"**CHAPTER 635**
TRIALS

Section
635-1, 2 Repealed
635-3 Dismissal for want of prosecution
635-4 Repealed

Right of Trial by Jury; Functions of Court and Jury; Verdict
635-11 Repealed
635-12 No jury, when
635-13 Jury, when of right
635-14 Reference
635-15 to 19 Repealed
635-20 Less than unanimous verdict authorized

Impaneling, Segregation of Jury
635-26 Impaneling
635-27 Examination for cause
635-28 Challenging for cause
635-29 Challenging peremptorily
635-30 Peremptory challenges, criminal cases
635-31 Repealed
635-32 Segregation during trial

Instructions, Procedure Relating to
635-41 to 44 Repealed

Argument
635-51 Repealed
635-52 Scope of argument

New Trial
635-56 Grounds for new trial
635-57 Repealed

Note

As to procedural statutes superseded by the rules of court, see note preceding Title 32.

Law Journals and Reviews

Blast It All: Allen Charges and the Dangers of Playing With Dynamite. 32 UH L. Rev. 323 (2010).

" **§§635-1 and 635-2 REPEALED.** L 1972, c 89, §2B(n).

" **§635-3 Dismissal for want of prosecution.** The court may dismiss any action for want of prosecution after due notice to the claimants whenever claimants have failed to bring such action to trial within a period established by rule of court. Prior to dismissal of any action for want of prosecution, a court shall have adopted, promulgated, and published a rule or rules of court providing circumstances in which a claimant may seek relief from the judgment or order and such other safeguards as may be necessary. [CC 1859, §1162; RL 1925, §2391; RL 1935, §4106; am L 1937, c 117, §1; am L 1939, c 145, §1; am L Sp 1941, c 56, §1; RL 1945, §10104; RL 1955, §231-4; HRS §635-3; am L 1972, c 89, §2B(a)]

Rules of Court

Dismissal, see HRCP rule 41(b).

Law Journals and Reviews

Remedies to obtain dismissal for want of prosecution discussed. 3 HBJ, no. 3, at 2 (1965).

Case Notes

Defendant's joining in stipulation to remove a cause from trial calendar is action of the "defendant to delay or postpone trial". 45 H. 165, 363 P.2d 968 (1961).

Question as to continued effectiveness of section in view of HRCP 41(b) raised but not decided. 45 H. 165, 363 P.2d 968 (1961).

Matter of continuance in view of public climate is within court's discretion. 45 H. 478, 370 P.2d 739 (1962).

Application of six-year provision. 48 H. 152, 397 P.2d 593 (1964); 48 H. 290, 401 P.2d 449 (1965); 48 H. 303, 401 P.2d 456 (1965).

Factors to be considered in the exercise of the discretion to dismiss. 60 H. 125, 588 P.2d 416 (1978).

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

Notice of motion, how made. 1 H. 14 (1847).

Rules for postponement of trial laid down. 1 H. 74 (1852).

Granting or refusing continuance at discretion of court. 7 H. 211 (1888); 8 H. 466 (1892); 14 H. 313 (1902); 29 H. 434 (1926); 33 H. 113 (1934); 34 H. 390 (1937).

Affidavit in support of continuance because of absence of witness should set out facts the witness is expected to prove. 8 H. 466 (1892).

Cited: 24 H. 97, 107 (1917); 33 H. 432, 439 (1935).

" **§635-4 REPEALED.** L 1972, c 89, §2B(n).

"**RIGHT OF TRIAL BY JURY; FUNCTIONS OF COURT AND JURY; VERDICT**

§635-11 REPEALED. L 1972, c 89, §2B(n).

" **§635-12 No jury, when.** (a) When there is no right of trial by jury, or the right has been waived, the issues shall be determined by the judge without the intervention of a jury.

(b) Whenever provision is made by statute for trial without the intervention of a jury, the same shall not be deemed to preclude trial of an issue with an advisory jury, or trial by jury by consent of the parties.

(c) Whenever a statute provides for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court:

(1) An order of the court relieves a party from the party's waiver; or

(2) Approval of or consent to the waiver is required in a criminal case and has not been given. [L 1892, c 57, §40; RL 1925, §2250; RL 1935, §3646; RL 1945, §9650; RL 1955, §215-20; HRS §635-12; am L 1972, c 89, §2B(b); gen ch 1985; am L 2016, c 55, §29]

Rules of Court

Right to trial by jury, see HRCP rule 38(a). Advisory jury, see HRCP rule 39(c).

Case Notes

Constitutional right to jury trial may be waived; noncompliance with statute constitutes waiver. 53 H. 372, 493 P.2d 1032 (1972).

" **§635-13 Jury, when of right.** When the right of trial by jury is given by the Constitution or a statute of the United States or this State and the right has not been waived, the case shall be tried with a jury. [CC 1859, §1130; am L 1909, c 23, §1; RL 1925, §2367; RL 1935, §4098; RL 1945, §10108; RL 1955, §231-8; HRS §635-13; am L 1972, c 89, §2B(c)]

Rules of Court

Demand for jury trial, see HRCP rules 38, 39; DCRCP rule 38; waiver, see HRPP rule 23.

Law Journals and Reviews

Blast It All: Allen Charges and the Dangers of Playing With Dynamite. 32 UH L. Rev. 323 (2010).

Case Notes

Jury trial, when available. 50 H. 528, 445 P.2d 376 (1968).

Based on the established common law convention of this jurisdiction at the time of adoption of the state constitution, as a general matter, a right to jury trial exists in state eminent domain proceedings. 91 H. 81, 979 P.2d 1107 (1999).

Where third party leasing agents were not parties to lease agreement between landlord and tenant, express waiver of right to jury trial in agreement did not apply to those third parties. 85 H. 300 (App.), 944 P.2d 97 (1997).

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

Jury trial may be waived by inaction as well as by positive acts of the parties. Demand for jury trial in complaint is insufficient. 24 H. 777, 780 (1919). See 28 H. 350, 364 (1925); 10 F.2d 474, 477 (1926).

District magistrate may try a defendant after defendant has demanded a jury trial. 27 H. 844 (1924).

Cited: 3 H. 546, 547 (1874).

See 33 H. 103 (1934); 33 H. 167 (1934); 33 H. 247 (1934); 33 H. 315 (1935) (construction of writing); 33 H. 523 (1935) (directed verdict); 33 H. 745 (1936) (experiments); 34 H. 35 (1936) (nonsuit); 34 H. 632 (1938) (misconduct).

" **§635-14 Reference.** In matters within the jurisdiction of circuit courts as set forth in sections 603-21.6 and 603-21.7, and in civil actions not within such jurisdiction if so provided by statute or rule of court, a reference to a master may be ordered. [CC 1859, §§1137, 1138; am L 1909, c 23, §2 and c 117, §1; am L 1913, c 72, §1; RL 1925, §§2369, 2370; RL 1935, §§4101, 4102; RL 1945, §§10106, 10107; RL 1955, §§231-6, 231-7; HRS §635-14; am L 1972, c 89, §2B(d)]

Case Notes

Provision for decision in writing, effect of Hawaii Rules of Civil Procedure. 42 H. 169 (1957).

Demand for jury trial, waiver. 44 H. 290, 353 P.2d 998 (1960); 45 H. 232, 243, 364 P.2d 646 (1961).

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

Trial is by court and decision is by court. 7 H. 333 (1888).

Jury waived case heard in term; judgment may be rendered in vacation. 10 H. 327 (1896).

Jurors are not officers of the government. 11 H. 571, 577 (1898).

Decision not being in writing is voidable. 11 H. 705 (1899); 20 H. 613 (1911); 22 H. 353, 356 (1914).

Waiver in civil cases, by action, conduct or words. 15 H. 59 (1903).

Judgment incorporating findings signed by judge as well as clerk sufficient. 16 H. 799 (1905); 20 H. 516 (1911).

Decision need not contain special findings of fact. 18 H. 81 (1906); 18 H. 427 (1907).

As to weight of formal compliance. 19 H. 421 (1909).

Decision must give reasons. 20 H. 192 (1910); 33 H. 416 (1935); 34 H. 679 (1938).

Failure to state reasons for decision is reversible error. 20 H. 192 (1910); 23 H. 761 (1917); 26 H. 178 (1921).

Revised decision. 20 H. 648 (1911).

Sufficiency of exception to decision. 21 H. 258 (1912).

Decision in writing not required when defendant confesses judgment. 21 H. 311 (1912).

In jury waived case court may reconsider and set aside its decision. 21 H. 551 (1913).

Proper exception. 22 H. 507, 509 (1915).

Exceptions to the oral decision and to the overruling of a motion for a new trial before the written decision was filed, present nothing for the consideration of the appellate court. 22 H. 673, 680 (1915).

Trial court should liberally comply with this statute. 24 H. 1, 5 (1917).

Prayer for process is not a demand for a jury. Filing of a demand by either party fixes the status of the case as a jury case which cannot be changed except by agreement of the parties; demand filed before case is at issue is not premature. 24 H. 777, 781 (1919); 25 H. 378 (1920).

Ruling denying defendant's motion for nonsuit at close of plaintiff's evidence in rebuttal will not be disturbed if evidence would have justified submitting questions of fact to a jury. 25 H. 470, 476 (1920).

The decision is equivalent to the verdict of a jury and will not be disturbed if there is evidence to support it. 25 H. 483, 489 (1920); 29 H. 250 (1926).

The court's "reasons" may be by adoption or confirmation of findings appealed from. 26 H. 785 (1923).

"Reasons" defined. 27 H. 20 (1923); 29 H. 548 (1927); 41 H. 191 (1955).

Binding effect upon appellate court of "reasons" assigned. 27 H. 544, 553 (1923).

The court's reasons are referable to material and not immaterial issues. 27 H. 544 (1923).

Suit in equity: Although a civil suit, right to a jury trial is not conferred on parties. 29 H. 73, 77 (1926).

This section not applicable to probate judge at chambers. 29 H. 73 (1926).

Stipulation in bond not amounted to waiver. 32 H. 109, 175 (1931).

Account stated. 32 H. 270, 275 (1932).

Exceptions to oral decision ineffective and present nothing for appellate consideration. 39 H. 93 (1951).

Waiver of jury trial. 41 H. 231 (1955).

" **§635-15 REPEALED.** L 1980, c 164, §11.

" **§635-16 REPEALED.** L 1972, c 89, §2B(n).

" **§635-17 REPEALED.** L 1980, c 164, §12.

" **§§635-18 and 635-19 REPEALED.** L 1972, c 89, §2B(n).

" **§635-20 Less than unanimous verdict authorized.** In all civil cases tried before a jury it shall be sufficient for the return of a verdict if at least five-sixths of the jurors agree on the verdict. [L 1965, c 171, §1; Supp, §231-28; HRS §635-20]

Cross References

Trial by jury, see Const. art. I, §13.

Rules of Court

See HRCP rule 48.

"IMPANELING, SEGREGATION OF JURY

§635-26 Impaneling. (a) At the trial of any cause requiring a jury in any circuit or district court, the clerk of the court shall draw a jury by lot, to the number of twelve, from the box containing the names of persons who have been duly summoned to attend as trial jurors and who are not excused from attendance. If any of the twelve are challenged and set aside, the clerk shall continue to draw by lot from the box until twelve impartial jurors are obtained, who then shall be sworn as the jurors for the trial of the cause. If so directed by the court, additional jurors shall be drawn and impaneled to sit as alternate jurors.

(b) Upon the stipulation of the parties, the jury may consist of a number less than twelve. [L 1903, c 38, §12; RL 1925, §2415; RL 1935, §3733; RL 1945, §10109; RL 1955, §231-9; HRS §635-26; am L 1972, c 89, §2B(f), (g); am L 1993, c 104, §3]

Cross References

Jurors, see chapter 612.

Rules of Court

Alternate jurors, see HRCP rule 47(b); HRPP rule 24(c). Jury of less than twelve when stipulated, see HRCP rule 48; HRPP rule 23(b).

Attorney General Opinions

Because proposed amendment to this section conflicted with §13 of article I of state constitution, a constitutional amendment for changing number of jury members in civil cases, where there is no agreement by the parties, was required. Att. Gen. Op. 97-2.

Law Journals and Reviews

The Protection of Individual Rights Under Hawai‘i's Constitution. 14 UH L. Rev. 311 (1992).

Case Notes

Oath requiring jury to give a true verdict according to the law and the evidence in the case before the court, is sufficient without adding to truly try the issues. 18 H. 263 (1907).

Section requires "strike and replace jury" method of impanelment in contrast to "struck jury" method used by trial judge. 73 H. 100, 828 P.2d 276 (1992).

" **§635-27 Examination for cause.** Each party shall have the right, under the direction of the court, to examine a proposed juror as to the proposed juror's qualifications, interest, or bias that would affect the trial of the cause and as to any matter that might tend to affect the proposed juror's verdict. Each party may introduce competent evidence to show the disqualification, interest, or bias of any juror. [L 1905, c 5, §1; RL 1925, §2416; am L 1931, c 294, §1; RL 1935, §3734; RL 1945, §10110; RL 1955, §231-10; HRS §635-27; am L 1972, c 89, §2B(h); gen ch 1985]

Cross References

Grounds for disqualification, see §§612-4 and 612-5.

Rules of Court

See HRCP rule 47(a); HRPP rule 24(a).

Case Notes

Prospective juror must be challenged for cause before juror is sworn. 5 H. 634 (1886).

Statement of juror though not sworn may be relied upon. 9 H. 622 (1895).

Refusal to sustain challenges for proper cause may result in reversible error. 23 H. 792 (1917).

Examination of prospective jurors upon voir dire party entitled to ask questions which will aid judge in determining whether juror should be excused for cause and also, within reasonable limits, all questions which may enlighten attorney upon question whether attorney should exercise peremptory challenges. 32 H. 543 (1932).

Court's refusal to allow voir dire inquiries into specific possible prejudices of prospective jurors upheld as within discretion. 57 H. 492, 559 P.2d 728 (1977).

Cited: 20 H. 7, 15 (1910).

" **§635-28 Challenging for cause.** In all cases, any party may challenge for cause any juror drawn for the trial. The court shall determine the validity of the objection urged. [L 1903, c 38, §19; RL 1925, §2417; RL 1935, §3735; RL 1945, §10111; RL 1955, §231-11; HRS §635-28; am L 1972, c 89, §2B(i)]

Rules of Court

See HRCP rule 47(a); HRPP rule 24(a).

Case Notes

Challenge before jury sworn. 5 H. 64 (1884).

Erroneous overriding of an objection to a juror by court avails nothing to the party objecting if party has not exhausted party's peremptory challenges. 8 H. 339 (1892). Where qualification of juror challenged but passed, defendant has no cause to complain if peremptory challenges not exhausted. 9 H. 522, 540 (1894). Juror not disqualified by regarding white man more credible than Chinese. 16 H. 457 (1905). Juror having opinion not disqualified if juror can decide impartially. 16 H. 743 (1905). Jury not impartial if one juror would not give weight to evidence of insanity by defendant except by physician. 23 H. 792 (1917). Special unpaid constable not disqualified, criminal trial. 30 H. 697 (1971). Juror not disqualified answers on erroneous theories of law, etc. 30 H. 697 (1971).

Juror not necessarily disqualified because juror has an opinion which would require evidence to remove. Question is whether juror could decide fairly and impartially on the law and evidence, question largely in discretion of judge. 8 H. 339 (1892); 16 H. 743, 753, 754 (1905); 20 H. 7 (1910). Where disqualification exists which is either known to the party or which might become known on proper examination, then no exception lies if the juror is allowed to sit. 9 H. 622 (1895). Jurors in employ of corporations controlled by president, who have friendly and even intimate relations with president, not disqualified, etc., criminal. 20 H. 7, 14 (1910). Juror not disqualified on ground of lack of knowledge of English language, although unable to define "impartial", "bias", "prejudice", "testimony", or "obligation". 20 H. 7 (1910). When general questions are put, silence of jury when such questions are proper, may be relied upon, and it is not negligence of counsel as would debar counsel from demanding a new trial if later a juror was found to be disqualified. 11 H. 293 (1898), questioned on other grounds, 46 H. 197, 210, 377 P.2d 609

(1962). Judge has wide discretion on matter of competency. 45 H. 247, 365 P.2d 460 (1961).

Person joining unsuccessfully, in a volunteer search for body of person murdered--not disqualified. 30 H. 697 (1971). Juror not disqualified because brother offered reward for detection of any person guilty of offense for which defendant is on trial. 4 H. 301 (1880). Court may excuse or exclude such jurors who upon examination appear to be disqualified. 7 H. 352 (1888). Right of defendant to have jury drawn from jurors duly summoned, until array is exhausted. 7 H. 352 (1888). Juror not disqualified to sit in murder trial because juror is of a remote connection by marriage to deceased. 3 H. 381 (1872).

Exclusion of juror not disqualified not ground for complaint if justice done. 37 H. 40 (1944).

Where cause for challenge was obvious, specific assignment was not required. 45 H. 247, 365 P.2d 460 (1961).

" **§635-29 Challenging peremptorily.** (a) In addition to the challenges of jurors allowed in section 635-28, the State and defendant in criminal cases shall be allowed peremptory challenges as provided by section 635-30.

(b) In civil cases each party shall be allowed to challenge peremptorily three jurors, without assigning any reason therefor. Where there are two or more plaintiffs or two or more defendants, they may be considered as a single party for the purposes of making peremptory challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly. If additional peremptory challenges are allowed to the parties on one side, the opposing party or parties may be allowed additional peremptory challenges.

(c) If an alternate juror or alternate jurors are to be impaneled, one or more additional peremptory challenges shall be allowed as provided by the rules of court. [L 1903, c 38, §20; RL 1925, §2418; am L 1927, c 39, §1; am L 1932 1st, c 11, §1; RL 1935, §3736; RL 1945, §10112; RL 1955, §231-12; HRS §635-29; am L 1972, c 89, §2B(j)]

Rules of Court

Peremptory challenges in criminal cases, see HRPP rule 24(b).

Sequence for challenging jurors, see RCC rule 17(f).

Case Notes

Where four joint defendants joined in each of ten challenges, held that they had exercised their full right of challenge,

although each would have been allowed ten challenges if taken separately. 3 H. 90 (1869).

Erroneous overriding of an objection to a juror by court avails nothing to the party objecting if party has not exhausted party's peremptory challenges. 8 H. 339 (1892).

Prejudicial if accused compelled to exhaust peremptory challenges. 23 H. 792 (1917).

Defendant's right to one peremptory challenge to alternate jurors under HRPP rule 24(c) is a right pertaining to all the alternate jurors and therefore defendant shall not be called upon to exercise the challenge until all potential alternate jurors have been examined and passed on challenges for cause. 79 H. 165 (App.), 880 P.2d 217 (1994).

Denial of defendant's statutory right to peremptorily challenge alternate jurors resulted in improper impaneling of alternate juror and was plain error. 82 H. 499 (App.), 923 P.2d 916 (1996).

Discussed: 86 H. 214, 948 P.2d 1055 (1997).

See 9 H. 522 (1894); 11 H. 293 (1898).

" **§635-30 Peremptory challenges, criminal cases.** In criminal cases, if the offense charged is punishable by life imprisonment, each side is entitled to twelve peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed six challenges. In all other criminal trials by jury each side is entitled to three peremptory challenges. If there are two or more defendants jointly put on trial for such an offense, each of the defendants shall be allowed two challenges. In all cases the State shall be allowed as many challenges as are allowed to all defendants. [L 1903, c 38, §21; am L 1915, c 73, §1; RL 1925, §2419; am L 1932 1st, c 11, §2; RL 1935, §3737; RL 1945, §10113; RL 1955, §231-13; am imp L 1957, c 282; HRS §635-30; am L 1972, c 89, §2B(k)]

Rules of Court

See HRPP rule 24(b).

Sequence for challenging jurors, see RCC rule 17(f).

Law Journals and Reviews

State v. Levinson: Limitations on a Criminal Defendant's Use of Peremptory Challenges. 13 UH L. Rev. 279 (1991).

Case Notes

Where four joint defendants joined in each of ten challenges, held that they had exercised their full right of challenge, although each would have been allowed ten challenges if taken separately. 3 H. 90 (1869).

Defendant allowed twelve peremptory challenges only when the charged offense itself carries penalty of life imprisonment. 65 H. 354, 652 P.2d 1119 (1982).

Circuit court plainly erred where, during jury selection, it removed two jurors for cause on the motion of respondent after the jury panel already had been passed for cause, and defendant and respondent had already exhausted their peremptory challenges; this procedure violated rule 24 of the HRPP, which provides that challenges for cause may be made at any time prior to the exercise of peremptory challenges, and in effect abrogated the parity in the number of peremptories each side is guaranteed pursuant to this section. 127 H. 415, 279 P.3d 683 (2012).

" **§635-31 REPEALED.** L 1972, c 89, §2B(n).

" **§635-32 Segregation during trial.** It shall not be necessary in any case for any trial jury after having been finally accepted and sworn to try the cause, to be segregated, locked up, or otherwise confined at any time prior to retiring to deliberate upon their verdict; provided that the court may in its discretion order and direct that the trial jury in any case shall be segregated, locked up, or otherwise confined after being finally accepted and sworn to try the cause and until a verdict is arrived at or the jury discharged. [L 1905, c 75, §1; RL 1925, §2424; RL 1935, §3740; RL 1945, §10116; RL 1955, §231-16; HRS §635-32; am L 1972, c 89, §2B(1)]

Case Notes

In case not capital, discretion of court to segregate jurors during trial. 9 H. 522 (1894).

Failure to segregate in capital case (now life imprisonment) not error. 30 H. 697 (1929).

Separation of jury and use of liquor, not prejudicial as matter of law. 45 H. 457, 370 P.2d 468 (1962).

Review of nonevidentiary table posted in courtroom by juror coming out of jury room during deliberations. 49 H. 116, 121-126, 412 P.2d 662 (1966).

"INSTRUCTIONS, PROCEDURE RELATING TO

§§635-41 to 635-44 REPEALED. L 1972, c 89, §2B(n).

"ARGUMENT

§635-51 REPEALED. L 1972, c 89, §2B(n).

" **§635-52 Scope of argument.** [(a)] At the close of the evidence (unless the court directs a verdict, or orders entry of a judgment of acquittal), the respective parties, or their counsel, shall be entitled to sum up the facts to the jury. In their addresses to the jury they shall be allowed ample scope and latitude for argument upon, and illustration of[,] any and all facts involved in the cause, and the evidence tending to either prove or disprove the same. They shall not be forbidden to argue the law of the case to the jury, but they shall not assume to instruct the jury upon the law, in such manner as to encroach upon the function of the court to so instruct the jury.

[(b)] In all actions for damages for personal injuries or death the parties or their counsel shall be entitled to argue the extent of damages claimed or disputed in terms of suggested formulas for the computation of damages or by way of other illustration, and shall be entitled to state in argument the amount of damages the party believes appropriate. [L 1892, c 56, §8; RL 1925, §2425; RL 1935, §3741; RL 1945, §10121; RL 1955, §231-21; am L 1967, c 241, §1; HRS §635-52; am L 1972, c 89, §2B(m)]

Case Notes

Background of last paragraph [subsection (b)], see 47 H. 408, 390 P.2d 740 (1964); 48 H. 22, 395 P.2d 365 (1964).

Counsel in argument may suggest lump sum amount for general damages and also may suggest fragmented segments of lump sum amounts if borne out by the evidence. 50 H. 89, 431 P.2d 931 (1967).

Counsel may make formula arguments for damages in personal injury cases. 51 H. 383, 463 P.2d 917 (1969).

Cited for rule that the court finds the law and instructs the jury thereon, including law of a treaty. 54 H. 450, 509 P.2d 1095 (1973).

Where defendant sought to draw adverse inference from the failure by the prosecution to present a witness, prosecution was entitled to explain the nonproduction. 57 H. 150, 552 P.2d 357 (1976).

On issue of amount of damages for violation of Fourth Amendment rights, plaintiff may argue the history of that Amendment to support plaintiff's claim. 57 H. 390, 557 P.2d 1334 (1976).

"NEW TRIAL

§635-56 Grounds for new trial. In any civil case or in any criminal case wherein a verdict of guilty has been rendered, the court may set aside the verdict when it appears to be so manifestly against the weight of the evidence as to indicate bias, prejudice, passion, or misunderstanding of the charge of the court on the part of the jury; or the court may in any civil or criminal case grant a new trial for any legal cause. [L 1892, c 56, pt of §1; RL 1925, pt of §2426; am L 1932 2d, c 24, pt of §1; RL 1935, pt of §3742; RL 1945, pt of §10122; RL 1955, pt of §231-22; HRS §635-56]

Rules of Court

New trial, see HRCP rule 59; HRPP rule 33; DCRCP rule 59.

Case Notes

Granting of motion on one of several grounds named does not of itself import an overruling of the other grounds. 21 H. 551 (1913).

When judgment has been set aside and a new trial ordered, the issues not being expressly limited by the order, the case is to be tried de novo. 22 H. 221 (1914).

Granting of motion for new trial does not confer any new right but merely relegates parties to their former status. 25 H. 378 (1920).

Where misconduct is known to counsel, counsel cannot await verdict and then complain. 52 H. 61, 469 P.2d 808 (1970).

Denial of motion for new trial is reviewable. 53 H. 440, 496 P.2d 4 (1972).

Party may move for new trial on ground verdict contrary to evidence, notwithstanding failure to move for directed verdict. 53 H. 440, 496 P.2d 4 (1972).

Appellate standard for granting new trial is that one party's evidence manifestly outweighs that of the other party. 53 H. 564, 498 P.2d 630 (1972).

New trial for prejudicial conduct of prosecutor, test is whether cumulative effect of prejudicial conduct overcomes presumption that curative remarks of court have rendered the prejudicial conduct harmless. 55 H. 127, 516 P.2d 336 (1973).

Test of a criminal conviction on appeal is whether there is substantial evidence to support the verdict. 55 H. 127, 516 P.2d 336 (1973).

New trial based on newly discovered evidence, when granted. 56 H. 241, 534 P.2d 489 (1976).

Where amount of damages awarded by jury exceeds amount justified by evidence, it is no abuse of discretion for court to grant new trial. 57 H. 378, 557 P.2d 788 (1976).

Grant or denial of new trial is within trial court's discretion and will not be reversed absent a clear abuse of discretion. 60 H. 144, 587 P.2d 1210 (1978).

Where record evinced that evenly balanced evidence was submitted as to the cause of the hematoma, the area where plaintiff was treated by chiropractor, and when the hematoma first emerged, trial court did not abuse discretion in denying plaintiff's motion for new trial on the ground that the verdict in favor of chiropractor was against the manifest weight of the evidence. 104 H. 1, 84 P.3d 509 (2004).

Circuit court was not authorized to grant defendant's motion for a new trial; when an HRPP rule 33 motion for a new trial asks for a jury's guilty verdict to be set aside and for a new trial to allow the defendant to request a deferred acceptance of a guilty plea that circuit court is statutorily not authorized to enter, the cause is neither legal nor in the interest of justice. 10 H. App. 31, 859 P.2d 1380 (1993).

Trial court did not abuse its discretion in denying motion for new trial; record provided substantial evidence to support jury verdict. 10 H. App. 298, 869 P.2d 1352 (1994).

Trial court abused its discretion in granting plaintiff's motion for new trial where it put great weight on its own factual finding regarding defendant, thereby usurping the rightful role and constitutional prerogative of the jury in weighing contradictory evidence and inferences, judging the credibility of witnesses, receiving expert instructions, and drawing the ultimate conclusion as to the facts. 99 H. 287 (App.), 54 P.3d 923 (2002).

Erroneous admission or rejection of evidence. 8 H. 247 (1891); 9 H. 505 (1894); 11 H. 69 (1897); 13 H. 218 (1900); 13 H. 723 (1902); 16 H. 29 (1904); 16 H. 69 (1904); 16 H. 123, 144 (1904); 16 H. 734 (1905); 17 H. 312, 323 (1906); 19 H. 496 (1909); 20 H. 245 (1910); 20 H. 724 (1911).

Misconduct. Of jury. 2 H. 155 (1859); 5 H. 662 (1886); 6 H. 326 (1882); 9 H. 318 (1893); 9 H. 604 (1895); 9 H. 622 (1895); 11 H. 322 (1898); 13 H. 218 (1900); 15 H. 139 (1903). Of attorney. 7 H. 104 (1887); 12 H. 92 (1899); 27 H. 399 (1923). By stranger; jury tampering discussed. 24 H. 193 (1918). See 32 H. 543 (1932); 33 H. 638 (1935); 33 H. 840 (1936); 34 H. 167 (1937); 34 H. 632 (1938); 35 H. 761 (1940); 36 H. 153 (1942); 37 H. 40 (1944). Separation of jury. 45 H. 457, 370 P.2d 468

(1962). Use of liquor by jury. 45 H. 457, 370 P.2d 468 (1962). Misconduct of judge. 36 H. 153 (1942).

Newly discovered evidence. 1 H. 54 (1851); 1 H. 519 (1856); 2 H. 155 (1859); 2 H. 165 (1859); 2 H. 309 (1860); 3 H. 356 (1872); 3 H. 623 (1875); 4 H. 450 (1882); 7 H. 365 (1888); 7 H. 379 (1888); 7 H. 676 (1889); 8 H. 271 (1891); 9 H. 27 (1893); 9 H. 548 (1894); 9 H. 553 (1894); 10 H. 446 (1896); 19 H. 380 (1909); 20 H. 195 (1910); 20 H. 724 (1911); 21 H. 710 (1913); 39 H. 393 (1952); 49 H. 672, 427 P.2d 94 (1967). But see 29 H. 340 (1926); 29 H. 560 (1927); 32 H. 628 (1933); 40 H. 534 (1954).

New trial, grounds for. 42 H. 630 (1958); 44 H. 134, 137-138, 351 P.2d 1089 (1960); 45 H. 457, 370 P.2d 468 (1962); 45 H. 478, 370 P.2d 739 (1962); 48 H. 22, 395 P.2d 365 (1964); 49 H. 314, 424 P.2d 107 (1966). See also 37 H. 57 (1945).

Review of award of damages. 42 H. 618 (1958); 42 H. 478 (1958); 44 H. 123, 131, 351 P.2d 1083 (1960); 44 H. 134, 351 P.2d 1089 (1960); 46 H. 112, 375 P.2d 229 (1962); 49 H. 42, 51, 410 P.2d 976 (1966); 49 H. 416, 424, 421 P.2d 289 (1966).

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

Amendments. Motion may not be amended after expiration of statutory period by inserting wholly new specification of error. 27 H. 177 (1923).

Costs. Party obtaining new trial may be required to pay costs. 17 H. 547 (1906).

Criminal cases. Circuit courts may grant new trials in criminal cases. 9 H. 548 (1894); 9 H. 553 (1894); 29 H. 459 (1926).

Decision in jury waived case. Failure of judge to find material fact in decision. 22 H. 414 (1915). Motion in jury waived case made before filing of written decision is premature. 22 H. 673 (1915). Trial court may grant new trial if decision against weight of evidence. 21 H. 551 (1913).

Excessive. 1 H. 139 (1852); 3 H. 740 (1876); 7 H. 82 (1887); 11 H. 453 (1898); 11 H. 767 (1899); 13 H. 232 (1901); 18 H. 481 (1907).

Involuntary nonsuit. Motion for new trial proper in case of. 16 H. 170 (1904).

Mistake or prejudice. 1 H. 248 (1854); 3 H. 88 (1868).

Notice. Notice of motion on ground other than that verdict is contrary to the law and the evidence need not be given at time verdict is rendered. 16 H. 170 (1904).

Refusal to submit to examination. 32 H. 543 (1932).

Surprise. 5 H. 294 (1885); 5 H. 632 (1886); 6 H. 181 (1876); 9 H. 27 (1893); 13 H. 515 (1901); 18 H. 577 (1908).

Time of filing. As to when motion may be filed. See 4 H. 450 (1882); 4 H. 601 (1883); 6 H. 226 (1879); 40 H. 534 (1954).

Verdict. Against evidence. 1 H. 139 (1852); 3 H. 88 (1868); 3 H. 118 (1869), questioned on other grounds 9 H. 548, 549 (1894); 3 H. 143 (1869); 3 H. 388 (1872); 3 H. 391 (1872); 7 H. 549 (1889). Against weight of evidence. 2 H. 155 (1859); 3 H. 40 (1867); 3 H. 465 (1873); 3 H. 526 (1874); 3 H. 589 (1875); 3 H. 755 (1877); 7 H. 293 (1888); 7 H. 397 (1888); 7 H. 590 (1889); 9 H. 438 (1894); 14 H. 301 (1902); 20 H. 426 (1911), explained 44 H. 134, 137, 351 P.2d 1089 (1960); 21 H. 551 (1913); 23 H. 74 (1915); 25 H. 521 (1920); 26 H. 538, 539 (1922). Question of whether verdict contrary to evidence may be raised on motion for new trial and not waived if not presented by motion for directed verdict. 24 H. 677 (1919). Where evidence capable of more than one inference, question of negligence must be left to jury and verdict cannot be disturbed. 27 H. 262 (1923). See 32 H. 865 (1933).

" **§635-57 REPEALED.** L 1972, c 89, §2B(n).