

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 20.

Laws Adoption and Adaptation.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), there was no gazetted indication, where the administration of this Chapter was vested. It seems likely, therefore, that under the Constitution, Section 148(2), the Prime Minister was politically responsible.

This Chapter does not refer to "the Minister", "the Department Head" or "the Department".

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CHAPTER NO. 20.

Laws Adoption and Adaptation Act.

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13. Rules of Admiralty in collisions.
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Laws Adoption and Adaptation Act.

Being an Act relating to the adoption of certain statutes of England, and to make certain provision concerning the adopted principles and rules of English common law and equity.

PART I.—ADOPTION OF ENGLISH STATUTES.

1. Application of Part I.

(1) The purpose of this Part is to declare the operation of Section Sch. 2.6 (*adoption of pre-Independence laws*) of the Constitution so far as it relates to the adoption of certain laws of England that were in force immediately before Independence Day as laws of Papua New Guinea by virtue of adoption by—

- (a) *The Courts and Laws Adopting Act of 1888* of the former Possession of British New Guinea; or
- (b) the *Laws Repeal and Adopting Act 1921* of the former Territory of New Guinea,

as in force immediately before the commencement of the pre-Independence *Laws Repeal Act 1975*.

(2) Accordingly, nothing in this Part applies to—

- (a) an Act, statute or law of England that was in force at the time of the passing of the Imperial Act Nine George the Fourth chapter eighty-three (*The Australian Courts Act, 1828*)¹; or
- (b) the principles and rules of common law or equity of England.

(3) This Part shall be read and construed subject to the Constitution, in accordance with Section 10 (*construction of written laws*) of the Constitution, and in particular nothing in this Part affects the operation of Section Sch. 2.7 (*adaptation of adopted law*) of the Constitution.

2. Adoption in Papua.

(1) This section applies in respect of the area that, immediately before Independence Day, formed the Territory of Papua.

(2) In this section, "the date of adoption" means 17 September 1888 (being the date of commencement of *The Courts and Laws Adopting Ordinance of 1888* of the former Possession of British New Guinea).

(3) Subject to Section 4, those portions of the Acts, statutes and laws of England (other than principles and rules of the common law and equity) that were in force in Queensland on the date of adoption and that can be put in force and be law in the area in respect of which this section applies are, to the extent to which they were in force in Queensland on the date of adoption, in force in that area as written laws.

¹ 25 July 1828.

3. Adoption in T.N.G.

(1) This section applies in respect of the area that, immediately before Independence Day, formed the Territory of New Guinea.

(2) In this section, "the date of adoption" means 9 May 1921 (being the date of commencement of the *Laws Repeal and Adopting Ordinance* 1921 of the former Territory of New Guinea).

(3) Subject to Section 4, those portions of the Acts, statutes and laws of England (other than principles and rules of the common law and equity) that were in force in Queensland on the date of adoption and that are applicable to and can be applied to the area in respect of which this section applies are, to the extent to which they were in force in Queensland on the date of adoption, in force in that area as written laws.

4. Adaptation of adopted laws.

(1) An Act, statute or law referred to in Section 2 or 3 is in force only so far as it is—

(a) applicable to the area concerned; and

(b) not repugnant to or inconsistent with—

(i) the Constitutional Laws; or

(ii) any other written law in force in relation to that area.

(2) All references in any such Act, statute or law to authorities, persons, places, subjects, matters or things shall be taken as referring to corresponding or analogous authorities, persons, places, subjects, matters or things in or for Papua New Guinea.

(3) For the purpose of facilitating the application of any such Act, statute or law, any court, Judge or magistrate may construe it with such verbal alteration not affecting the substance as is necessary to make it applicable to the matter before the court, Judge or magistrate.

PART II.—APPLICATION OF CERTAIN PRINCIPLES OF THE UNDERLYING LAW, ETC., IN PAPUA.

5. Interpretation of Part II.

(1) In this Part—

"cause" includes any suit, action or other original proceeding between a plaintiff and a defendant;

"order" includes rule.

(2) In this Part, a reference to the common law or to equity shall be read as a reference to the principles and rules of the common law or equity (as the case requires) of England as adopted as part of the underlying law by Section Sch. 2.2 (*adoption of a common law*) of the Constitution.

6. Application of Part II.

(1) This Part applies in respect of the area that, immediately before Independence Day, formed the Territory of Papua.

(2) The provisions of this Part are subject to any other law (other than the common law or equity) and, in particular—

(a) this Part shall be read and construed subject to the Constitution, in accordance with Section 10 (*construction of written laws*) of the Constitution; and

- (b) except as expressly provided to the contrary, nothing in this Part affects the operation of Parts 1, 2 and 3 of Schedule 2 (*adoption, etc., of certain laws*) to the Constitution; and
- (c) this Part does not derogate the powers and jurisdiction of the Supreme Court or the National Court under the Constitution or any other law.

7. Claims for breach of trust not statute-barred.

No claim of a *cestui que trust* against his trustee for any property held on an express trust or in respect of a breach of an express trust is barred by the *Statute of Frauds and Limitations Act* or any other statute of limitations.

8. Impeachment of waste.

An estate for life without impeachment of waste does not confer on the tenant for life any right at common law to commit waste of the kind known as equitable waste unless an intention to confer that right expressly appears by the instrument creating the estate.

9. Merger of legal estates.

No estate merges in another estate by virtue only of the operation of the common law if the beneficial interest in it would not, in equity, merge or be extinguished.

10. Right of mortgagor in possession to sue.

Where—

- (a) a mortgagor is entitled for the time being to the possession of, or to the receipt of the rents and profits of, any land; and
- (b) his mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits,

the mortgagor may sue alone, in his own name—

- (c) for the possession of the land; or
- (d) for the recovery of the rents and profits; or
- (e) to prevent, or to recover damages in respect of, any trespass or other wrong in relation to the land or to the rents and profits,

unless the cause of action arises on a contract made by him jointly with another person.

11. Stipulations not of the essence.

A stipulation in a contract as to time or otherwise that would not have been treated as being of the essence of the contract under the law in Queensland before 1 January 1877 (being the date of commencement of *The Judicature Act* of Queensland) shall be construed in the same way, and has the same effect, as it would have been or had in Queensland before that date.

12. Mandamus and injunction, and appointment of receivers.

(1) Where it appears to the Court just or convenient, mandamus or injunction may be granted or a receiver appointed by an interlocutory order of the National Court, either conditionally or on such terms and conditions as the Court thinks just.

(2) If, whether before, at or after the hearing of a cause or matter, an injunction is asked for to prevent any threatened or apprehended waste or trespass, the injunction may be granted if the National Court thinks fit—

(a) whether or not—

(i) the person against whom the injunction is sought is in possession under a claim of title; or

(ii) the person, being out of possession, claims a right to do the act sought to be restrained under a colour of title; and

(b) whether the estates claimed by either party or both parties are legal or equitable.

13. Rules of Admiralty in collisions.

Where in a cause or proceeding for damages arising out of a collision between two vessels both of the vessels are found to be at fault, and there is any variance between—

(a) an applicable rule that was in force in the High Court of Admiralty on 9 June 1927 (being the date of commencement of the *Administration of Justice Ordinance, 1927* of the former Territory of Papua); and

(b) an applicable rule that was in force in the Courts of Common Law in Queensland before 1 January 1877 (being the date of commencement of *The Judicature Act of Queensland*),

the former prevails.

14. Questions relating to infants.

Subject in particular to Section Sch. 2.2(1)(c) (*adoption of a common law*) of the Constitution, in questions relating to the custody and education of infants the rules of equity prevail.

15. Equity to prevail.

Where in any matter not particularly mentioned in Sections 6 to 14 (inclusive) there is a conflict or variance between the rules of equity and the rules of the common law, the former prevails.

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APPENDIX.

SOURCE OF LAWS ADOPTION AND ADAPTATION ACT.

Part A.—Previous Legislation.

(1) Laws of the former Territory of Papua.

Administration of Justice Act, 1927 (No. 2 of 1927)

*The Courts and Laws Adopting Act (Amended) of 1889*¹ (No. 6 of 1889).

as amended before and by—

The Courts and Laws Adopting (Papua) Act 1975 (No. 38 of 1975).

(2) Laws of the former Territory of New Guinea.

*Laws Repeal and Adopting Act 1921*¹ (No. 1 of 1921),

as amended before and by—

Laws Repeal and Adopting (New Guinea) Act 1975 (No. 41 of 1975).

Part B.—Cross References.

Note—In this table, the following abbreviations are used :—

(A.J.): Administration of Justice Act, as set out in Part A(1).

(C.L.A.): Courts and Laws Adopting Act, as set out in Part A(1).

(L.R.A.): Laws Repeal and Adopting Act, as set out in Part A(2).

Section, etc., in Revised Edition.	Previous Reference.	Section, etc., in Revised Edition.	Previous Reference.
1	—	8	A.J. 3(2)
2	C.L.A. 3	9	A.J. 3(3)
3	L.R.A. 14	10	A.J. 3(4)
4	C.L.A. 3, 5; L.R.A. 14, 17	11	A.J. 3(5)
5	A.J. 2	12	A.J. 3(6)
6	—	13	A.J. 3(7)
7	A.J. 3(1)	14	A.J. 3(8)
		15	A.J. 3(9)

¹ These Acts were amended so often before 1975, as local legislation took the place of adopted legislation, that it is not worthwhile listing the amending Acts, which were referred to in the footnotes to Nos. 38 and 41 of 1975 respectively.

