.83/44 XI 376

(990) INFORMATION -Amendment of

Cr.A. 125/40 VII 567

(991)

INFORMATION. Charges in alternative

Not correct to lay charges in an information or Charge Sheet alternatively.  
Cr.A.57/43 X 291.

(992) INFORMATION- Counts several.

Committal of accused for trial on twenty one counts- Filing of information in respect of one Count only- Prosecution dropping other twenty one Counts Information- bad. CRA 24/44 XI 201

(993) INFORMATION Counts

Information containing several Counts and charging several accused with those counts- Practice to be followed by trial Courts in such cases. Where several counts are joined in one information against several accused, the Trial Court should make a formal finding on each count in respect of each accused and a sentence should be allocated to each Count in respect of which the Court finds the accused guilty.  
Cr.A. 122/42 IX 592.



## I N F O R M A T I O N

Inquest- Insanity- Inspection  
Instalments

(994) INFORMATION Counts  
Accused charged on four counts  
of robbery contrary to s. 287  
and 288 (1) of the C.C.O. 1936  
No real objection to Informat-  
ion because those Counts were  
really part of one transaction.  
Cr.A.133/41 VIII 528

(995) INFORMATION - insuffi-  
cient particulars.  
Cr.A.85/42 IX 411.

(996) INFORMATIONs Drafting of  
Cr.A.106/44 XI 461.

(997) INFORMATION Form  
Para 4 of the Schedule to the  
Cr.P.T.U.I. Ordinance lays  
down what an Information should  
contain, and it provides that  
the forms in the Appendix or  
forms conforming thereto as  
nearly as may be shall be used.  
There is a form for manslaugh-  
ter and it is undesirable that  
any other form should be used  
Information contained however  
more than on the form-  
HELD Good information and should  
should not be struck out.  
Cr.A.127/40 VII 593.

(998) INFORMATION. Prima  
facie offence.  
Where Information discloses  
a prima facie offence, it is  
the duty of the Court to try  
it. The Court is not entitled  
to try a case on the depositions  
alone. Cr. A.7/40 VII 44.

(999) INFORMATION. Names of  
witnesses not on back of..  
Practice to be followed where  
Prosecution does not call with-  
esses whose names are upon the  
Information. PCA 66/43 XI 237

(1000) INFORMATION. Witnesses  
Prosecution witnesses whose  
names are mentioned on the  
back of the Information- Rule  
of practice to be generally  
followed in all Courts with  
regard to tendering the prose-  
cution witnesses who do not  
give evidence before the Trial  
Courts and whose names appear  
in the Information for the  
purpose of having them cross

examined by the defence, if  
the defence desires to cross  
examine such witnesses, is  
that the Prosecution should  
put forward such witnesses  
although according to the Law  
the Prosecution is not bound  
to do so. Cr.A.39/43 X 212

(1001) INQUEST  
Petition to the High Court  
to direct Coroner to hold  
Inquest- Petitioner not  
personally interested - no  
damage sustained by Petitioner  
by non performance of duties  
sought to be enforced. Order  
refused. HC 19/42 IX 181

(1002) INSANITY  
Only one degree of legal Ins-  
anity as provided under s. 14  
of the Criminal Code Ordinance.  
No second kind or lesser degree  
of insanity. Cr.A.199/42 X 1.

(1003) INSANITY See Gift

(1004) INSPECTION of Property  
by Magistrate. A Magistrate  
has power at any time before  
Judgment even of his own mot-  
ion to inspect property or  
an article notwithstanding  
fact that there is no express  
consent to..by both parties to  
litigation..Magistrate may  
also recall any or all the  
witnesses who had previously  
given evidence in Court.  
CA 190/44 XI 547

(1005) INSTALMENTS. Payment  
of Judgment debt by... instead  
of sale of attached goods.  
HC 84/40 VII 523  
HC 96/40 VII 576

(1006) INSTALMENTS. Judgment  
Creditor must be given an op-  
portunity of appearing and  
objecting to the granting of  
an application by his Judgment  
debtor for an order for payment  
of the Judgment debt by inst-  
alments instead of the sale  
of the attached goods.  
HC 83/36 not followed.  
HC 84/40 VII 523 distinguished.

HC 96/40 VII 576



## INSTALMENTS - INSURANCE

## INTEREST

## (1007) INSTALMENTS-

Once an examination of a Judgment debtor as to his means has been held and an order made for the payment of the Judgment debt by instalments it is for the Judgment debtor to show cause to the Chief Execution Officer if he can that his means have altered since the original Order for the payment of instalments was given- Habeas corpus proceedings in such a case totally inappropriate.

HC 3/41 VIII 59

(1008) INSURANCE Policy Action to recover under. Finding that abnormal conditions existed in the country and in vicinity of insured premises -at material date. Onus on plaintiff to prove that fire happened independently of the existence of such abnormal conditions.

CA 99/40 VII 325.

(1009) INSURANCE - Double Insurance  
There is no double insurance unless at least a substantial part of the same risk is covered by both insurances.

CA 99/40 VII 325.

(1010) INSURANCE Fire Claim against Insurance Co. for damage by fire. Denial by Insurance Co of liability under both indorsement and Policy- Effect of Endorsement on excepted risks clause of Policy. CA 200/40 VII 552

(1011) Claim under fire Insurance Policy for damage by fire- Allegation by Company that damage happened during abnormal conditions and therefore not covered.

PCA 34/39 VII 273

(1012) INTEREST- see Ottoman Law of Interest

(1013) INTEREST - Claim of..  
CA 86/43 XI 307

(1014) INTEREST on money paid on account of purchase price may be awarded as damages from the date that money was paid until it is recovered. CA 69/42 IX 422

(1015) INTEREST Date from which payable - where money for compensation in respect of expropriated land paid in to Court.

CA 284/43 XI 26

(1016) INTEREST Date- From which date interest is payable on purchase money ordered to be returned where the contract is silent on the question of interest.  
HELD From date of action.

CA 85, 40 VII 304

(1017) INTEREST Excessive Charging of excessive interest not contrary to Public Order in Palestine.

PCA 54/38 VII 94

(1018) INTEREST - Judgment Judgment given without awarding interest- Application for interest to be added- Order awarding interest- a decree and appealable as of right because it determined the rights of the parties as regards interest. Interest could not be added under rule 358 of the Civil Procedure Rules 1939 and failure to award interest not an accidental omission- which could be so remedied.

CA 282/44 XI 584

(1019) INTEREST- When in an ordinary mortgage deed it is stated that interest at so much per cent is payable during the currency of the mortgage interest goes on being payable after term of mortgage until final payment. HC 27-28/40 VII 213.



I N

IN Issues

(1020) INTENTION is an element which in most cases must be inferred from the circumstances surrounding a charge. Cr.A.153 44 XI 645

(1021) INTERDICTION See Bankruptcy.

(1022) INTERPLEADER APPLICATIONS. See COSTS

(1023) INTERNEES. Internees in Mazra'a Camp desired to send certain letters by registered post- Officer in charge refused HELD. Before ordering the issue of an order nisi H.Court must be satisfied that Officer in Charge under statutory obligation to accept and forward letters in question by reg. post. HC 107/42 IX 542.

(1024) INTERDICTED PRODIGAL. See Prodigal.

(1025) INTERPRETATION. Ejusdem Generis rule. Words "FOR ANY PURPOSE WHATSOEVER" are of so wide a nature as to bring a matter within that class of cases in which the rule is specifically excluded by words of generality. CA 240/43 X 584.

(1026) INTERPRETATION Ordinance Definition of 'person' in..is applicable to the construction of the word 'person' under the Cultivation (Prot) Ord. Upon the true interpretation of the Cult. (Prot) Ord. a Special Commission appointed thereunder is charged with the duty of dealing in appropriate cases with the position not only of any 'individual' but also of such fluctuating bodies of persons as members of a tribe or the inhabitants of a village where the peculiar local social conditions involve the recognition as legal entities of such fluctuating bodies as those in question.

(1027)	s. 3	X	434
		X	207
		VII	60
	ss. 5	VII	199
		XI	438
		XI	478

(1028) INTERPRETATION Ord. s. 7

The restrictions contained in s. 7 do not apply to regulations made under the provisions of an Order by H.M. in Council The section applies only to Ordinances HC 69/42 IX 425

(1029) s. 7 refers to regulations and Orders which have to be published in the Gazette. Cr.A.82/42 IX 357 - and see Vol. X 526

(1030) INTERROGATORIES. Circumstances in which answers to.. may be relied upon..alth. not put in evidence.. but, generally, a party intending to rely upon an answer to interrogatories must put it in evidence. CA 62/40 VII 244.

(1031) INTERNATIONAL LAW Treaties and Agreements. It is a settled practice in.. that treaties and International Agreements are not affected by a change in Government, or in the form of Government of one of the contracting parties and remain in force until denounced by the new Government or until they expire by effluxion of time. HC 124/42 IX 683

(1032) ISSUES.

Course of justice will be expedited if District Courts do make findings ON ALL RELEVANT ISSUES and not only on one issue. CA 118/40 VII 390

(1033) ISSUES. The Civil Procedure Rules 1938 do not give a District Court power to decide a case on one issue only. The procedure laid down in r. 189 should be followed, and a decision should be given on all the framed issues. CA 230/41 IX 86

(1034) ISSUES. Where parties have agreed to the issues so as to avoid appearing before the Judges for the purpose of settlement thereof, they cannot go back on that settlement on the technical ground that neither of them appeared on the date fixed..CA 178/43 X 352



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