

**"CHAPTER 634
CIVIL ACTIONS AND PROCEEDINGS, GENERALLY**

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Note

Chapter heading amended by L 1972, c 89, §2A(s).

Act 89, L 1972, as amended by Act 109, L 1973, completely revised this chapter, repealing a number of sections in the process. The remaining sections are renumbered as set forth herein. The following table shows the current disposition of the chapter.

Working group to define duties and responsibilities of process servers under the department of public safety's jurisdiction; create a process of registration, etc. (repealed June 30, 2020). L 2013, c 116, §§20 to 23, 25; L 2015, c 101, §4.

Disposition Table

HRS (1968)	Herein	HRS (1968)	Herein
634-1 to 20	R	634-57	R
634-26, 27	R	634-58 to 60	634-22 to 24
634-31	634-1	634-60.5	634-25
634-32	R	634-61	634-27
634-33	634-2	634-62	634-28
634-34	634-3	634-63	634-26
634-41, 42	R	634-64	634-29
634-43	634-11	634-65	R
634-44	R	634-66 to 72	634-30 to 36
634-45	634-12	634-76	634-51
634-46	R	634-81	R
634-47	634-13	634-82	634-61
634-48	R	634-83 to 86	R
634-51	R	634-91 to 98	R
634-56	634-21		

"PART I. PARTIES, GENERAL PROVISIONS

[§634-1] Assignee; nonnegotiable chose. The assignee of any nonnegotiable chose in action, assigned in writing, may maintain thereon in the assignee's own name any action which, but for the assignment, might be maintained by the assignor; subject, however, to all equities and setoffs existing in favor of the party liable against the assignor and which existed at the time of the assignment or at any time thereafter until notice thereof was given to the party liable, except as otherwise provided. [L 1898, c 7, §1; RL 1925, §2361; RL 1935,

§4045; RL 1945, §10037; RL 1955, §230-7; HRS §634-31; am L 1972, c 89, §2A(a); ren HRS §634-1; gen ch 1985]

Rules of Court

Real party in interest, see HRCP rule 17(a); DCRCP rule 17(a).
Setoff, see HRCP rule 13; DCRCP rule 13.

Case Notes

Cases prior to adoption of the Hawaii Rules of Civil Procedure.

Requiring joinder as coplaintiff on breach of contract. 5 H. 430 (1885).

Set off against assignee. 11 H. 764 (1899).

Assignee of judgment may sue in own name. 20 H. 138 (1910),
aff'd 226 U.S. 462 (1913).

Endorsee for collection may sue in own name. 29 H. 434
(1926).

May sue in assignor's or assignee's name, under common law
rule. 30 H. 959 (1929).

Principal and agent. 31 H. 12 (1929).

Legality of assignment. 34 H. 754 (1947).

Cited: 20 H. 146, 149 (1910); 27 H. 642, 645 (1923); 36 H.
676, 680 (1944).

" **[§634-2] Joint contractual obligations.** In an action on a contract on which two or more persons are jointly, jointly and severally, or severally liable, the court in which the action is pending has jurisdiction to proceed against such of the obligors as can be served as if they were the only obligors. [CC 1859, §1105; RL 1925, §2363; RL 1935, §4047; RL 1945, §10039; RL 1955, §230-9; HRS §634-33; am L 1972, c 89, §2A(b); ren HRS §634-2]

Rules of Court

See HRCP rules 19, 20; DCRCP rule 20. Service, see HRCP rule 4; DCRCP rule 4.

Case Notes

Action cannot be maintained against one only of several joint contractors. 1 H. 71 (1852).

Waiver will cure misjoinder, failure to take advantages of defense. 2 H. 184 (1859).

In ejectment several defendants claiming separate interests in land are proper parties defendant. 5 H. 434 (1885); 18 H. 494 (1907).

Joint contractors should be joined in suit. 7 H. 563 (1889).
Judgment is joint though the obligation may be joint and several. 9 H. 306 (1893), criticized, 20 H. 138, 141 (1910).
Assignor of lease need not be a party to a bill in specific performance of covenant to renew. 9 H. 597 (1895).
Failure to join necessary parties may subject pleading to demurrer or motion. 10 H. 340 (1896).
Nonjoinder of one of the joint makers of a note cured by the verdict. 10 H. 540 (1896).
Suit against joint makers of promissory note must be either joint or several. 10 H. 540 (1896).
Service on all defendants unnecessary when all are joined as parties. 12 H. 344 (1900).
All parties to a joint and several contract must be joined, and in actions on judgment, all judgment debtors must be joined or excuse shown for not doing so. 13 H. 339, 361 (1901).
Principal debtor need not be joined with grantors as defendants. 13 H. 690 (1901).
Does not apply to joint trustees in a statutory action at law to quiet title. 15 H. 401 (1904).
Persons named as joint debtors in a contract not signed by them cannot be joined in an action on the contract. 16 H. 332 (1904).
County need not be joined in a tax action though it receives half the taxes. 17 H. 146 (1905).
Parties need not be joined in action by one surety against co-sureties for contribution. 22 H. 540, 546 (1915).
In tort action the liability of a co-defendant is several as well as joint and several. 24 H. 579 (1918), modified on other grounds, 24 H. 597 (1919).
Service of assignment of errors on one of several joint defendants is constructive service on the rest. 24 H. 774, 776 (1919).
In tort may join defendants when they concur in negligent action. 25 H. 508 (1920).
Wife in action on promissory note against a partnership of which husband is a member need not join husband. 27 H. 369 (1923).
No joinder of plaintiffs in a contract by one party with 103 others each of whom has a separate contract. 29 H. 122 (1926).
Partnership pleading. 33 H. 567 (1935).
May not join defendants in the alternative. 40 H. 86 (1953).
Referred to: 3 H. 695, 696 (1876).

" **[§634-3] Actions against persons by firm name.** Whenever two or more persons, associated in any business, transact such business under a firm name, whether it comprises the names of

such persons or not, the associates may be sued by such firm name, the summons in such case being served on one or more of the associates or as otherwise provided by rule of court; and any judgment recovered against the firm, as such, may be enforced against the firm property, and against the individual property of any of the associates who have been served with process or who have appeared in the action. [L 1915, c 210, §1; RL 1925, §2364; RL 1935, §4048; RL 1945, §10040; RL 1955, §230-10; HRS §634-34; am L 1972, c 89, §2A(c); ren HRS §634-3]

Cross References

Organizations and associations, see §634-30.

Rules of Court

See HRCP rule 23.2.

Service, see HRCP rule 4.

Case Notes

Cited: 33 H. 180, 191 (1934).

"PART II. INTERPLEADER

§634-11 Interpleader; application for order by sheriff, deputy sheriff, police officer, or independent civil process server. [*Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.*] When, in the execution of process against goods and chattels issued by or under the authority of the courts of the State, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process had issued, whereby the sheriff, deputy sheriffs, police officers, or independent civil process servers from the department of public safety's list under section 353C-10 are exposed to the hazard and expense of actions, any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof, it shall be lawful for the court, out of which the execution shall have issued, or any judge thereof, upon application of the sheriff, deputy sheriff, police officer, or independent civil process server made before or after the return of such process, and as well before as after any action brought against the sheriff, deputy sheriff, police officer, or independent civil process server to call before it or the judge by rule, order, or summons, as well the party issuing such process as the party making the claim.

Thereupon the court or judge shall, for the adjustment of the claims and the relief and protection of the sheriff, deputy sheriff, police officer, or independent civil process server, make such rules, orders, and decisions as shall appear to be just according to the circumstances of the case. The costs of all such proceedings shall be in the discretion of the court or judge. [L 1876, c 33, §5; RL 1925, §2872; RL 1935, §4061; RL 1945, §10043; RL 1955, §230-13; am L 1963, c 85, §3; HRS §634-43; ren HRS §634-11; am L 1980, c 232, §32; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2012, c 142, §6; am L 2013, c 116, §§8, 25(7)]

Case Notes

Did not apply to district courts under prior law. 6 H. 254 (1879).

" **§634-12 Sale of property seized on execution, when.**

[Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]
When goods or chattels have been seized in execution by the sheriff, deputy sheriff, a police officer, or an independent civil process server from the department of public safety's list under section 353C-10 under process of any court, and some third person claims to be entitled under a bill of sale, chattel mortgage, or otherwise, to the goods and chattels by way of security for a debt, the court or a judge may order a sale of the whole or part thereof, upon such terms as to the payment of the whole or part of the secured debt or otherwise as it or the judge shall think fit; and may direct the application of the proceeds of sale in such manner and upon such terms as to the court or judge may seem just. [L 1876, c 33, §7; RL 1925, §2874; RL 1935, §4063; RL 1945, §10045; RL 1955, §230-15; am L 1963, c 85, §3; HRS §634-45; ren HRS §634-12; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2012, c 142, §7; am L 2013, c 116, §§9, 25(8)]

Case Notes

Did not apply to district courts under prior law. 6 H. 254 (1879).

Claimant of goods seized by sheriff on execution not authorized to apply for order of interpleader. 13 H. 88 (1900).

" **[§634-13] Questions of law; submission to supreme court.**

In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute, the judge shall be at liberty at the judge's discretion to decide the question

without directing an action or issue, and (if the judge shall think it desirable) to order that a special case be stated for the opinion of the supreme court, and the proceedings upon such case shall (as nearly as may be) be the same as upon a submission to the court according to law. [L 1876, c 33, §9; RL 1925, §2876; RL 1935, §4065; RL 1945, §10047; RL 1955, §230-17; HRS §634-47; ren HRS §634-13; gen ch 1985]

Rules of Court

Interpleader, see HRCPC rule 22.

Case Notes

Did not apply to district courts under prior law. 6 H. 254 (1879).

"PART III. SERVICE

Note

Working group to define duties and responsibilities of process servers under the department of public safety's jurisdiction; create a process of registration, etc. (repealed June 30, 2020). L 2013, c 116, §§20 to 23, 25; L 2015, c 101, §4.

Rules of Court

See Hawaii Electronic Filing and Service Rules.

§634-21 Service of process, by whom. Except as otherwise provided, service of all process and orders shall be made by the sheriff or the sheriff's deputy, the chief of police of the county in which the service is made or the chief's duly authorized subordinate, some other person specially appointed by the court for the purpose, any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), or a person authorized by the rules of court. [CC 1859, §1102; am L 1898, c 5, §1; am L 1911, c 60, §1; RL 1925, §2341; am L 1929, c 13, §1; RL 1935, §4076; RL 1945, §10058; RL 1955, §230-28; am L 1963, c 85, §3; HRS §634-56; am L 1972, c 89, §2A(d); ren HRS §634-21; gen ch 1985; am L 1989, c 123, §2 and c 211, §10; am L 1990, c 281, §11; am L 1993, c 173, §2; am L 1994, c 9, §1]

Rules of Court

See HRCP rule 4; DCRCP rule 4; RCC rules 2(d), 5, 28, 31(a)(3); HFCR rules 4, 5; HPR rule 7.

Case Notes

Cases prior to adoption of the Hawaii Rules of Civil Procedure.

Service on agent doing business in Hawaii good. 2 H. 453 (1861).

Service on manager at corporation office, president being out of country, good. 6 H. 259 (1879).

Formal requisites of documents for service; no need to attach to declaration copy of custom house orders. 7 H. 314 (1888).

Sheriffs not plaintiff serve process. 14 H. 448 (1902).

A copy of summons lacking court seal or clerk's signature is fatally defective and cannot be cured by amendment. 14 H. 627 (1903).

Service on agent. 15 H. 401 (1904); 15 H. 628 (1904).

Service of process in district court. 15 H. 486 (1904).

Not necessary to attach copy of note where suit is on oral promise to pay note. 17 H. 32 (1905).

Not applicable to writ of error. 18 H. 392 (1907).

A general appearance by attorneys cures defect in service. 18 H. 602 (1908).

Return of service not invalidated by failure to show it was made as required by statute, presumption. 19 H. 494 (1909).

Who may certify copy of summons. 20 H. 352 (1911); 20 H. 548 (1911); 22 H. 723, 725 (1915).

Garnishment of defendant's debtor is sufficient notice to defendant who is not and never has been an inhabitant of Hawaii. 22 H. 321 (1914).

Substituted service, district court. 34 H. 328 (1937).

Cited: 2 U.S.D.C. Haw. 301, 302 (1905).

" **[§634-21.5] Service of process within a condominium, cooperative housing, or planned community.** (a) Each board of directors of an association of apartment owners governed by chapter 514A or 514B, cooperative housing corporation governed by chapter 421I, and planned community association governed by chapter 421J shall establish, if entry to the property is inaccessible to the general public, a policy to provide reasonable access as specified in subsection (b) to the building or community to persons authorized to serve civil process for the purpose of serving any summons, subpoena, notice, or order on a person who is identified by the document being served as residing or present in the condominium, cooperative housing project, or planned community.

(b) The policy established pursuant to subsection (a) shall:

- (1) Subject to any conditions as may be specified in accordance with paragraph (4), allow a person authorized to serve civil process to access common areas adjacent to a principal entry to the residence specified in accordance with paragraph (2) for the sole purpose of attempting to effect service of process;
- (2) Require that a person authorized to serve civil process present clear personal identification and evidence that the person is authorized to serve process, including documentation clearly indicating the precise name and address, and if applicable, a unit number, of the person residing or present on the property to be served;
- (3) Allow for denial of access to the person authorized to serve civil process if the person is unable to produce clear and credible identification and documentation as required in paragraph (2);
- (4) Set forth conditions of time and manner according to which a person authorized to serve civil process may enter and remain in the building or community, and allow a person designated in accordance with paragraph (5) to compel a person authorized to serve civil process, who has been allowed access to the building or community but who has not acted in accordance with the conditions, to leave the building or community immediately; and
- (5) Designate an individual, by title or position, such as a resident manager, a building manager who is located in or reasonably near the building or community, or another person who is generally available to respond to a request for access during normal business hours in a timely manner, and at least one alternate individual if the primary designee is unavailable, to respond to a request for access by a person authorized to serve civil process.

(c) An association of apartment owners governed by chapter 514A or 514B, a cooperative housing corporation governed by chapter 421I, or a planned community association governed by chapter 421J shall not be liable to:

- (1) Any person if, after access is allowed to the building or community in accordance with this chapter, service of civil process is not actually effected for whatever reason; and

(2) A person upon whom service of process is actually effected in accordance with this chapter.

(d) As of January 1, 2010, each board of directors of an association of apartment owners of a condominium shall identify the designees specified in subsection (b)(5) in its biennial registration. A cooperative housing corporation or planned community association shall make a printed copy of the policy required by this chapter available at all times at the principal point of entry to the building or community.

[(e)] The department of commerce and consumer affairs shall adopt or amend forms and shall adopt rules pursuant to chapter 91 to implement this [section]. [L 2009, c 158, §§5, 6, 8; am L 2011, c 65, §1]

Revision Note

L 2009, c 158, §6 was codified to this section pursuant to §23G-15.

" **§634-22 Return.** [*Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.*] In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff, deputy sheriff, an independent civil process server from the department of public safety's list under section 353C-10, or any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the sheriff, deputy sheriff, police officer, independent civil process server, or investigator making the service. If the sheriff, deputy sheriff, police officer, independent civil process server, or investigator fails to make service, the sheriff, deputy sheriff, police officer, independent civil process server, or investigator in like manner, shall endorse the reason for the sheriff, deputy sheriff, police officer, independent civil process server, or investigator's failure and sign this record. When service is made by a person specially appointed by the court, or an independent civil process server, that person shall make declaration or affidavit of that service.

The record, declaration, or affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the sheriff, deputy sheriff, police officer, independent civil process server, or investigator making service, in which case the sheriff, deputy sheriff, police officer, independent civil

process server, or investigator shall be notified to appear for examination. [L 1888, c 57; RL 1925, §2342; RL 1935, §4078; RL 1945, §10060; RL 1955, §230-30; am L 1963, c 85, §3; HRS §634-58; am L 1972, c 89, §2A(e); ren HRS §634-22; gen ch 1985; am L 1989, c 123, §3 and c 211, §10; am L 1990, c 281, §11; am L 1993, c 173, §3; am L 1994, c 9, §2; am L 2012, c 142, §8; am L 2013, c 116, §§10, 25(9)]

Rules of Court

As to circuit courts, see HRCP rule 4(g), (h); as to district courts, see DCRCP rule 4(g), (h); as to family courts, see HFRCR rule 4.

Probate proceedings, see HPR rule 8.

Case Notes

Officers who may serve. 15 H. 486 (1904).

Record sufficient evidence. 16 H. 427 (1905).

Return not invalidated by failure to show that it was made as required by statute. Presumption of validity in absence of contrary showing. 19 H. 494 (1909).

Conflicting interests of serving officers. 40 H. 279 (1953).

Return is prima facie evidence of all it contains. 48 H. 306, 402 P.2d 440 (1965).

" **§634-23 Joinder of unknown persons; service when defendant unknown or absent.** Where an action or proceeding involves or concerns any property, tangible or intangible, within the jurisdiction of a circuit court, or any legal or equitable estate, right or interest, vested or contingent, in any such property, or any status or res within the jurisdiction of a circuit court:

- (1) Any person having a claim, interest, or concern so as to be a necessary or proper party, who cannot be identified or whose name is unknown to the plaintiff, may be made party to the action or proceeding as provided by the rules of court;
- (2) If a defendant is unknown or does not reside within the State or if, after due diligence, the defendant cannot be served with process within the State, and the facts shall appear by affidavit to the satisfaction of the court, it may order that service be made as provided by section 634-24 or by publication, as may be appropriate; provided that service by publication shall not be valid unless it is shown to the satisfaction of the court that service

cannot be made as provided by section 634-24. The affidavit required by this paragraph shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect personal service on the defendant and any other pertinent facts;

- (3) Service by publication shall be made in at least one newspaper published in the State and having a general circulation in the circuit in which the action or proceeding has been instituted, in a manner and for a time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. If the action or proceeding concerns real property, the court shall order additional notice by posting a copy of the summons upon the property;
- (4) Any adjudication, as regards a defendant served by publication pursuant to this section, or served as provided by section 634-24, shall affect only the property, status or res that is the subject of the action, unless the:
 - (A) Defendant appears in the action and defends on the merits, in which case the defendant shall be liable to a personal judgment with respect to the claim so defended, including in the case of a foreclosure action a deficiency judgment; or
 - (B) Service is authorized by section 634-25 or other law, in which case the defendant shall be liable to any judgment authorized by that law; and
- (5) Nothing in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law or rule of court. [CC 1859, §1103; am L 1909, c 34, §1; RL 1925, §2343; am L 1929, c 43, §1; am L 1931, c 50, §1; RL 1935, §4079; RL 1945, §10061; RL 1955, §230-31; HRS §634-59; am L 1972, c 89, §2A(f); ren HRS §634-23; am L 1976, c 183, §1; gen ch 1985; am L 2016, c 55, §26]

Cross References

Publication how made, see §601-13.

Rules of Court

Proof of publication, see RCC rule 11.

Publication of summons, see HRCF rule 4.

Case Notes

Not applicable when nonresident defendant has agent here. 2 H. 453 (1861).

Service under creditor's bill to reach property of judgment debtor need not be personal. 10 H. 668 (1897).

Must affirmatively appear that defendant cannot be found and hence personal service cannot be made. 35 H. 689, 711 (1940).

Service by publication, and by posting summons on property was reasonably calculated to inform defendant of quiet title action and consistent with due process. 2 H. App. 395, 633 P.2d 553 (1981).

No evidence that plaintiff exercised due diligence to locate defendants to effect personal service on them. Claimant in adverse possession action must strictly comply with notice requirements. 6 H. App. 241, 718 P.2d 1109 (1986).

" **§634-24 Service outside the State or by registered mail.**

[(a)] In any case in which, under section 634-23, provision is made for service of summons as provided by this section, personal service shall be made upon the defendant wherever found or the defendant shall be served by registered or certified mail with request for a return receipt and marked deliver to addressee only, as ordered by the court. A certified copy of the order, the summons and the complaint shall be served, and the service shall be evidenced by an affidavit showing that the required papers were sent by registered or certified mail as aforesaid, and by the receipt signed by the defendant and filed with the affidavit, or in the case of personal service by the return of the serving officer or the affidavit of any other person authorized to serve process in the place where the defendant is found or appointed by the court to make the service.

[(b)] The affidavit required by this section shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to satisfy the requirements of this section and any other pertinent facts. [CC 1859, §1104; am L 1903, c 5, §1; RL 1925, §2344; am L 1929, c 43, §2; RL 1935, §4080; RL 1945, §10062; RL 1955, §230-32; HRS §634-60; am L 1972, c 89, §2A(g); ren HRS §634-24; am L 1976, c 183, §2; gen ch 1985]

Case Notes

See 10 H. 668, 673 (1897); 35 H. 689, 710 (1940); 46 H. 1, 373 P.2d 710 (1962); 50 H. 484, 443 P.2d 155 (1968).

" **§634-25 Personal service on resident outside the State.**

[(a)] Whenever a defendant, being a resident of the State, cannot be served within the State[,] personal service may be made upon the defendant outside the State by any person authorized to serve process in the place in which the defendant may be found or specially appointed by the court to make the service[,] which service shall be evidenced by the return of the serving officer or by affidavit and shall be of the same legal force and validity as if made within the State.

[(b)] The affidavit required by this section shall set forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to satisfy the requirements of this section and any other pertinent facts. [L 1972, c 89, §2A(h); HRS §634-60.5; ren HRS §634-25; am L 1976, c 183, §3; gen ch 1985]

" **[§634-26] Form of published notice.** The published notice provided for by section 634-23 shall be in the form of a summons, without a caption but referring to the complaint or petition, stating briefly the object of the action or proceeding[,] with a brief description of the property involved, and calling upon the persons to whom it is addressed to plead on or before a return day stated in the notice. [L 1917, c 67, §3; RL 1925, §2347; am L 1929, c 43, §4; RL 1935, §4083; RL 1945, §10065; RL 1955, §230-36; HRS §634-63; am L 1972, c 89, §2A(i); ren HRS §634-26]

Rules of Court

Publication of summons, see HRCP rule 4.

" **[§634-27] Substituted service of summons in attachment cases.** In all cases where a writ of attachment is issued out of any court in accordance with chapter 651, relating to attachments, if it appears by affidavit or otherwise to the satisfaction of the judge that the defendant in attachment was never a resident of the State, or has removed therefrom, or that the defendant secretes oneself so that process cannot be personally served upon the defendant, the judge may order that service be made by publication as provided in section 634-23, or in the manner provided in section 634-24, and with like effect. Upon the trial of the cause the defendant thus summoned, if the defendant does not appear, may be declared to be in default, and the court may proceed to hearing and judgment, and may issue

execution against the property upon which attachment has been levied. [L 1917, c 67, §1; RL 1925, §2345; am L 1929, c 43, §3; RL 1935, §4081; RL 1945, §10063; RL 1955, §230-34; HRS §634-61; ren HRS §634-27; gen ch 1985]

Rules of Court

See HRCF rules 4(e), (f), 64, 69.

" **§634-28 Form of judgment.** The judgment rendered in such a cause shall be in form a personal judgment against the defendant or defendants, but shall not be valid, except for the purpose of the issuance of the levy of execution and of sale upon the property so attached. [L 1917, c 67, §2; RL 1925, §2346; RL 1935, §4082; RL 1945, §10064; RL 1955, §230-35; HRS §634-62; ren HRS §634-28]

Rules of Court

See HRCF rules 64, 69.

" **§634-29 In case of attachment, etc., of real property.** *[Repeal and reenactment on June 30, 2020. L 2015, c 101, §4.]* In all cases of attachment, sequestration, or injunction of real property, the sheriff, deputy sheriff, police officer, or independent civil process server from the department of public safety's list under section 353C-10 serving the writ shall, in addition to personal delivery of a copy thereof to the defendant, post upon the premises a copy of the process, and a notice of the day and hour when attached, sequestered, or enjoined, and shall also give notice thereof in a newspaper or newspapers suitable for the advertisement of judicial proceedings. But in all cases where a writ of attachment is issued in accordance with chapter 651 relating to attachments, and the defendant in attachment was never a resident of the State or has departed from the State or secretes oneself so that the writ of attachment cannot be personally served upon the defendant, personal service of the writ upon the defendant may be dispensed with. All after-leases, mortgages, sales, devises, assignments, trusts, or other conveyances of the property, until the dissolution of the process, shall be void in law as against the plaintiff in such cases. [CC 1859, §1124; am L 1903, c 5, §1; am imp L 1917, c 67, §1; RL 1925, §2348; RL 1935, §4084; RL 1945, §10066; RL 1955, §230-37; HRS §634-64; ren HRS §634-29; gen ch 1985; am L 2013, c 116, §§11, 25(10)]

Rules of Court

See HRCF rules 4(e), (f), 64, 65; DCRCF rule 64.
Proof of publication, see RCC rule 11.

Case Notes

Execution must be postponed to the lien of a prior attachment.
6 H. 564 (1885).

Compliance with statute while essential to completion of a title under the lien established by the levy of attachment constitutes no part of the levy itself. 26 H. 342 (1922).

Section is in pari materia with §§651-44 and 651-49 and a mortgage made subsequent to attachment is void as against attaching creditor. 51 H. 164, 454 P.2d 116 (1969).

Valid attachment is dissolved only if defendant puts up bond or recovers judgment, or action is discontinued or dismissed. 51 H. 164, 454 P.2d 116 (1969).

" **§634-30 Organizations and associations, service of process on; judgment.** When two or more persons associate and act, whether for profit or not, under a common name, including associating and acting as a labor organization or employer organization, whether the common name comprises the names of the persons or not, they may sue in or be sued by the common name, and the process shall be served on any officer, trustee, or agent of the association if an officer, trustee, or agent can be found, or if no officer, trustee, or agent can be found as shown by the return of the serving officer, then upon any one or more members of the association, or as otherwise provided by rule of court. Any such service constitutes service upon the association. The judgment in those cases shall accrue to the joint or common benefit of and bind the joint or common property of the association, the same as though all members had been named as parties to the action. No judgment shall be enforceable against any person or the person's individual assets unless the:

- (1) Person has been joined and served as an individual party to the action; or
- (2) Judgment is so enforceable pursuant to section 634-3 or any other law. [L Sp 1949, c 4, §1; RL 1955, §230-39; HRS §634-66; am L 1972, c 89, §2A(j); ren HRS §634-30; am L 2016, c 55, §27]

Rules of Court

Actions relating to unincorporated associations, see HRCF rule 23.2.

Execution, see HRCP rule 69.

Service, see HRCP rule 4.

Case Notes

Mentioned with respect to validity of personal judgment against creditors and stockholders of a corporation. 59 H. 189, 579 P.2d 99 (1978).

" **§634-31 Same; nonresidents; service.** The transaction of any acts, business, or activities within the State by any officer, agent, representative, employee, or member of any such association having officers, agents, members, or property without the State, on behalf of such association, or any of its members or affiliated local associations, shall subject the association and its members to the jurisdiction of the courts of this State in any action or proceeding against or involving the association growing out of the acts, business, or activities within the State giving rise to any cause of action, and the acts, business, or activities shall be a signification of the agreement of the association and its members that any legal process or notice in any action, matter, or proceeding against or involving it, which is served shall be of the same legal force and validity as if served upon the association and its members personally. Service of such process or notice shall be made by registered mail to the association at its last known address and an affidavit of compliance with this section shall be filed with the court or other state agency or department before which the action, matter, or proceeding is pending. The filing shall be deemed service upon the association and its members twenty days after the filing. [L Sp 1949, c 4, §2; RL 1955, §230-40; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; HRS §634-67; am L 1972, c 89, §2A(k); ren HRS §634-31; am L 1983, c 153, §4; am L 1984, c 209, §1]

Cross References

Use of certified mail, see §1-28.

Rules of Court

See HRCP rule 4.

" **§634-32 Other laws not affected.** Nothing contained in sections 634-30 and 634-31 shall be construed to amend or repeal chapter 425 or 432, article 1, or section 634-3. [L Sp 1949, c

4, §3; RL 1955, §230-41; HRS §634-68; ren HRS §634-32; am L 2016, c 55, §28]

" **§634-33 Service in cases of operation of motor vehicles.**

[(a)] The use and operation by any person, whether a resident or a nonresident of the State, of any motor vehicle upon a public highway in this State shall subject the person to the jurisdiction of the courts of this State in any action or proceeding against the person growing out of any accident or collision in which the person and the motor vehicle so used and operated may be involved. The use and operation of the motor vehicle is deemed a signification of the person's agreement that any summons against the person which is served is of the same legal force and validity as if served upon the person personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Service of such summons is to be made as provided by section 634-36, if the defendant cannot be found in the State.

[(b)] This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply. [L 1953, c 167, §§1, 2; RL 1955, §230-33; am L 1959, c 15, §1; am L Sp 1959 2d, c 1, §15; am L 1963, c 114, §3; am L 1965, c 86, §1; HRS §634-69; am L 1972, c 89, §2A(1); ren HRS §634-33; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1984, c 209, §2; gen ch 1985]

Cross References

Nonresident violator compact, see chapter 291A.

Case Notes

Section 657-18 did not apply to toll the no-fault statute of limitations where a nonresident motorist defendant was at all times subject to the jurisdiction of Hawaii's courts and amenable to service of process under its long-arm statutes as set forth in §634-36 and this section. 89 H. 1, 967 P.2d 1059 (1998).

" **§634-34 Service on boat operators.** [(a)] The operation, navigation, use, or maintenance by any person, whether a resident or nonresident of the State, of any boat, ship, barge, or other watercraft in the navigable waters of the State shall subject the person to the jurisdiction of the courts of this

State in any action or proceeding against the person growing out of any accident, collision, or claim for damages in which the person and the boat, ship, barge, or other watercraft may be involved in the navigable waters. The operation, navigation, use, or maintenance is deemed a signification of the person's agreement that any summons against the person which is served is of the same legal force and validity as if served upon the person personally within this State, whether the person is a nonresident of this State or at the time a cause of action arises is a resident of this State but subsequently becomes a nonresident of this State. Service of the summons is to be made as provided by section 634-36, if the defendant cannot be found in the State.

[(b)] This section shall not be construed as repealing or amending any other provision of law relating to the service of process nor as establishing an exclusive method of service of process in cases to which this section may apply. [L 1965, c 172, §1; Supp, §230-33.5; HRS §634-70; am L 1972, c 89, §2A(m); ren HRS §634-34; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1984, c 209, §3; gen ch 1985]

" **§634-35 Acts submitting to jurisdiction.** (a) Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits such person, and, if an individual, the person's personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of the acts:

- (1) The transaction of any business within this State;
- (2) The commission of a tortious act within this State;
- (3) The ownership, use, or possession of any real estate situated in this State;
- (4) Contracting to insure any person, property, or risk located within this State at the time of contracting.

(b) Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made as provided by section 634-36, if the person cannot be found in the State, with the same force and effect as though summons had been personally served within this State.

(c) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

(d) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law. [L 1965, c 134, §1; Supp, §230-41.5; HRS §634-71; am L 1972, c 89, §2A(n); ren HRS §634-35; gen ch 1985]

Rules of Court

See HRCF rule 4.

Law Journals and Reviews

Jurisdiction Under Hawaii's New "Long Arm" Statute. 4 HBJ, no. 1, at 4 (1966).

Products Liability in Hawaii. 14 HBJ, no. 4, at 127 (1979).

Case Notes

Negligent manufacture outside the State, resulting in injury in the State, constituted "commission of tortious act within the State". 417 F.2d 231 (1969).

Requirement of minimum contact to satisfy due process discussed in holding manufacturer in England subject to state jurisdiction. 417 F.2d 231 (1969).

Under both the "transacting business" and "tortious act" clauses of this section, the cause of action must relate to the defendant's contacts in the State. 558 F.2d 948 (1977).

Does not express "strong policy" that insurance cases must be tried in State despite contrary insurance contract clause. 738 F.2d 1455 (1984).

Definition of term "doing or carrying on business" in Hawaii statute relating to foreign corporations and filing does not restrict or limit definition or scope of term "transaction of business" in statute. 253 F. Supp. 588 (1966).

Sufficiency of contact with State for application of statute. 290 F. Supp. 848 (1968).

Plaintiff made a prima facie case that the court had specific personal jurisdiction over defendant; the court's exercise of personal jurisdiction would comport with due process and defendant's contacts with Hawaii, as alleged and evidenced by plaintiff, satisfied Hawaii's long-arm statute. 664 F. Supp. 2d 1103 (2008).

Prerequisites of minimum contacts to satisfy due process discussed. 54 H. 597, 513 P.2d 165 (1973).

Minimum contact requirement held not met in a medical malpractice action. 56 H. 306, 536 P.2d 568 (1975).

Tort is "committed in this State" when the injury occurs in this State. 56 H. 306, 536 P.2d 568 (1975).

Facts held sufficient to constitute transaction of business in State. 59 H. 189, 579 P.2d 99 (1978).

Establishment of contractual relationship through the mail; "transaction of business"; minimum contact. 61 H. 644, 608 P.2d 394 (1980).

Expands jurisdiction of Hawaii's courts to extent permitted by due process clause of the Fourteenth Amendment. 61 H. 644, 608 P.2d 394 (1980).

Plaintiff had not demonstrated that defendant was "transacting business" in Hawaii; plaintiff sufficiently alleged a prima facie case that defendant committed a "tortious act within this State" for purposes of subsection (a)(2); plaintiff sufficiently alleged a tortious breach of contract to satisfy demands of due process. 76 H. 323, 876 P.2d 1291 (1994).

Defendant California theme park's advertising in a national magazine and on an internet website was not "the transaction of any business within this State"; also, where plaintiff's injury occurred on a roller coaster ride in defendant's California theme park, the alleged tortious acts occurred in California; thus, trial court lacked personal jurisdiction over defendants under this section. 102 H. 203, 74 P.3d 26 (2003).

" **§634-36 Manner of service under sections 634-33 to 35.**

[(a)] When service of summons is provided for by section 634-33, 634-34, or 634-35, service shall be made by service upon the defendant personally by any person authorized to serve process in the place in which the defendant may be found or appointed by the court for the purpose, or sent by certified, registered, or express mail, postage prepaid, with return receipt requested, by the plaintiff or the plaintiff's attorney to the defendant. The plaintiff or the plaintiff's attorney shall file the return of the serving officer or an affidavit showing that the copy of summons and complaint were served as aforesaid or sent by certified, registered, or express mail as aforesaid, and in the latter case the return receipt signed by the defendant shall be filed with the affidavit. The service shall be complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided.

[(b)] If the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. [L 1972, c 89, §2A(o); HRS §634-72; ren HRS §634-36; am L

1982, c 204, §8; am L 1983, c 124, §17; am L 1984, c 209, §4; am L 1985, c 68, §29; am L 1987, c 283, §62; am L 1990, c 29, §1]

Rules of Court

Publication of summons, see HRCF rule 4.

Case Notes

Section 657-18 did not apply to toll the no-fault statute of limitations where a nonresident motorist defendant was at all times subject to the jurisdiction of Hawaii's courts and amenable to service of process under its long-arm statutes as set forth in §634-33 and this section. 89 H. 1, 967 P.2d 1059 (1998).

Defendant, who was a citizen and resident of Japan, was amenable to service by publication pursuant to this section where defendant's address was unknown, and such service would not have been pre-empted by the Hague Convention. 99 H. 488, 57 P.3d 413 (2002).

" **§634-37 Presumption of notice and service of process in child support cases.** Whenever notice and service of process is required for child support enforcement proceedings subsequent to an order issued pursuant to chapter 571, 576B, 576E, 580, or 584, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6. [L 1997, c 293, §9; am L 1998, c 11, §32 and c 83, §11]

" **[§634-38] Manner of service within the State; assumpsit.** For civil actions in the nature of assumpsit, when service of summons is required by law, court rule, or court order, service on the defendant within the State shall be:

- (1) By personal delivery by a person authorized to serve process; or
- (2) If a reasonable attempt at personal delivery has not been successful, then by certified, registered, or express mail sent to the addressee only, as ordered by the court.

Service pursuant to paragraph (1) and proof of personal service shall be made in the manner prescribed by law, court rule, or court order. If service is made pursuant to paragraph (2), a return receipt or other proof of service provided by the postal

service shall be filed showing delivery to the addressee within the State. [L 2014, c 41, §2]

"PART IV. NOTICE OF PENDENCY OF ACTION

§634-51 Recording of notice of pendency of action. [(a)] In any action concerning real property or affecting the title or the right of possession of real property, the plaintiff, at the time of filing the complaint, and any other party at the time of filing a pleading in which affirmative relief is claimed, or at any time afterwards, may record in the bureau of conveyances a notice of the pendency of the action, containing the names or designations of the parties, as set out in the summons or pleading, the object of the action or claim for affirmative relief, and a description of the property affected thereby. From and after the time of recording the notice, a person who becomes a purchaser or encumbrancer of the property affected shall be deemed to have constructive notice of the pendency of the action and be bound by any judgment entered therein if the person claims through a party to the action; provided that in the case of registered land, section 501-151, sections 501-241 to 501-248, and part II of chapter 501 shall govern.

[(b)] This section authorizes the recording of a notice of the pendency of an action in a United States District Court, as well as a state court. [L 1927, c 73, §1; RL 1935, §4086; RL 1945, §10068; RL 1955, §230-42; am L 1966, c 33, §4; HRS §634-76; am L 1972, c 89, §2A(p); ren HRS §634-51; gen ch 1985; am L 1998, c 219, §14; am L 2009, c 120, §14; am L 2013, c 119, §9]

Law Journals and Reviews

Concerning constitutionality of lis pendens statutes, see *Dealing with the Remorseful Seller: Time Being of the Essence and Buyer's Right to Specific Performance in Hawaii Real Estate Transactions*. 15 HBJ, no. 2, at 77 (1980).

Case Notes

Since filing notice of lis pendens under this section poses only a potential cloud on title, it is not an unconstitutional seizure of property without due process. 418 F. Supp. 695 (1976).

Action in which plaintiff made fraudulent transfer claims under the Hawaii Uniform Fraudulent Transfer Act (chapter 651C), seeking to avoid the transfer of real property to the extent necessary to satisfy plaintiff's claims and/or to grant plaintiff other relief under §651C-7(a), was an appropriate

subject of a lis pendens under the Hawaii doctrine of lis pendens, codified in this section. 457 F. Supp. 2d 1121 (2006).

Where plaintiffs filed a notice of pendency of action pursuant to this section and §501-151, magistrate judge's order, in applying Sports Shinko to the facts of the case to deny defendant's motion to expunge, was not clearly erroneous or contrary to law. 529 F. Supp. 2d 1206 (2007).

Party may not invoke lis pendens where party's interest in land is only a percentage of the income derived from the use of land and there is no right to title or control of the land. 72 H. 267, 814 P.2d 396 (1991).

Alleged equitable lien and filing of lis pendens not breach of covenant against encumbrances since lien was not actually in existence, valid, and enforceable at time of conveyance; a recorded lis pendens is an encumbrance. 75 H. 480, 866 P.2d 951 (1994).

Where complainant does not claim title to or a right of possession of property, section not implicated and lis pendens should have been expunged. 75 H. 480, 866 P.2d 951 (1994).

Where trial court's judgment in favor of defendant extinguished any claims plaintiff had against defendant and filing of appeal did not affect validity of the judgment being appealed from, lis pendens properly expunged as it was no longer based on "any action concerning real property". 92 H. 243, 990 P.2d 713 (1999).

Where mortgagors' rights to property extinguished through foreclosure, that issue is res judicata. 4 H. App. 439, 667 P.2d 834 (1983).

Where appellants filed both of their motions for notice of pendency of action after the decree of foreclosure, after the order confirming the foreclosure sale was entered, and after the writ of possession had been issued by the court in favor of the bank, the sale of the property to a third party rendered the appeal of the expungement of the lis pendens moot. 117 H. 506 (App.), 184 P.3d 821 (2008).

Where developer did not seek to directly obtain title to, or possession of, property, but rather sought to avoid the transfer of the property owner's and lessee's interest in the property for the purpose of securing payment of money which might potentially be owed if developer succeeded on its counterclaims, the developer's claim under chapter 651C, the Hawaii Uniform Fraudulent Transfer Act, was asserted for a purpose which was rejected as a basis for a lis pendens under this section; thus, circuit court did not abuse its discretion in granting county's motion to expunge developer's lis pendens. 128 H. 378 (App.), 289 P.3d 1014 (2012).

"PART V. ABATEMENT AND REVIVAL

[\$634-61] Death or dissolution of plaintiff or defendant.

The death of a plaintiff or defendant or the dissolution of a corporate plaintiff or defendant shall not cause an action to abate, but it may be continued upon substitution of the proper parties as provided by the rules of court, or if the claim is one which survives to or against the surviving parties the action shall proceed in favor of or against the surviving parties as provided by the rules of court. [L 1876, c 34, §1; RL 1925, §2632; RL 1935, §4053; RL 1945, §10081; RL 1955, §230-55; am L 1967, c 82, §1; HRS §634-82; am L 1972, c 89, §2A(q); ren HRS §634-61]

Rules of Court

See HRCF rules 15(d), 25(a), (c); DCRCP rules 15(d), 25.

Case Notes

Defendant removed action to U.S. district court alleging complete diversity of citizenship based on plaintiff's notice of defendant doctor's death, and argued, inter alia, that under Hawaii law, a decedent is not a proper party to an action; because the time in which to substitute doctor's estate or representative had not yet passed, the action against doctor had not been dismissed; therefore, removal on that basis was premature. 61 F. Supp. 2d 1121 (1999).

Trespass quare clausum abates upon death of plaintiff. 6 H. 556 (1885), questioned 45 H. 373, 375, 369 P.2d 96 (1961).

Counsel for deceased may appear as amicus curiae on motion made prior to death. 10 H. 505 (1896).

Ejectment does not abate by death of sole defendant between verdict and judgment. 10 H. 505 (1896).

Plaintiff in ejectment having died after verdict and before defendant's bill of exceptions was allowed, plaintiff's heirs could not be substituted on motion in supreme court. 19 H. 385 (1909).

Survival of cause of action. 34 H. 667 (1938).

Suit over title to land or over performance of decedent's contract to convey land, heirs as parties. See 43 H. 241 (1959); 44 H. 464, 474, 357 P.2d 100 (1960); 45 H. 1, 13, 361 P.2d 374 (1961); 49 H. 409, 410, 420 P.2d 93 (1966).

Substitution of party must be made within reasonable time after death of party. 60 H. 125, 588 P.2d 416 (1978).

Appellant's claim against corporations not abated by involuntary dissolutions, where before default judgment was

entered, corporations were involuntarily dissolved. 77 H. 417, 886 P.2d 754 (1994).

As a general rule, an heir of an undistributed estate, who has not been judicially appointed as the personal representative of a decedent's estate, is not a "proper party" for substitution pursuant to HRCF rule 25(a)(1). 89 H. 91, 969 P.2d 1209 (1998).

Defamation action does not survive death of defendant. 1 H. App. 517, 620 P.2d 771 (1980).

"[PART VI.] ANONYMOUS FILINGS

[\$634-71] Anonymous filings. (a) Upon petition to a court under this section, the court may allow a petition, complaint, motion, or other document to be filed by a party identifying the parties as "jane doe" or "john doe"; provided that when deciding to permit a "jane doe" or "john doe" filing, the court may consider factors including:

- (1) The severity of the petitioner's injury;
- (2) The reasonableness of the petitioner's fears of reprisal;
- (3) The petitioner's vulnerability to retaliation from the action;
- (4) The risk of prejudice to the other party; and
- (5) Whether the public interest would be served by allowing the petitioner to remain anonymous.

(b) If there are compelling reasons sufficient to outweigh the public interest in the disclosure of the parties and it is the belief of the court that the parties' court files may become a vehicle for improper use if not made anonymous, the court may seal from the public all documents or portions of documents, including all subsequently filed documents, that would identify the parties or contain sufficient information from which the parties' identity could be discerned or inferred. [L 2011, c 225, §1]