



LAWS OF MALAYSIA

REPRINT

Act 194

OATHS AND AFFIRMATIONS ACT 1949

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OATHS AND AFFIRMATIONS ACT 1949

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LAWS OF MALAYSIA**Act 194****OATHS AND AFFIRMATIONS ACT 1949**

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LAWS OF MALAYSIA

Act 194

OATHS AND AFFIRMATIONS ACT 1949

An Act relating to Oaths and Affirmations.

[1 December 1949]

Short title

1. (1) This Act may be cited as the Oaths and Affirmations Act 1949.

(2) This Act shall apply only in *Peninsular Malaysia.

Interpretation

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

*“Peninsular Malaysia” has the meaning assigned thereto by section 3 of the Interpretation Acts 1948 and 1967 [Act 388], and includes the Federal Territory.

Application of Act

3. Nothing in this Act shall apply to proceedings before courts martial.

Authority to administer oaths and affirmations

4. All courts and persons having, by law, or by order of reference by any court, or by consent of parties, authority to receive evidence are authorized to administer, by themselves or by an officer empowered by them in that behalf, oaths and affirmations in discharge of the duties or in exercise of the powers conferred upon them respectively as aforesaid.

*NOTE—All references to “West Malaysia” shall be construed as references to “Peninsular Malaysia”—see Interpretation (Amendment) Act 1997 [Act A996], s. 5(2).

Taking of oaths out of Peninsular Malaysia

5. Any oath or affidavit required for the purpose of any court or matter in Peninsular Malaysia, or for the purpose of the registration of any instrument in any part of Peninsular Malaysia, may be taken or made in any place out of Peninsular Malaysia before any person having authority to administer an oath in that place:

Provided that, subject to section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act 1959 [*Act 348*], this section shall not apply to any oath required to be taken for the purposes of the Constitution.

Persons by whom oaths are to be taken

6. (1) Subject to section 7, oaths shall be taken by the following persons:

- (a) witnesses, that is to say, all persons who may be lawfully examined, or give or be required to give evidence, by or before any court or person having, as mentioned in section 4, authority to examine such person or to receive evidence;
- (b) interpreters of questions put to and of evidence given by witnesses;
- (c) translators; and
- (d) jurors.

(2) Nothing herein contained shall render it necessary to administer to the official interpreter of any court, or to a certified interpreter in the employment of the Government of Malaysia or of any State Government when he is engaged in the performance of his duties, after such official or certified interpreter has entered on the duties of his office, an oath that he will faithfully discharge those duties.

Where oath required affirmation may be made

7. Where any person is required by this Act or any other written law to take an oath the requirement shall be deemed to be complied with if an affirmation is made.

Evidence of persons of immature age

8. Any person who by reason of immature age ought not in the opinion of the court to be admitted to give evidence on oath or affirmation shall be admitted to give evidence after being cautioned by the court to speak the truth, the whole truth, and nothing but the truth.

Form of oaths and affirmations

9. Oaths and affirmations made under section 6 or section 7 shall be administered according to such forms and with such formalities as may be prescribed by rules made by the Rules Committee and, until such rules are made, according to the forms and formalities in use at the commencement of this Act.

Power of court to tender certain oaths or affirmations

10. If any party to or witness in any judicial proceeding offers, or, upon challenge, consents to give evidence on oath or affirmation in any form common amongst or held binding by persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit, notwithstanding anything herein before contained, cause such oath or affirmation to be tendered to him.

Procedure where a party offers to be bound by oath or affirmation

11. (1) If any party to any judicial proceeding of a civil nature offers to be bound by any such oath or affirmation as is mentioned in section 10, if such oath or affirmation is made by the other party to or by any witness in such proceeding, the court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in court solely for the purpose of answering such question.

(2) If such party or witness agrees to make such oath or affirmation, the court may administer it, or, if more convenient, may authorize any person to administer it and to take the evidence of the person to be sworn or affirmed, and return it to the court.

(3) The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

(4) If the party or witness refuses to make such oath or affirmation, he shall not be compelled to make it, nor be asked his reason for refusal, but the court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the fact that he was asked whether he would make it and that he refused it, together with any reason which he may voluntarily assign for his refusal.

Proceedings and evidence not to be invalidated by omission of oath or irregularity

12. No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding or render inadmissible any evidence whatever in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

Persons giving evidence bound to state the truth

13. Every person giving evidence on any subject before any court or person authorized by this Act to administer oaths and affirmations shall be bound to state the truth on such subject.

Summary punishment for perjury in open court

14. (1) If any person giving evidence on any subject in open court in any judicial proceeding, whether civil or criminal, before the Federal Court, the High Court, or a Sessions Court or a Court of a Magistrate of the First Class, either—

- (a) gives, in the opinion of the Court before which the judicial proceeding is held, false evidence within the meaning of section 191 of the Penal Code [Act 574] upon a material issue; or
- (b) wilfully and knowingly makes or is proved to have made two or more contradictory statements of fact or alleged fact upon a material issue, either at the same examination or at two or more examinations, and such contradictory statements have been made before the Court in which

such judicial proceeding is held or before such Court and before any other Court or Courts, and whether the respective truth or falsehood of the said statements can be ascertained or not,

it shall be lawful for the Court to call upon such witness to show cause (immediately or on a subsequent date) why he should not be summarily punished for giving false evidence and, if such witness fails to show such cause, then summarily to sentence such witness as for contempt—

- (i) where the Court is the Federal Court or the High Court, to imprisonment for a term not exceeding three months or to a fine not exceeding five hundred ringgit;
- (ii) where the Court is a Sessions Court, to imprisonment for a term not exceeding two months or to a fine not exceeding three hundred ringgit;
- (iii) where the Court is the Court of a Magistrate of the First Class, to imprisonment for a term not exceeding one month or to a fine not exceeding one hundred ringgit.

(2) Whenever any power given by this section is exercised by the High Court, a Sessions Court or Magistrates' Court, the person sentenced shall have the same right of appeal as if he had been sentenced after a trial held in accordance with the provisions of the law for the time being in force relating to criminal procedure, and the provisions of such law shall, subject to subsection (3) and with such other variations as may be necessary, be complied with in connection with any such appeal.

(3) Any person sentenced under subsection (1) by the High Court, a Sessions Court or a Magistrates' Court shall, immediately after such sentence has been pronounced, be informed of his right of appeal against such sentence.

(4) Upon notice of appeal being lodged by any person sentenced under this section, the High Court, the Sessions Court or Magistrates' Court that has ordered such sentence shall stay execution of such sentence, and shall release the person sentenced on terms secured by his personal bond only.

(5) Instead of exercising the power of summary sentence given by subsection (1) the Court may, if it thinks fit, summarily commit the offender for trial before any court having jurisdiction, and

shall, in such case, bind over all persons whose evidence it may consider material to appear and give evidence at such trial; and the court of trial shall take cognizance of the offence as if the requirements of paragraph 129(1)(b) and all other requirements of the Criminal Procedure Code [*Act 593*] had been complied with.

(6) Nothing in this section contained shall be deemed to deprive any person sentenced under this section of any right to appeal conferred by the law for the time being in force relating to criminal procedure.

(7) A person who has undergone any sentence of imprisonment or paid any fine imposed under this section shall not be liable to be punished again for the same offence.

Repeal

15. The Enactments and Ordinances set out in the Schedule are hereby repealed.

SCHEDULE

[Section 15]

REPEAL

| | |
|-----------------------------------|--|
| F.M.S.Cap. 14 | The Affirmations Enactment. |
| Johore Enactment No. 19 | The Affirmations Enactment. |
| Kedah Enactment No. 2 | Enactment No. 2 (Affirmations). |
| Kelantan Enactment No. 11 of 1924 | The Affirmations Enactment 1924. |
| Perlis Enactment No. 3 of 1337 | The Affirmations Enactment 1337. |
| Trengganu Enactment No. 7 of 1356 | The Affirmations Enactment 1356. |
| S.S. Cap. 15 | The Oaths Ordinance. |
| M.U. Ord No. 36 of 1947 | The Affirmations (Application) Ordinance 1947. |

LAWS OF MALAYSIA**Act 194****OATHS AND AFFIRMATIONS ACT 1949**

LIST OF AMENDMENTS

| Amending law | Short title | In force from |
|--------------|---|---------------|
| Ord. 40/1952 | Oaths and Affirmations (Amendment) Ordinance, 1952 | 21-10-1952 |
| Act 10/1959 | Oaths and Affirmations (Amendment) Act 1959 | 31-12-1959 |
| Act 91 | Courts of Judicature Act 1964 | 16-03-1964 |
| Act 160 | Malaysian Currency (Ringgit) Act 1975 | 29-08-1975 |

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LIST OF SECTIONS AMENDED

| Section | Amending authority | In force from |
|---------|-------------------------|--------------------------|
| 5 | Act 10/1959 | 31-12-1959 |
| 14 | Ord. 40/1952 Act 160 | 21-10-1952 29-08-1975 |

