

CHAPTER 1
COMMON LAW; CONSTRUCTION OF LAWS

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" **§1-1 Common law of the State; exceptions.** The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State. [L 1892, c 57, §5; am L 1903, c 32, §2; RL 1925, §1; RL 1935, §1; RL 1945, §1; RL 1955, §1-1; HRS §1-1]

Attorney General Opinions

Common-law authority establishes that governmental bodies possess inherent power to receive gifts to be used in implementing their functions. Att. Gen. Op. 92-4.

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.
Native Hawaiian Cultural Practices Under Threat. I HBJ No. 13, at pg. 1.
On the Reception of the Common Law in the Hawaiian Islands. III HBJ No. 13, at pg. 87.
The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.
Pele Defense Fund v. Paty: Exacerbating the Inherent Conflict Between Hawaiian Native Tenant Access and Gathering Rights and Western Property Rights. 16 UH L. Rev. 207.
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The "Hawaiinness" of Same-Sex Adoption. 30 UH L. Rev. 517.

Method is Irrelevant: Allowing Native Hawaiian Traditional and Customary Subsistence Fishing to Thrive. 32 UH L. Rev. 203 (2009).

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The Life of the Law is Perpetuated in Righteousness: The Jurisprudence of William S. Richardson. 33 UH L. Rev. 99 (2010).

The Moon Court, Land Use, and Property: A Survey of Hawai'i Case Law 1993-2010. 33 UH L. Rev. 635 (2011).

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

Case Notes

Generally.

As this section does not establish the supremacy of the 1840 Constitution over the current state constitution, or somehow render the documents concurrent, whether chapter 431 violated the 1840 Constitution was immaterial for purposes of defendant's conviction. 90 H. 130 (App.), 976 P.2d 444.

Article XII, §7 of the Hawaii constitution and/or this section do not authorize for native Hawaiian grandparents any more visitation rights than §571-46(7) and §571-46.3 authorize for all grandparents, native and non-native Hawaiian. 112 H. 113 (App.), 144 P.3d 561.

Background of statute; general principles.

Prior to 1893, common law (usually) or civil law, not contrary to Hawaiian law or usage, followed as reason and equity dictated (L 1847, p 5; cc 1859, §§14, 823). 2 H. 209; 3 H. 90, 95; 3 H. 106, 112; 5 H. 543; 6 H. 718, 725; 8 H. 77, 80; 13 H. 499, 505; 17 H. 393, 410; 27 H. 626; 27 H. 671, 674; 31 H. 661, 669, reh'g denied 31 H. 796; 41 H. 634; 45 H. 373, 383-84, 369 P.2d 96; 46 H. 425, 429, 380 P.2d 762.

Effective January 1, 1893, common law adopted "except as otherwise provided..., or fixed by Hawaiian judicial precedent, or established by Hawaiian usage...." Effect of Hawaiian judicial precedent: 10 H. 421, 436; 16 H. 294, 303; 20 H. 146, 149; 25 H. 701, 708; 27 H. 626, 628; 31 H. 661, 669, reh'g denied 31 H. 796; 38 H. 479, 481; 40 H. 92; 45 H. 373, 383-84, 369 P.2d 96; 46 H. 425, 429, 380 P.2d 762; 49 H. 273, 414 P.2d 925. Statute gives Hawaiian decisions "the force of a statute". 25 H. 701, 708; 42 H. 518, 525. Effect of Hawaiian usage: 10 H. 408 (conveyance by lessor); 10 H. 421, 436 (conveyance by disseisee); 12 H. 375, 391 (estates tail, fees simple conditional); 16 H. 377, 389, overruled on another point 25 H. 397, 405, 21 H. 74, 83 (merger of estates); 18 H. 91, 96, aff'd 212 U.S. 208 (deed of release); 20 H. 146, 149 (whether agreement void for champerty); 24 H. 47, 57; 31 H. 376, 383; aff'd 52 F.2d 356 (water rights); 49 H. 273, 414 P.2d 925 (adoption).

Rejection, previous to 1893, of essential parts of common law justifies present rejection of other parts; and previous application (contrary to common law) of a general principle to one question justifies subsequent application to another question. 10 H. 421, 436; 12 H. 375, 380; 16 H. 615, 628; 31 H. 661, 669, reh'g denied 31 H. 796; 40 H. 92; 45 H. 373, 384, 369 P.2d 96.

Court to consult both American and English decisions. 10 H. 421, 434; 14 H. 554, 561; 18 H. 588, 591, aff'd 212 U.S. 208; 22 H. 140, 144; 29 H. 571, 577; 30 H. 912, 938-43; 40 H. 86, 89; 49 H. 624, 629, 425 P.2d 1014.

Statute adopting common law inapplicable where title already vested. 13 H. 499, 500. Applicability to construction of will already probated, raised but not decided. 12 H. 375, 379-80.

This section continued in effect by Hawaiian Organic Act. 1 U.S.D.C. Haw. 75, aff'd 114 F. 849; 305 U.S. 91, 108, aff'g 33 H. 34.

Common law consists of principles, not set rules. 14 H. 554, 561; 22 H. 140, 144; 39 H. 460, 466, aff'd 205 F.2d 616; 40 H. 86, 89; 41 H. 106, 117-21; 42 H. 500.

"Common law" adopted by this statute includes English statutes, unless too recent. 16 H. 294, 303; 20 H. 447, 450; 22 H. 140, 144; 40 H. 86, 89 (includes statutes passed before emigration of first settlers to America). Includes statute of 13th Elizabeth governing fraudulent conveyances. 21 H. 1, 3; 39 H. 493, 496. Includes rule against perpetuities. 18 H. 52, 69, aff'd 211 U.S. 321; 32 H. 323, 330; 34 H. 288, 293.

This statute deemed to preclude adoption of modern rule. 22 H. 140; 28 H. 275, 276; 36 H. 107, 110; see 25 H. 357, 371, aff'd 272 F. 856, questioned 49 H. 456, 487, 421 P.2d 550. But

other cases hold court not required to follow a rule based on reasons which no longer exist or conditions which do not obtain. 10 H. 408, 413; 10 H. 421, 436; 14 H. 554; 27 F.2d 582, rev'g 29 H. 770; 40 H. 86, 89; 41 H. 527, 552. Not required to follow a rule repugnant to the system established in Hawaii. 12 H. 375, 391. May apply enlightened modern authorities. 29 H. 571, 577; 39 H. 460, 465, aff'd 205 F.2d 616; 198 F. Supp. 78, 105-11, aff'd 304 F.2d 149.

Applicability of common law in determining duties of public officers. 29 H. 83, denying reh'g of 29 H. 21; 42 H. 14. Right to sue on bail bond. 19 H. 4, 7.

Common law does not remain in sedentary state. 52 H. 40, 469 P.2d 183.

Rule against perpetuities is part of English common law. 52 H. 40, 469 P.2d 183.

Referred to: 16 H. 731, 733; 17 H. 566, 569; 19 H. 88, 93; 19 H. 366, 375 (concurring opinion); 26 H. 699, 700; 27 H. 655, 659, aff'd 10 F.2d 474, 477; 46 H. 197, 209, 377 P.2d 609; 69 F.2d 681, 682; 190 U.S. 197, 217; 3 U.S.D.C. Haw. 176, 179; 238 F. Supp. 867.

Criminal law and procedure.

See also notes under Effect of common law on statutory construction.

Practice of putting question why sentence should not be pronounced, not indispensable. 3 H. 106.

No common law offenses. 4 H. 39; 10 H. 469, 472; 11 H. 293, 300.

Leave of court required for a nol. pros. 6 H. 718.

Elements of offense where not defined, resort to common law. 25 H. 814.

Appeal in mitigation fixed by Hawaiian judicial precedent. 38 H. 479, 481.

Whether corroboration of accomplice required, governed by common law. 45 H. 16, 42, 361 P.2d 45.

No common law offenses, and the applicable statute or ordinance itself must provide a penalty. 62 H. 656, 619 P.2d 93.

Effect of common law on statutory construction.

Torrens Act construed in light of common law. 256 F.2d 208, 212, remanding 41 H. 490, modified 42 H. 661.

Appellants' contention that native Hawaiian rights were exclusive and possessory was unsupported in the law. 76 F.3d 280.

If plaintiff could prove that its custom and usage of subject land, prior to 1892, established its right of occupancy and use

based upon the doctrine of individual aboriginal title, then that doctrine, as established in 1923, would apply. Any aboriginal title that plaintiff may have had was extinguished; plaintiff failed to show that its use and occupancy of the area was exclusive as required by the doctrine. 875 F. Supp. 680.

Plaintiff's claims of reserved rights of native tenants under Hawaii law did not extend to the right of perpetual and exclusive occupancy upon the land of another; plaintiff's ancestors' failure to claim kuleana title to subject land, which rendered them tenants at sufferance, foreclosed plaintiff's attempt to claim possessory rights to the land under Hawaii law. 875 F. Supp. 680.

Statutes in derogation of common law strictly construed. 5 H. 41; 9 H. 23, 25; 10 H. 151, 159; 22 H. 765, 767 (explaining earlier cases); 23 H. 541, 545; 37 H. 374, 379 (ordinance); 37 H. 571, 580; 49 H. 624, 628, 425 P.2d 1014; 50 H. 201, 436 P.2d 752. But should nevertheless be construed in accordance with legislative purpose. 41 H. 442, 459; 44 H. 59, 67, 352 P.2d 335.

Grounds for annulment held exclusively statutory. 8 H. 77.

Interpretation of words in criminal statute according to common law meaning. 8 H. 259; 22 H. 618, 629; 33 H. 560, 563.

Marriage controlled by statute, no common law marriage. 25 H. 397.

Usury statute as superseding common law. 36 H. 107.

Statute codifying common law, interpreted according to modern decisions. 39 H. 460, 465, aff'd 205 F.2d 616.

Common law as background in applying statutes prescribing time and place of trial. 46 H. 197, 209, note 4, 377 P.2d 728.

The common law recognizes a cause of action for invasion of right of privacy where defendant uses plaintiff's name or picture for commercial purposes. 50 H. 374, 441 P.2d 141.

Common law holds that right to rent to accrue on a lease of real property is an interest in realty. Rent already due is personalty. 56 H. 295, 535 P.2d 1109.

Common law rule for use of ancient documents as evidence construed. 57 H. 312, 555 P.2d 495.

Joint owners of an animal may be liable in an action for injuries caused by such animal. 57 H. 620, 562 P.2d 779.

"Hawaiian usage" must predate November 25, 1892. 58 H. 106, 566 P.2d 725.

No evidence that "Hawaiian usage" gave to owner of land along seashore title to lava extensions created by volcanic eruption. 58 H. 106, 566 P.2d 725.

Where practices have, without harm to anyone, been continued, reference to Hawaiian usage in section insures their continuance for so long as no actual harm is done thereby. Retention of a

Hawaiian tradition should in each case be determined by balancing respective interests and harm once it is established that application of the custom has continued in a particular area. 66 H. 1, 656 P.2d 745.

"Hawaiian usage" clause may establish certain customary Hawaiian rights beyond those found in §7-1. 73 H. 578, 837 P.2d 1247.

Common law rights ordinarily associated with tenancy do not limit customary rights existing under the laws of Hawaii. 79 H. 425, 903 P.2d 1246.

Descendants of native Hawaiians who inhabited islands prior to 1778 who assert valid customary and traditional Hawaiian rights under this section entitled to protection regardless of their blood quantum. 79 H. 425, 903 P.2d 1246.

Hawaii constitution and this section require county planning commission to "preserve and protect" reasonable exercise of customary or traditional native Hawaiian rights to the extent feasible when issuing special management area use permits. 79 H. 425, 903 P.2d 1246.

If property is deemed "fully developed", i.e., lands zoned and used for residential purposes with existing dwellings, improvements, and infrastructure, it is always "inconsistent" to permit the practice of traditional and customary native Hawaiian rights on such property. 89 H. 177, 970 P.2d 485.

To establish the existence of a traditional or customary native Hawaiian practice, there must be an adequate foundation in the record connecting the claimed right to a firmly rooted traditional or customary native Hawaiian practice. 89 H. 177, 970 P.2d 485.

Where defendant failed to adduce sufficient evidence to support claim of the exercise of a constitutionally protected native Hawaiian right and knowingly entered landowner's property which was fenced in a manner to exclude others, trial court properly concluded that defendant was unlawfully on property in violation of §708-814(1). 89 H. 177, 970 P.2d 485.

Judicial precedents prior to adoption of common law by this statute (with cases applying these precedents).

Delivery of seisin obsolete. 1 H. 17. Deed reserving life estate valid. 4 H. 515, 517; 5 H. 484. Rule in Shelley's case rejected. 8 H. 392; 12 H. 375, 389; 13 H. 196, 199; 19 H. 78.

Seal not necessary to validity of instrument. 1 H. 23; 4 H. 459; 6 H. 633 (single justice). Applied as rendering of no force common law distinction between action of covenant and of assumpsit. 40 H. 92. Incontestability of sealed instrument for want of consideration raised but not decided. 29 H. 548.

Widow may recover for death of husband. 2 H. 209; 1 U.S.D.C. Haw. 75, aff'd 114 F. 849. Applied as allowing action by father for death of minor child. 16 H. 615, 628; 27 H. 671, 674; 31 H. 939; 37 H. 571. But not as allowing action for death of adult child, 27 H. 626, or for injury to parent short of death, 41 H. 634. Applied as rejecting rule of Baker v. Bolton (1 Camp. 493) that death of human being not an injury, so as to permit personal representative to sue for lost earnings under survival statute (§663-7). 45 H. 373, 369 P.2d 96.

Rule that conveyance to two or more construed as joint tenancy, rejected. 5 H. 543; 8 H. 392, 396. Precedent applied in case of adverse holding by two or more. 31 H. 661, reh'g denied 31 H. 796.

Survival of cause of action governed by common law in absence of specific statute. 6 H. 556 (single justice); 34 H. 667.

Grounds for annulment, held exclusively statutory. 8 H. 77.

Estates tail and fees simple conditional rejected (without reliance on statutes prior to 1893). 12 H. 375, 391-4; 20 H. 372, 377; 21 H. 699, aff'd 242 U.S. 612; 23 H. 747, 757, aff'd 255 F. 732; 25 H. 561, 567.

Word "heirs" unnecessary to conveyance of a fee simple. 13 H. 499; 23 H. 38, 44, aff'd 242 F. 446; 23 H. 298, 304; 46 H. 425, 429, 380 P.2d 762.

Statute of uses is in force, the point having been settled as early as 1855. 16 H. 294, 303.

Common law doctrine of merger of estates rejected. 16 H. 377, 388, overruled on another point 26 H. 405.

Status of adopted child as "issue" in view of Hawaiian usage and precedents. 35 H. 104, aff'd 115 F.2d 956; 42 H. 640; 49 H. 273, 414 P.2d 925.

Hawaiian usage in establishing seaward boundaries. 50 H. 314, 440 P.2d 76.

Hawaiian usage mentioned is usage which predated Nov. 25, 1892. 52 H. 472, 479 P.2d 202.

" **§1-2 Certain laws not obligatory until published.** No written law, unless otherwise specifically provided by legislative enactment, except general or special appropriation acts, loan fund acts, pension acts, and franchise acts, shall be obligatory without first being printed and made public. General or special appropriation acts, loan fund acts, pension acts, and franchise acts, whether affecting state funds or the funds of county or other municipal subdivisions or commissions, shall become operative according to their respective terms. [CC 1859, §1; RL 1925, §3; RL 1935, §3; am L 1935, c 10, §2; RL 1945, §3; RL 1955, §1-3; HRS §1-2]

Case Notes

Prior to amendment spelling out that legislature may provide a different effective date, statute was so interpreted. 29 H. 250, 255. See 37 H. 260.

Under article III, section 16, of the Constitution, a law may become applicable from the time the governor approves it. 59 H. 430, 583 P.2d 955.

" **§1-3 Laws not retrospective.** No law has any retrospective operation, unless otherwise expressed or obviously intended. [CC 1859, §5; RL 1925, §5; RL 1935, §5; RL 1945, §4; am L 1955, c 57, §1(a); RL 1955, §1-6; HRS §1-3]

Attorney General Opinions

New administrative rules superseded old rules as to all matters except permit applications that were filed before July 1, 1994; further, on or after July 1, 1994, when statutory authority for old rules was repealed, the old rules were void and not in effect, the only exception being with respect to pending permit applications from the period before July 1, 1994. Att. Gen. Op. 97-4.

Case Notes

Section 386-5, as amended, could not be applied retroactively. 910 F. Supp. 479.

New divorce law construed as inapplicable to pending cases, old law applicable. 3 H. 304.

Law making sale or possession of opium illegal not retrospective though dealing in opium was formerly licensed. 3 H. 672; 3 H. 687.

Cutting down period allowed for suit against government so as to bar claims, not unconstitutional when prior statute did not provide for enforcement of judgment. 11 H. 404.

Retrospective law defined. 11 H. 404; 22 H. 96, 106; 42 H. 532, 535-6 (from standpoint of constitutionality); 33 H. 766, 774 (distinguishing between constitutional and unconstitutional retrospective laws).

It is a general rule that prospective operation is favored construction. 11 H. 600, 620, overruled on another point 11 H. 654, 658; 22 H. 96, 110; 28 H. 462, 467.

Wrongful death statute inapplicable where death already had occurred. 27 H. 626.

Income tax law expressly made effective on preceding January 1, applies to income of calendar year last past. 33 H. 766. Reduced tax rate expressly made retrospective applies to income of preceding calendar year. 21 H. 571. Requirement of tax clearance as condition of county license, if deemed retrospective nevertheless not unconstitutional. 22 H. 96, 107.

Statute clearly intended to cure defect in prior statute and confer benefit will be given retroactive operation. 34 H. 150, 158.

Statute enacted after death of testator cannot jeopardize rights vested under the will. 34 H. 333.

Legislature is powerless by subsequent enactment to vary terms of trust deed previously executed. 35 H. 1.

Statute prescribing special rules of descent for land held under homestead agreement, inapplicable to existing agreement. 35 H. 550.

Change in method of computing trustees' commissions, application to existing trust. 37 H. 111.

Statute providing that subsequent marriage revokes designation of beneficiary, applicable though the marriage already had occurred. 42 H. 532. Statute legitimatizing child of parents who marry after its birth, applicable though the marriage already had occurred. 29 H. 258, aff'd 16 F.2d 273.

Repeal in 1859 of provision for reservation of mineral rights, no effect on existing rights. 49 H. 429, 443, 421 P.2d 570.

Cited in holding that §584-7 was intended to operate retrospectively. 59 H. 259, 581 P.2d 310.

Applied. 63 H. 540, 632 P.2d 649.

Change in maximum liability of real estate recovery fund. 64 H. 74, 636 P.2d 1344.

Section is only a rule of statutory construction and where the legislative intent may be ascertained, it is no longer determinative. 64 H. 210, 638 P.2d 319.

Amendments to driving under influence statute did not have retrospective application. 72 H. 597, 825 P.2d 1065.

To the extent department rule applied procedures established pursuant to no-fault amendments to no-fault claimant injured prior to effective date of amendments, rule invalid. 82 H. 249, 921 P.2d 169.

As §607-14 does not expressly or obviously manifest an intent to be applied retroactively, the 1993 amendment did not apply retroactively to litigation terminated prior to the effective date of the amendment, July 1, 1993. 88 H. 46, 961 P.2d 611.

It was the "obvious intention" of the legislature to authorize the retroactive application of the part of Act 167, L 1990, that authorized the sentencing court the discretion to impose a

sentence of community service instead of a fine. 77 H. 476 (App.), 888 P.2d 376.

" **§1-4 Persons and property subject to laws.** The laws are obligatory upon all persons and property within the jurisdiction of the State. [CC 1859, §6; am imp PC 1869, c 3, §1 (same as PC 1850, c 3, §1); RL 1925, §6; RL 1935, §6; RL 1945, §5; am L 1955, c 57, §1(b); RL 1955, §1-7; HRS §1-4]

Cross References

Boundaries, see Const. art. XV.

Concurrent jurisdiction of the State over federal reservations, see Pub L 86-3, §16(b).

Full faith and credit, judgment of another state, see U.S. Const. Art. IV.

Hawaii National Park, specific rights reserved to the State, see Pub L 86-3, §16(a).

Service of process, see §634-21 et seq. and provisions of particular chapters; HRCF rule 4.

Law Journals and Reviews

The Decision to Disobey: A View of Symbolic Civil Disobedience. 7 HBJ 5.

Case Notes

Territorial waters, offenses committed on vessels within, prior to annexation, 1 H. 58; during territorial status, 217 U.S. 234, aff'g 3 U.S.D.C. Haw. 345.

Contracts, what law governs. 3 H. 21; 10 H. 138; 10 H. 614, 622.

Personal property, whether within the jurisdiction, taxation of. 3 H. 292; 16 H. 396. Compare as to intangibles. 31 H. 264, aff'd 47 F.2d 869; 26 H. 299, 356, aff'd 289 F. 664.

Embezzlement, money received in Hawaii for delivery elsewhere. 5 H. 372.

Divorce, effect of on ownership of insurance policy, what law governs. 10 H. 117, reh'g denied. 10 H. 562. Compare 132 Cal. 85, app. dis. 188 U.S. 291.

Comity, action on insurance policy within and without the State, which takes precedence. 14 H. 80, app. dis. 187 U.S. 308.

Federal reservations: Jurisdiction during territorial status. 19 H. 198; 23 H. 61; 38 H. 188, 198; 4 U.S.D.C. Haw. 62; 142 F.

Supp. 666. Divorce, residence on military reservation. 35 H. 461; 37 H. 223; 38 H. 261.

Real estate situated outside State, validity of trust under will of Hawaiian resident. 46 H. 475, 562, 382 P.2d 920.

Custody of children found within the State. 49 H. 20, 29-31, 407 P.2d 885.

Maritime injuries, effect of admiralty jurisdiction. 49 H. 77, 83, note 2, 412 P.2d 669, mod. and reh'g denied. 49 H. 267, 269-71, 414 P.2d 428.

General laws not applicable to State unless explicitly made applicable. 51 H. 87, 451 P.2d 809.

" **[\$1-4.5] Cession of concurrent jurisdiction.** (a)
Notwithstanding the provisions of any other law, the State of Hawaii hereby cedes concurrent legislative jurisdiction to the United States over the lands and improvements located in the State presently owned or hereafter acquired, whether acquired by condemnation or otherwise, leased, occupied, or controlled by or for the United States Department of Justice, or any of its component agencies or bureaus, for correctional purposes.

(b) Cession of concurrent legislative jurisdiction, in accordance with subsection (a), shall only take effect upon the acceptance of such jurisdiction by the United States. The concurrent legislative jurisdiction so ceded shall end as to any such lands, improvements, or such portions thereof, that cease to be owned, leased, occupied, or controlled by or on behalf of the United States for correctional purposes. [L 1998, c 291, §1]

" **§1-5 Contracts in contravention of law.** Private agreements shall have no effect to contravene any law which concerns public order or good morals. But individuals may, in all cases in which it is not expressly or impliedly prohibited, renounce what the law has established in their favor, when such renunciation does not affect the rights of others, and is not contrary to the public good. [CC 1859, §7; RL 1925, §7; RL 1935, §7; RL 1945, §6; RL 1955, §1-8; HRS §1-5]

Cross References

Parental preferences in government contracts and services, see §577-7.5.

Case Notes

Contracts.

No recovery of medical fees when plaintiff not approved by board of health. 4 H. 9.

Condition in restraint of marriage, void. 6 H. 72 (single justice).

No recovery on note given for liquor sold without license. 24 H. 263.

Illegal transaction, action for money had and received, whether parties in pari delicto. 21 H. 513; 22 H. 759.

Illegal consideration for indivisible note voids note. 24 H. 263. Accord: 24 H. 540.

Contract for services by a public official within the scope of official duties, void. 24 H. 540. Ultra vires agreement by public officer to be distinguished from one contrary to public policy, former being enforceable against one who has received benefits. 19 H. 41.

Buyer under conditional sales contract cannot show seller's waiver of terms of contract as part of an illegal raffle. 26 H. 407.

Insurable interest, whether sufficient for group life insurance or whether a wager involved. 50 H. 177, 434 P.2d 750.

Renunciation of rights.

Provision as to waiver applied. 5 H. 300, 304; 11 H. 428, 429; 12 H. 262, 264. But see as to appeals, jurisdictional requisites, note appended to chapter 641.

Validity of provision in articles limiting statutory power to make bylaws. 15 H. 333, 343, 346.

Jurisdiction cannot be stipulated. 46 H. 197, 208, 377 P.2d 609.

Waiver of defense of res judicata. 50 H. 22, 428 P.2d 411.

" **§1-6 Prohibitory law, effect.** Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed. [CC 1859, §8; RL 1925, §8; RL 1935, §8; RL 1945, §7; RL 1955, §1-9; HRS §1-6]

Case Notes

Applied in holding no common law marriage; statutory requisites enforced. 25 H. 397, 403; 34 H. 161, 165. See 295 F. 636.

Statute requiring consent of parent for marriage of certain minors is prohibitory, and marriage without consent will be annulled. 26 H. 89, 95.

Cited and considered in relation to usury statute. 49 H. 160, 184, 413 P.2d 221, reh'g denied. 49 H. 255, 413 P.2d 221; see 36 H. 107, 126.

Referred to: 35 H. 545, 549; 37 H. 374, 378; 39 H. 378, 381; 45 H. 247, 259, 365 P.2d 460.

" **§1-7 Repeal of laws.** Laws may be repealed either entirely or partially by other laws. [CC 1859, pt of §20; RL 1925, §21; RL 1935, §23; RL 1945, §23; RL 1955, §1-10; HRS §1-7]

Case Notes

Referred to: 17 H. 428, 438.

" **§1-8 No revivor on repeal; exception.** The repeal of any law shall not revive any other law which has been repealed, unless it is clearly expressed. [CC 1859, pt of §20; RL 1925, §22; RL 1935, §24; RL 1945, §24; RL 1955, §1-11; HRS §1-8]

Case Notes

Statute repealing 1870 divorce law without expressly reenacting previous statutes on the subject would result in there being no law to enable divorces to be granted, if the repealing statute were valid. 3 H. 661.

No revival under this section where statutes attempted to be revived referred to only in general terms. 7 H. 359.

" **§1-9 Express or implied repeals.** The repeal of a law is either express or implied. It is express when it is literally declared by a subsequent law; it is implied when the new law contains provisions contrary to, or irreconcilable with, those of the former law. [CC 1859, §21; RL 1925, §23; RL 1935, §25; RL 1945, §25; RL 1955, §1-12; HRS §1-9]

Case Notes

Generally.

Amendment intended to take place of previous act impliedly repeals it. 9 H. 171, 176. Though amendatory act expressly repeals chapter amended, effect is that amended chapter takes place of previous law and is not itself repealed. 9 H. 171, 177. Provision applicable at a later time does not supersede present provision immediately. 17 H. 23.

Repeals by implication not favored. 9 H. 402, 404; 20 H. 170; 26 H. 469, 472; 30 H. 658, 663; 42 H. 518; 69 F.2d 954. This section fixes the rule on the subject of implied repeals. 20 H. 170, 171.

Where attempt apparently made to repeal expressly all former laws intended to be repealed, repeal by implication not found. 9 H. 402, 404. Express repeal by void act, earlier act remains in force. 14 H. 215, 221. Where statute amended "to read as follows" parts omitted are repealed. 22 H. 183; 24 H. 12.

For later statute covering entire subject matter of earlier statute to repeal the earlier statute, the legislative intent to repeal must be clear. 50 H. 351, 440 P.2d 528.

Repeals by implication not favored. 54 H. 519, 511 P.2d 161.

Common law.

Court should not, merely by application of maxim expressio unius exclusio alterius, find common law superseded in area not mentioned in statute. 49 H. 624, 628, 425 P.2d 1014; see 37 H. 571, 574.

General and special laws.

General (affirmative) law does not abrogate earlier special one by mere implication. 9 H. 402, 404. But when later act covers whole subject matter, repeal by implication found. 30 H. 658; 50 H. 277, 439 P.2d 206. Special statute controls general without regard to priority of enactment. 8 H. 381, 382; 34 H. 484, 488-9; 45 H. 650, 662, 372 P.2d 348. Where statute prescribes special rule applicable to certain class and another statute prescribes general rule, repeal of special statute renders general statute applicable to the special class and this is not a revivor of a repealed statute. 10 H. 241; 23 H. 558, 561; 44 H. 634, 648, 361 P.2d 390.

Specific statute is favored over general one when two statutes cover same subject. 54 H. 250, 505 P.2d 1179.

Joint resolution of annexation.

Effect of on Hawaiian laws, see 12 H. 58; 190 U.S. 197. Referred to: 3 H. 90, 98; 7 H. 359, 362; 16 H. 769, 781; 18 H. 485, 487; 22 H. 96, 107.

Jurisdiction; remedies.

Law conferring on one court jurisdiction conferred on another by previous law does not repeal earlier law by implication; jurisdiction concurrent unless later law confers exclusive jurisdiction. 1 H. 31; 10 H. 476; 19 H. 106, 116; see 7 H. 270. Same where statutory remedy enacted but merely permissive or not complete; earlier remedy still exists. 3 H. 127, 137; 3 H. 618;

12 H. 12, 13; 14 H. 554, 564; 26 H. 89, 91; 40 H. 397, 412; see 10 H. 507. Compare where statutory remedy not merely cumulative, 5 H. 57; where statute itself confers the right, 3 H. 127, 136; 3 H. 618, 621; 5 H. 57, 58. Tax appeals, exclusiveness of statutory remedy. 14 H. 117.

Revised laws.

Where repugnant statutes are carried into revised laws and enacted, original statutes may be referred to and the later enactment controls. 23 H. 91, 95; 28 H. 744, 751.

Other instances.

Repeal of laws conferring exclusive fishing rights repeals penal provision applicable to violation of such rights. 16 H. 306. Law prohibiting infamous punishment supersedes provision for hard labor but not provision for imprisonment. 17 H. 428, 438; 23 H. 91. Employee blanketed into civil service is no longer removable at pleasure though so removable when appointed. 30 H. 477.

" **§1-10 Effect of repeal on accrued rights.** The repeal of any law shall not affect any act done, or any right accruing, accrued, acquired, or established, or any suit or proceedings had or commenced in any civil case, before the time when the repeal takes effect. [CC 1859, §22; RL 1925, §24; RL 1935, §26; RL 1945, §26; RL 1955, §1-13; HRS §1-10]

Rules of Court

Effect of rules of court on pending proceedings, see HRPP rule 59 and Sup. Ct. order of October 29, 1976.

Attorney General Opinions

New administrative rules superseded old rules as to all matters except permit applications that were filed before July 1, 1994; further, on or after July 1, 1994, when statutory authority for old rules was repealed, the old rules were void and not in effect, the only exception being with respect to pending permit applications from the period before July 1, 1994. Att. Gen. Op. 97-4.

Case Notes

A law repealing former divorce laws does not affect pending suits. 3 H. 304.

Repeal in 1859 of provision for reservation of mineral rights, effect of. 49 H. 429, 442, 421 P.2d 570.

" **§1-11 Effect of repeal on pending suit or prosecution.** No suit or prosecution pending at the time of the repeal of any law, for any offense committed, or for the recovery of any penalty or forfeiture incurred under the law so repealed, shall be affected by such repeal. [CC 1859, §23; RL 1925, §25; RL 1935, §27; RL 1945, §27; RL 1955, §1-14; HRS §1-11]

Case Notes

Prosecution for gaming valid though law repealed pending appeal taken for trial de novo. 9 H. 98.

Section applied and minimum term of imprisonment was determinable under the law as it existed at time of commission of crime. 50 H. 351, 440 P.2d 528.

" **§1-12 Application of statutory construction provisions.** All provisions of the Hawaii Revised Statutes relating to general statutory construction shall apply not merely to laws now in force but to all hereafter enacted, unless otherwise expressed or obviously intended. [L 1945, c 233, §4; RL 1955, §1-15; HRS §1-12]

" **§1-13 Official languages.** English and Hawaiian are the official languages of Hawaii. Whenever there is found to exist any radical and irreconcilable difference between the English and Hawaiian version of any of the laws of the State, the English version shall be held binding. Hawaiian shall not be required for public acts and transactions. [L 1864, p 68; RL 1925, §26; RL 1935, §9; RL 1945, §8; RL 1955, §1-16; HRS §1-13; am L 1979, c 97, §2]

Law Journals and Reviews

"Officially" What? The Legal Rights and Implications of 'Ōlelo Hawai'i. 30 UH L. Rev. 243.

Case Notes

Originally, Hawaiian version prevailed. 1 H. 402; 1 H. 457. Beginning with cc 1859, English version prevailed. 8 H. 478; 41 H. 358, 366.

" **[§1-13.5] Hawaiian language; spelling.** Macrons and glottal stops may be used in the spelling of words or terms in the Hawaiian language in documents prepared by or for state or county agencies or officials. Any rule, order, policy, or other act, official or otherwise, that prohibits or discourages the use of these symbols shall be void. [L 1992, c 169, §2]

Law Journals and Reviews

"Officially" What? The Legal Rights and Implications of 'Ōlelo Hawai'i. 30 UH L. Rev. 243.

" **§1-14 Words have usual meaning.** The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning. [CC 1859, §9; RL 1925, §9; RL 1935, §10; RL 1945, §9; RL 1955, §1-17; HRS §1-14]

Attorney General Opinions

Cited in construing "child". Att. Gen. Op. 93-1.

Case Notes

Where statute does not refer to renewal of a license and treats all licenses as similar whether first or subsequent, circumstance that in popular mind there is a difference not sufficient to alter plain meaning. 12 H. 303, 306.

Where words are defined in statute express declaration of meaning governs. 15 H. 29, 34; 33 H. 371, 374; 36 H. 170, 178; 37 H. 314, 319, aff'd 174 F.2d 21; 37 H. 374, reh'g denied. 37 H. 380; 38 H. 16, 28; 49 H. 426, 421 P.2d 294; 4 U.S.D.C. Haw. 664, 667.

Presumption is that words used in usual sense. 25 H. 669, 686; 31 H. 625, 629, aff'd 52 F.2d 411; 41 H. 156, 159; 43 H. 154, 160; 44 H. 519, 530, 356 P.2d 1028; 46 H. 375, 399, 381 P.2d 687. Other cases where usual sense given or statute cited: 3 H. 793; 5 H. 321; 8 H. 259; 25 H. 747, 754; 39 H. 100, 109. But most known and usual sense may be repelled by the context, 25 H. 669, 686; 34 H. 269, 272, reh'g denied. 34 H. 324, aff'd 105 F.2d 286; or where would lead to absurdity or inconsistency, 43 H. 154, 157; 44 H. 220, 227, 352 P.2d 846. Compare where

strict construction called for. 22 H. 618, 625; 38 H. 421, 426; 44 H. 59, 67, 352 P.2d 335; 45 H. 167, 177, 363 P.2d 990.

Modern meaning given, as distinguished from ancient restricted meaning. 34 H. 245. Commonly accepted meaning, as distinguished from fine distinctions of law of future interests. 46 H. 375, 381 P.2d 687.

More natural interpretation may be rejected where would lead to unconstitutionality. 36 H. 170, 182; 40 H. 257, 259.

While common meaning is general rule, where statute involves a trade presumption is that words have trade meaning. 45 H. 167, 177, 363 P.2d 990.

There must be substantial justification for disregarding generally accepted meaning, but court must look to evils which provision expected to cure. 50 H. 212, 437 P.2d 99.

Words of any statute, usually read in their ordinary and popular sense. 52 H. 279, 474 P.2d 538.

Usual meaning should be rejected if it results in absurdity. 55 H. 55, 515 P.2d 621.

Statute may be construed contrary to literal meaning where literal meaning results in absurdity and the words are susceptible of another construction carrying out the manifest intent. 57 H. 84, 549 P.2d 737.

Whatever is necessarily or plainly implied is as much a part of the statute as that which is expressed. 58 H. 53, 564 P.2d 436.

Courts are bound to give effect to all parts of a statute if such a construction can legitimately be found. 60 H. 487, 591 P.2d 607.

Cited in construing "accident". 1 H. App. 625, 623 P.2d 1271.

Cited in construing "decision". 131 H. 513, 319 P.3d 432 (2014).

Mentioned: 9 H. App. 325, 839 P.2d 530.

" **§1-15 Construction of ambiguous context.** Where the words of a law are ambiguous:

- (1) The meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning.
- (2) The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.
- (3) Every construction which leads to an absurdity shall be rejected. [CC 1859, §10; RL 1925, §10; RL 1935, §11; RL 1945, §10; am L 1955, c 57, §1(c); RL 1955, §1-18; HRS §1-15]

Case Notes

Construction, generally.

Where no ambiguity, no room for construction. 17 H. 389, 391; 22 H. 31, 33; 22 H. 557, 566; 30 H. 116, 121; 30 H. 685, 690, aff'd 36 F.2d 159; 33 H. 239, 242; 33 H. 915, 920; 35 H. 248, 251; 35 H. 429; 35 H. 788, 794; 40 H. 478; 41 H. 1. Intent shown by language used is primary consideration, and mischief sought to be remedied to be considered only where language ambiguous. 9 H. 106; 19 H. 83, 85. But where literal meaning would lead to injustice, repugnancy or absurdity, room for construction. 21 H. 6, 8; 23 H. 220, 222; 23 H. 541, 544; 40 H. 96; 40 H. 604, 612; 41 H. 89, 103; 50 H. 150, 433 P.2d 220; compare 1 H. 31; 1 H. 254; 17 H. 389, 391.

Effect of rule of strict construction on other rules. Even where strict construction called for, statute should be construed in harmony with its purpose. 44 H. 59, 67, 352 P.2d 335. Rule of strict construction of tax statutes does not have preferred status, being applicable only after consideration of other possible aids to construction. 45 H. 167, 193, 363 P.2d 990. Rule that penal statute cannot be extended beyond its express terms (22 H. 31; 22 H. 618, 625; 35 H. 248, 251; 42 H. 29) does not mean that penal statute must be susceptible of only one construction. 23 H. 133, 136; 40 H. 257, 260; 44 H. 665, 680, 361 P.2d 1044; 49 H. 624, 634, 425 P.2d 1014.

On legislative silence after judicial construction. 50 H. 603, 446 P.2d 171.

Rules of construction in tax cases. 50 H. 603, 446 P.2d 171.

Title may be resorted to for meaning of act. 51 H. 1, 449 P.2d 130.

Applied in construing public accountancy statute. 51 H. 80, 452 P.2d 94.

Court will not usurp legislative power and enter into legislative field. 51 H. 87, 93, 451 P.2d 809, 813; 51 H. 540, 465 P.2d 580.

Interpretation of law adopted from foreign jurisdiction with changes in words. 51 H. 540, 465 P.2d 580.

Where statute is plain and unambiguous, there is no occasion for construction. 52 H. 577, 482 P.2d 151. 54 H. 563, 512 P.2d 1.

Even in absence of ambiguity, departure from literal construction is justified when such construction produces absurd and unjust result and is clearly inconsistent with purposes of act. 53 H. 208, 490 P.2d 899.

Generally, statute should be so construed that no sentence, clause, or word is rendered superfluous. 54 H. 356, 507 P.2d 169.

No room for construction where there is no ambiguity in language of statute and literal application produces no absurd result. 55 H. 610, 525 P.2d 586.

Rules of construction in tax cases. 56 H. 321, 536 P.2d 91.

Court is bound by plain, clear, unambiguous language of act. 56 H. 404, 537 P.2d 1190.

Where language is plain and unambiguous, court is bound to give effect to the law according to its plain and obvious meaning. 61 H. 572, 608 P.2d 383.

Court is bound to plain language of statutes. 61 H. 596, 607 P.2d 415.

Where there is no ambiguity, there is no room for construction. 62 H. 159, 612 P.2d 1168.

Rule of strict construction of tax statutes should be resorted to only after other possible aids to construction have been considered. 63 H. 199, 624 P.2d 1346.

Absurdity.

It is presumed legislature did not intend absurdity. 7 H. 505. Construction rejected as absurd. 9 H. 171, 176; 11 H. 370; 20 H. 114; 41 H. 527, 551-2; 50 H. 150, 433 P.2d 220; see 4 U.S.D.C. Haw. 664, 666.

Even in absence of ambiguity, departure from literal construction is justified when such construction produces absurd and unjust result and is clearly inconsistent with purposes of act. 53 H. 208, 490 P.2d 899.

Usual meaning should be rejected if it results in absurdity. 55 H. 55, 515 P.2d 621.

Departure from literal construction justified if such construction produces absurdity. 57 H. 557, 560 P.2d 490.

Unless it would produce an absurd result, court is bound by plain language. 60 H. 497, 591 P.2d 611.

There is ambiguity if literal interpretation would lead to unreasonable, unjust or absurd consequences. 61 H. 385, 605 P.2d 496.

Literal application of language rejected as leading to unreasonable and absurd consequences. 63 H. 222, 624 P.2d 1353.

Cited: 3 H. 90, 97; 3 H. 223, 229; 11 H. 221, 225; 17 H. 428, 437; 17 H. 539, 544; 19 H. 214, 217; 40 H. 96, 105; 40 H. 257, 260; 41 H. 89, 103.

Context.

Words or phrases in a statute cannot be given a meaning foreign to their context. 44 H. 665, 673-74, 361 P.2d 1044.

Statute should be so construed as to make it consistent in all its parts and so that effect may be given to every section, clause or part of it. 17 H. 142, 145; 22 H. 557, 564. Word "applicant" read as "appellant" after considering context. 15 H. 590.

"Noscitur a sociis". 236 F.2d 622, 626; 9 H. 64, 66; 17 H. 135, 139; 23 H. 387, 393; 43 H. 154, 161; 49 H. 624, 636, 425 P.2d 1014; 55 H. 572, 524 P.2d 890.

"Ejusdem generis". 236 F.2d 622, 626; 260 F.2d 744; 10 H. 278; 23 H. 1; 23 H. 387, 393; 42 H. 184, 187; 44 H. 370, 376, 355 P.2d 25; 44 H. 665, 671, 361 P.2d 1044; 55 H. 531, 523 P.2d 299.

Title or preamble as an aid to construction. 160 F. 842, 845; 15 H. 325, 331; 20 H. 600, 604-5, modified 20 H. 675; 43 H. 103, 112; 43 H. 154, 165; 49 H. 651, 652, 426 P.2d 626.

Language must be read in context of entire statute. 53 H. 208, 490 P.2d 899.

Cited: 5 H. 73, 74; 17 H. 428, 439.

Reason and spirit.

Policy and objects of legislature as guide to construction. 1 H. 31; 1 H. 165 (291); 4 H. 427; 5 H. 73; 8 H. 227, 229; 18 H. 221, 239; 20 H. 669, 672; 23 H. 220, 222; 25 H. 644; 40 H. 96; 40 H. 257, 260; 40 H. 485, 490; 40 H. 523, 538; 41 H. 89, 103; 44 H. 220, 225, 352 P.2d 846; 44 H. 665, 674, 361 P.2d 1044; 46 H. 261, 377 P.2d 703; 49 H. 624, 636, 425 P.2d 1014; 49 H. 651, 656, 426 P.2d 626; 50 H. 150, 433 P.2d 220; 50 H. 212, 437 P.2d 99.

Circumstances at time of enactment may be considered. 23 H. 387, 395.

Statute should be construed in light of problem intended to be dealt with, and not always literally. 52 H. 395, 477 P.2d 780.

Legislative studies by non-legislators do not have probative value of committee reports or debates. 52 H. 577, 482 P.2d 151; 54 H. 578, 513 P.2d 156.

In case of incompleteness or ambiguity of expression the reason and spirit of the statute should be considered. 58 H. 53, 564 P.2d 436.

Cited: 3 H. 223, 229; 5 H. 73, 74; 17 H. 428, 437; 20 H. 114, 119; 34 H. 150, 158; 4 U.S.D.C. Haw. 664, 666.

" **§1-16 Laws in pari materia.** Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another. [CC 1859, §11; RL 1925, §11; RL 1935, §12; RL 1945, §11; RL 1955, §1-21; HRS §1-16]

Attorney General Opinions

Sections 1-29 and 92-7 both address issue of time in relation to actions required by law, must be read in pari materia. Att. Gen. Op. 92-6.

Cited in construing "child". Att. Gen. Op. 93-1.

Case Notes

Consideration of other laws in arriving at meaning. 236 F.2d 622, 625; 235 F. Supp. 990, 998; aff'd 352 F.2d 735; 1 H. 31; 1 H. 457, 259 (464); 8 H. 715, 720; 15 H. 325, 332; 22 H. 589, 591; 25 H. 397, 403; 26 H. 469, 475; 35 H. 21, 23; 45 H. 1, 13, 361 P.2d 374; 47 H. 87, 110, 384 P.2d 536; 47 H. 361, 388, 389 P.2d 439.

County nonliability statute and Contribution among Tortfeasors Act in pari materia. 283 F. Supp. 854.

Statute should be construed with reference to system of laws of which it is a part; exemption of bequest "otherwise taxed" does not refer to federal tax. 14 H. 38.

Consideration of subsequent act in pari materia. 37 H. 252, 258; 43 H. 84, 85.

Meaning of words or phrases used in two or more sections of a statute presumed the same. 46 H. 164, 172, 377 P.2d 932; 49 H. 624, 635-6, 425 P.2d 1014.

Sections of chapter 101, eminent domain, in pari materia. 50 H. 237, 437 P.2d 321.

Sections 651-44, 651-49 and 634-64, relating to attachment, are in pari materia. 51 H. 164, 454 P.2d 116.

Excise tax law and income tax law should be construed in relation to each other. 56 H. 644, 547 P.2d 1343.

Principle applied to welfare fraud and general theft statutes. 61 H. 79, 595 P.2d 291.

Cited: 3 H. 90, 98; 3 H. 223, 229; 5 H. 73, 74; 20 H. 114, 119; 34 H. 935, 938; 73 H. 81, 829 P.2d 1325.

" **§1-17 Number and gender.** Words in the masculine gender signify both the masculine and feminine gender, those in the singular or plural number signify both the singular and plural number, and words importing adults include youths or children. [PC 1869, c 1, §5; RL 1925, §14; RL 1935, §15; RL 1945, §14; am L 1945, c 233, §1; RL 1955, §1-22; HRS §1-17]

Case Notes

Singular read as plural where more than one office to be filled. 22 H. 520, 523.

"Sureties" read as "surety". 33 H. 265, 266.

" **§1-18 "Or", "and"**. Each of the terms "or" and "and", has the meaning of the other or of both. [PC 1869, c 1, §4; RL 1925, §15; RL 1935, §16; RL 1945, §15; am L 1945, c 233, §2; RL 1955, §1-23; HRS §1-18]

Case Notes

Applied: 230 F. Supp. 455; 17 H. 135, 141; 34 H. 935, 941.

"And" deemed conjunctive, not alternative. 33 H. 98, 101.

"Or" deemed alternative, not conjunctive, penal statute. 44 H. 601, 604, 359 P.2d 289.

Applied in substituting "and" for "or" in public accountancy statute. 51 H. 80, 452 P.2d 94.

"Or" deemed "and". 54 H. 356, 507 P.2d 169.

Use of word "and" is not necessarily decisive. 56 H. 675, 548 P.2d 268.

Cited: 52 F.2d 411, 414; 5 H. 52, 53; 19 H. 393, 397.

" **§1-19 "Person", "others", "any", etc.** The word "person", or words importing persons, for instance, "another", "others", "any", "anyone", "anybody", and the like, signify not only individuals, but corporations, firms, associations, societies, communities, assemblies, inhabitants of a district, or neighborhood, or persons known or unknown, and the public generally, where it appears, from the subject matter, the sense and connection in which such words are used, that such construction is intended. [CC 1859, §17; RL 1925, §16; RL 1935, §17; am L 1939, c 150, §1; RL 1945, §16; am L 1945, c 233, §3; am L 1955, c 57, §1(e); RL 1955, §1-24; HRS §1-19]

Case Notes

Though "person" includes corporation, term "corporation" held not to include an individual. 22 H. 660, 662.

Applicability of various statutes to counties discussed, counties as "corporations". 17 H. 9, 14. Municipal corporation subject to garnishment as a "person". 23 H. 564, 568.

" **§1-20 "Month", "year"**. The word "month" means a calendar month; and the word "year", a calendar year. [CC 1859, §18; RL

1925, §17; RL 1935, §18; RL 1945, §17; RL 1955, §1-25; HRS §1-20]

Case Notes

Cited: 10 H. 249, 250; 38 H. 443, 444.

" **§1-21 "Oath"**. The word "oath" includes a solemn affirmation. [CC 1859, §19; RL 1925, §18; RL 1935, §19; RL 1945, §18; RL 1955, §1-26; HRS §1-21; am L 1973, c 31, §1]

Cross References

Constitutional provisions, see Const. art. I, §7 and art. XVI, §4.

Right to affirm instead of swear on grounds of religious belief, see §621-12.

Rules of Court

See HRCF rule 43(d); HRPP rule 6(h); DCRCF rule 43(d).

Case Notes

Judicial oath in common use is legal oath. 8 H. 259.

" **§1-22 "County"**. The word "county" includes the city and county of Honolulu. [L 1935, c 121, §1; RL 1945, §19; RL 1955, §1-27; HRS §1-22]

" **§1-23 Severability**. If any provision of the Hawaii Revised Statutes, or the application thereof to any person or circumstances, is held invalid, the remainder of the Hawaii Revised Statutes, or the application of the provision to other persons or circumstances, shall not be affected thereby. [L 1955, c 57, §1(f); RL 1955, §1-29; HRS §1-23]

Case Notes

Part may be invalid and rest valid. 7 H. 76, 78; 9 H. 171, 174; 12 H. 120, 122; 13 H. 590, 593; 15 H. 607, 609; 19 H. 535, 542; 19 H. 628, 629; 21 H. 39, 42; 28 H. 222, 227; 31 H. 196, 202; 31 H. 678, 697; 36 H. 32, 41; 38 H. 310, 328; 40 H. 604,

609. But if an essential part is invalid the whole is. 15 H. 365, 370.

If an exception is invalid whole may fall. 11 H. 112, 121; 13 H. 590, 595; 15 H. 361.

Statute may be invalid as to some and not as to other objects within its terms. 13 H. 590, 594; 121 F. 772. But see 31 H. 196, 202; 31 H. 678, 697.

Where one part invalid remainder cannot stand if elimination of invalid part would alter meaning of the remainder. 15 H. 361.

See also note to §5, Hawaiian Organic Act.

" **§1-24 Interpretation of uniform acts.** All provisions of uniform acts adopted by the State shall be so interpreted and construed as to effectuate their general purpose to make uniform the laws of the states and territories which enact them. [L 1955, c 57, §1(f); RL 1955, §1-30; HRS §1-24]

" **§1-25 References apply to amendments.** Whenever reference is made to any portion of the Hawaii Revised Statutes or of any other law of the State, the reference applies to all amendments thereto. [L 1955, c 57, §1(f); RL 1955, §1-28; HRS §1-25]

" **§1-26 References inclusive.** Whenever reference is made to a series of sections in the Hawaii Revised Statutes by citing only the numbers of the first and last sections connected by the word "to", the reference includes both the first and last sections. [L 1955, c 57, §1(f); RL 1955, §1-31; HRS §1-26]

" **§1-27 Citations of laws included in supplements and replacement volumes.** Any act of the legislature may be cited in any subsequent legislative act or in any other proceeding by reference to the chapter or section numbers as set forth in the supplements and replacement volumes published pursuant to sections 23G-14 to 23G-16. [L 1955, c 76, §2; RL 1955, §1-5.5; am L 1963, c 193, §2; HRS §1-27; am L 1979, c 105, §1]

" **§1-28 Service of notice by mail.** Wherever a state statute provides for the giving of notice or service of legal process by registered mail the sending of such notice or service of such legal process may be made by means of certified mail, return

receipt requested and deliver to addressee only. [L 1961, c 48, §1; Supp, §1-36; HRS §1-28]

Rules of Court

Service outside State in accordance with statute or court order, see HRCP rule 4(e), (f).

Case Notes

Referred to: 50 H. 484, 443 P.2d 155.

" **§1-28.5 Publication of notice.** (a) Notwithstanding any other statute, law, charter provision, ordinance, or rule to the contrary, whenever a government agency is required to give public notice or to publish notice, the notice shall be given only as follows:

(1) For statewide publication:

(A) In a daily or weekly publication of statewide circulation; or

(B) By publication in separate daily or weekly publications whose combined circulation is statewide; and

(2) For county-wide publication, by publication in a daily or weekly publication in the affected county.

Additional supplemental notice may also be given through Hawaii FYI, the State's interactive computer system.

(b) For purposes of this section, the comptroller pursuant to chapter 103D shall determine a publication for all government agencies to enable the public to go to one source of publication for published public notice on each island.

(c) Whenever a public notice is published in a newspaper or other publication described in subsection (a), proof of the publication shall be the affidavit of the printer, publisher, principal clerk, or business manager of the newspaper or other publication or of the designated agent of the group that published the notice.

(d) This section shall not apply to notices required by chapters 103D, 103F, 127A, and 523A.

(e) For purposes of this section, "government agency" means each department, board, commission, or officer of the State or any of its political subdivisions. [L 1998, c 2, §2; am L 1999, c 160, §22; am L 2003, c 74, §1; am L 2014, c 111, §3]

" **§1-29 Computation of time.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded. When so provided by the rules of court, the last day also shall be excluded if it is a Saturday. [L 1923, c 3, §1; RL 1925, §19; RL 1935, §20; RL 1945, §20; RL 1955, §1-40; HRS §1-29; am L 1973, c 31, §2]

Cross References

Holidays, see §§8-1 to 8-3.
"Month", "year" defined, see §1-20.
"Successive" weeks, see §601-13.

Rules of Court

Computation of time, see DCRCP rule 6; HCTR rule 21; HFCR rule 6; HPR rule 10; HRAP rule 26(a); HRCF rule 6(a); HRPP rule 45(a).

Attorney General Opinions

Section refers to calculation of time in terms of days rather than hours. Att. Gen. Op. 92-6.

Case Notes

Where act to be done a specified period before a certain event, how computed. 8 H. 602; 8 H. 735, 738 (single justice); 19 H. 225 (prior to statutory exclusion of Sunday).

Statute applied: 10 H. 249; 18 H. 7; 24 H. 250 (district court proceeding at time when statute applicable only to circuit court proceedings); 38 H. 443. Not applicable where time was fixed by the judge. 28 H. 455 (Prior to adoption of present rules of court).

Publication "for not less than ten days" before letting contract not satisfied by one publication more than ten days prior. 30 H. 94.

" **§1-30 Hawaiian standard time applicable.** In all statutes, ordinances, rules, regulations, and orders relating to the time of performance of any act by any state or county officer or agency, whether in the legislative, executive, or judicial branches of the government, or relating to the time within which any rights shall accrue or determine, or within which any act shall or shall not, may or may not, be performed by any person

subject to the jurisdiction of the State, that time shall be Hawaiian standard time. [L 1947, c 161, §2; RL 1955, §1-41; HRS §1-30]

" **§1-31 Hawaiian standard time; definition; observance.** Hawaiian standard time is ten hours slower than Greenwich time, based on the mean solar time of the one hundred and fiftieth degree of longitude west from Greenwich and shall be the time which the entire State, including all of its political subdivisions, shall observe annually, notwithstanding the daylight time conversion provisions of the Uniform Time Act of 1966, Public Law 89-387, 80 Statutes at Large 107. [L 1947, c 161, §1; RL 1955, §1-42; am L 1967, c 4, §2; HRS §1-31]

" **§1-32 Acts to be done on holidays.** Whenever any act of a secular nature other than a work of necessity or mercy is appointed by law or contract to be performed upon a particular day, which day falls upon a Sunday or holiday, the act may be performed upon the next business day with the same effect as if it had been performed upon the appointed day. When so provided by the rules of court, the act also may be performed upon the next business day with the same effect as if it had been performed upon the appointed day if the appointed day falls on a Saturday. [L 1923, c 3, §2; RL 1925, §20; RL 1935, §23; RL 1945, §22; RL 1955, §1-44; HRS §1-32; am L 1973, c 31, §3]