

# NIUE ACT 1966

1966/38 (NZ) – 1 January 1967

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### To consolidate and amend certain enactments relating to the Government and laws of Niue

#### 1 Short title

This is the Niue Act 1966.

#### 2-3 [Repealed]

#### PART 1

#### THE EXECUTIVE GOVERNMENT OF NIUE

#### 4–20 [Repealed]

#### 21 Persons authorised to practise medicine or surgery

(1) No person shall practise medicine or surgery in Niue, for fee, salary, or other remuneration or reward of any nature whatsoever, unless –

- (a) He is registered as a medical practitioner in New Zealand;
- (b) He holds a certificate issued under the hand of the Secretary to the Medical Council of New Zealand that, in the opinion of that Council, he has attained a standard of practice in medicine and surgery equivalent to that required for registration as a medical practitioner in New Zealand;
- (c) He –
  - (i) is a graduate of the Fiji School of Medicine; or
  - (ii) holds a certificate issued under the hand of the Director of Health that, in the opinion of the Director, he is a graduate of a school of medicine

equivalent in standard to the Fiji School of Medicine, and has attained a competent standard of practice in medicine and surgery.

(2) Notwithstanding subsection (1) (c) –

- (a) If no conditions are prescribed by Act and the position of Director of Health is vacant and no acting Director of Health has been appointed; or
- (b) If no conditions are so prescribed and the Director of Health is absent from Niue or is otherwise incapable of performing his duties, exercising his powers, and carrying out his functions,

any such graduate employee may practise medicine or surgery in Niue, subject to the general control of Cabinet and not otherwise.

## **22 Offences**

(1) Every person commits an offence who, not being a medical officer –

- (a) Directly or by implication represents or holds himself out to be a medical officer; or
- (b) Engages, for or without any fee, salary, or other remuneration or reward, in the practice of medicine or surgery, or any branch of medicine or surgery, under the style or title of physician, surgeon, doctor, licentiate in medicine or surgery, bachelor of medicine, or medical practitioner, or under any name, title, addition, or description implying that he holds any degree or diploma in medicine or surgery or in any branch of medicine or surgery, or is otherwise specially qualified to practise medicine or surgery or any branch of medicine or surgery.

(2) Every person who commits an offence against this section is liable –

- (a) On a first conviction, to a fine not exceeding 1 penalty unit, and, where the offence is a continuing one, to a further fine not exceeding 1 penalty unit for each day on which the offence has continued;
- (b) On a second or subsequent conviction, to imprisonment for a term not exceeding 2 months or to the penalties specified in paragraph (a).

## **23 Director of Health**

(1) The Niue Public Service Commission shall appoint a Director of Health who shall be the administrative head of the Department of Health and responsible in Niue for the administration of all laws relating to public health, mental health, hospitals, medical and surgical services, the quarantine of persons, and all other operations of the Department.

(2) The Niue Public Service Commission in appointing a Director of Health must be satisfied that the appointee has qualifications, proven ability and work experience in medicine or management, or a combination of both, appropriate for the performance of the functions of Director of Health.

(3) An acting Director of Health shall, during the subsistence of his appointment, perform all the duties, exercise all the powers, and carry out all the functions of the Director of Health, whether conferred by this Act or any other enactment.

## **23A Medical services**

(1) Without restricting section 23 (8) it shall be the duty of the Director of Health to provide for all persons in Niue such medical and surgical services as may be reasonably required and reasonably practicable.

(2) Medical and surgical treatment, aid, and attendance provided by any medical officer employed in the Niue Public Service may, in the case of Niueans, be

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gratuitous, and shall, in the case of all other persons, be subject to payment of any reasonable and proper fees which may either generally or in any particular instance, be fixed or prescribed by Cabinet and all fees for such treatment, aid, and attendance shall be paid into and shall form part of the public revenues of Niue.

(3) No liability shall be incurred by the Crown in respect of any failure or neglect to provide any services referred to in subsection (1) or any treatment, aid, or attendance referred to in subsection (2) or in respect of any negligence, wrongful act, or wrongful omission on the part of any medical officer employed in the Niue Public Service.

### **24 Medical officers**

(1) The Niue Public Service Commission shall appoint medical officers and such other employees as are necessary for the provision of medical services on Niue.

(2) A medical officer so appointed must meet the requirements under section 21.

**25** [Repealed]

**26-30** [Reprint – see now Criminal Law Code 2007]

## PART 2

### THE LEGISLATIVE GOVERNMENT OF NIUE

**31-48** [Repealed]

### **49 Regulations**

(1) Cabinet may make such regulations as it thinks fit for the purposes of this Act and in such regulations provide for the taking of fees, the imposing of charges, and the imposition of penalties for contravention of regulations.

(2) Such regulations may amend or repeal the Sea Carriage of Goods Act 1940 as promulgated for Niue by the Cook Islands Sea Carriage of Goods Order 1946, and may amend or repeal the Marine Pollution Act 1974 and rules made under it following the original extension to Niue of the Oil in Navigable Waters Act 1965 under the Niue (New Zealand) Laws Regulations 1972.

**50-52** [Repealed]

## PART 3

### THE HIGH COURT OF NIUE

#### *Constitution of the High Court*

**53-59** [Repealed]

### **60 Commissioners of High Court**

A Commissioner of the High Court shall possess and may exercise the powers and functions of a Judge of that Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Justice).

**61** [Repealed]

**62 Registrar and Deputy Registrar of the High Court**

(1) [Repealed]

(2) The Registrar of the Court shall keep the records of the High Court, and shall perform all such administrative duties in respect of that Court as the Chief Justice may direct.

(3) The Deputy Registrar of the Court shall, subject to the control of the Registrar, possess, exercise, and perform the same powers, functions, and duties, as the Registrar; and every reference in this Act to a Registrar of the High Court shall, so far as applicable, extend and apply to the Deputy Registrar accordingly.

**63** [Repealed]

**64 Seal of the High Court**

The High Court shall have in the custody of each Judge and Commissioner and the Registrar a seal of the Court, in such form or forms as Cabinet approves, for the sealing of all orders, warrants, records and other instruments requiring to be sealed.

**65 Records of the High Court**

The Registrar of the High Court shall keep proper books in which shall be entered minutes of all proceedings in the Court, whether in its civil or criminal jurisdiction.

*Jurisdiction of the High Court*

**66-67** [Repealed]

**68 Habeas corpus**

The High Court may, on the application of any person, make an order for the release of any person from unlawful imprisonment or detention, or for the production before the Court of any person alleged to be unlawfully imprisoned or detained, and every person who disobeys any such order shall be guilty of contempt of the High Court.

**69** [Reprint – see now Family Law Code 2007]

*Procedure of the High Court*

**70 Rules of Court**

(1) The Cabinet may, after consultation with the Chief Justice, make rules of court determining –

(a) The practice and procedure of the High Court (whether in its civil or criminal jurisdiction, including its jurisdiction in relation to land); and

(b) The practice and procedure of the Court of Appeal.

(2) Rules of court made under subsection (1) may require an appellant to give security for the costs of an appeal, and may provide for the dismissal of an appeal by the High Court or by a Judge of the Court by reason of the failure of the appellant to conform to any such requirement or to prosecute the appellant's appeal under those rules of court, and no appeal to the Court of Appeal lies from any such dismissal of an appeal.

**71 Procedure so far as not governed by rules of Court**

Subject to any enactment, the practice and procedure of the High Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

**72 Forms**

Subject to any enactment, all statements of claim, informations, summonses, warrants, convictions, orders, recognisances, and other documents required or authorised in the course of the civil or criminal jurisdiction of the High Court may be in such form as the Court or the Judge, Registrar, or other officer by whom they are issued, made, or received thinks sufficient.

**73 Summons to witnesses**

A Judge or Registrar of the High Court may in any proceedings before the Court, whether civil or criminal, issue a summons to any person requiring him to appear before the Court at the time and place mentioned in the summons, there to give evidence in those proceedings or to produce any document to the Court in those proceedings.

**74 Default of witness**

Every person shall be guilty of contempt of the High Court who –

- (a) Having been served with any such summons, neglects or fails without sufficient cause shown by him to appear or to produce any document which he is so required to produce; or
- (b) Whether summoned to attend or not, is present in Court and, being required to give evidence or to produce any document then in his possession, refuses, without sufficient cause shown by him, to be sworn or to give evidence or to produce that document; or
- (c) Having been sworn to give evidence in any proceedings, neglects or fails without sufficient cause shown by him to appear at such time as the Court directs for the purpose of giving further evidence in the proceedings.

**75 Commissioners to take evidence**

The High Court may, in any civil or criminal proceedings where it appears necessary for the purposes of justice, make an order for the examination on oath before any officer of the Court or any other person or persons, and at any place either in or out of Niue, of any witness or person and may order any deposition so taken to be filed in the Court, and may empower any party to the proceedings to give the deposition in evidence.

**76 Evidence by affidavit sworn out of Niue**

In any proceedings in the Court, an affidavit made out of Niue may, with the leave of the Court, be received in evidence if made before a solicitor of the High Court of New Zealand, or in any other manner by which the affidavit would be admissible in civil proceedings in New Zealand.

**77 Witnesses may be ordered out of Court**

The High Court may at any time during any proceedings, whether civil or criminal, order all witnesses other than the witness under examination to go and remain outside the Court until required to give evidence; and any witness who disobeys any such order shall be guilty of contempt of the High Court.

**78 Affidavits in Niue**

(1) Affidavits in the High Court may be sworn in Niue before –

- (a) A Commissioner of the High Court;
- (b) A Solicitor of the High Court of New Zealand;
- (c) The Registrar of the High Court;
- (d) A Postmaster;
- (e) The Financial Secretary;
- (f) [Repealed]
- (g) A medical officer.

(2) The making of such affidavits shall be governed by the same rules as are in force for the time being with respect to affidavits in the High Court of Niue.

**79 Evidence by affidavit**

In any civil proceedings in the High Court evidence may be taken either orally or by affidavit, but in actions and other proceedings *inter partes* affidavits shall not be admissible without the leave of the Court.

**80 Right of audience in the High Court**

In any proceedings in the High Court, whether civil or criminal, any party may be represented either by a barrister or solicitor of the High Court of New Zealand, or, with the leave of the Court, by any other agent, but any such leave may be at any time withdrawn.

**81 Costs**

In any proceedings in the High Court, the Court shall have the power to make such order for the payment of the costs of the proceedings by or to any party.

**82 Security for costs**

(1) In any civil proceedings and at any stage of them, the High Court may require a plaintiff or applicant resident out of the jurisdiction of the High Court to deposit any sum of money as security for costs, and may stay the proceedings pending the making of that deposit.

(2) When any sum has been so deposited as security for costs, it shall be disposed of in such manner as the Court directs.

**83 Court fees**

The scale of costs and Court fees to be paid in all civil or criminal proceedings in the High Court shall be as prescribed.

**84 Minutes of judgments**

(1) Every judgment of the High Court shall be deemed to be complete when a minute of it has been made in the record books of the Court and signed by a Judge of the Court.

(2) When necessary, the judgment may at any time after that be drawn up under the seal of the Court.

**85 Amendments**

A Judge of the High Court may amend any minute or judgment of the Court or other record of the Court, in order to give effect to the true intent of the Court in respect of it or truly to record the course of any proceedings.



**86 Rehearing of civil proceedings**

(1) On application made at any time within 14 days after the date of any judgment given by the High Court in its civil jurisdiction, the Court may rehear the matter, and may on the rehearing either affirm, reverse, or vary the judgment.

(2) The Court may rehear the matter on an application made more than 14 days after the date of the judgment, if the Court is satisfied that the application could not reasonably be made sooner.

**87 Rehearing of criminal proceedings**

(1) Where on the hearing of any information the accused has been convicted, the High Court may grant a rehearing of the information, either as to the whole matter or only as to the sentence, upon such terms as the Court thinks fit.

(2) When a rehearing has been granted, the conviction or, as the case may be, the sentence only shall immediately cease to have effect.

(3) If a rehearing is granted in any case where the accused was on conviction sentenced to a term of imprisonment that has not expired, but the hearing is not proceeded with immediately, the Court may remand the accused in custody or admit the accused to bail, with or without sureties until the date appointed for the rehearing.

(4) On any rehearing the Court shall have the same powers and shall follow the same procedure as if it were the first hearing.

(5) If the defendant does not appear on the date set down for the rehearing of any information, the Court may, without rehearing the case direct that the original conviction or sentence, as the case may be, shall be restored.

*Executions of Judgments*

**88 Writs of sale and possession**

(1) Where by any judgment of the High Court in its civil jurisdiction any person is ordered to pay any sum of money, the party to whom the money is payable may cause a writ of sale to be issued.

(2) Where by any judgment of the High Court any person is ordered to deliver possession of land or chattels, the party to whom the land or chattels are ordered to be delivered may cause a writ of possession to be issued.

**89 Effect of writ of possession**

A writ of possession shall authorise the officer to whom it is addressed to deliver to any party named in the writ, possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from the land, or to seize and take possession of any such chattels.

**90 Effect of writ of sale**

(1) A writ of sale shall authorise the officer to whom it is directed to seize all the chattels (including money, cheques, bills of exchange, and other securities for money) of the person against whom it is issued, except wearing apparel, bedding, tools and implements of trade, not exceeding in the aggregate one hundred dollars in value.

(2) All chattels so seized may, unless the judgment is sooner satisfied, together with the costs of the execution, be sold or otherwise converted into money by the Registrar, and the proceeds of the sale or conversion, after payment from them of the costs of the execution, shall be applied in satisfaction of the judgment.

**91 Issue of writs of sale or possession**

Every writ of sale or writ of possession shall be issued by the Registrar under the seal of the High Court, and shall be addressed to an officer of the Court or to a constable.

**92 Charging orders**

(1) Any judgment of the High Court in its civil jurisdiction for the payment of any sum of money may be enforced by a charging order made by the Court against any real or personal property of the person by whom the money is payable (including debts and other money due or accruing due to that person, but not including the interest of a Niuean in any Niuean land).

(2) Any such charging order shall be made and shall have effect in manner provided by rules of Court.

**93 Stay of execution**

The High Court may in any civil proceedings stay the execution of any judgment for such term as the Court thinks fit.

**94 Judgment summons**

(1) When judgment for the payment of any debt, damages, or other sum of money has been given by the High Court in its civil jurisdiction, the judgment creditor may at any time after judgment file in Court an application for an order under this section.

(2) A Judge or the Registrar of the Court may thereupon issue a summons (a judgment summons) to the judgment debtor to show cause why an order should not be made against him for the payment of the amount of the judgment.

(3) On the hearing of the application, the Court may make an order that the judgment debtor pay to the judgment creditor the amount of the judgment debt forthwith, or at such time or by such instalments as the Court thinks fit.

(4) Except where the judgment debtor fails to appear in Court in pursuance of the judgment summons, no such order shall be made, unless the Court is satisfied either –

- (a) That the judgment debtor is of sufficient ability to pay the judgment debt under the terms of the order; or
- (b) That the liability in respect of which judgment was given against him was incurred by fraud; or
- (c) That before or after the date of the judgment the judgment debtor has made away with any property for the purpose of evading payment of the liability.

(5) If any judgment debtor disobeys any order made against him under this section, he shall be guilty of contempt of the High Court.

(6) Nothing in this section shall exclude any other lawful method of executing any such judgment.

**95 Enforcement of foreign judgments**

(1) In this section –

“final decision” means a judgment from which there is no appeal in the courts of the country where the judgment was originally made or, when the judgment is executory, because the time for appealing the judgment has expired;

“judgment” means a final decision of a court other than a court of Niue, in criminal or civil proceedings, for the payment of a sum of money as compensation or damages, and includes arbitral awards and maintenance orders but excludes sums payable in respect of a fine or other penalty;

“judgment creditor” means the person in whose favour a judgment was given and any person who has rights under a judgment.

(2) A judgment may be enforceable in Niue if –

- (i) the foreign court had jurisdiction to decide the matter; and
- (ii) it is for a definite sum of money; and
- (iii) enforcement would not be contrary to the public policy of Niue; and
- (iv) a certified copy of the judgment has been filed for registration in the High Court within 2 years from the date on which it was made or became executory.

(3) After receiving an application to register a judgment, the High Court shall issue a summons –

- (i) calling upon the person against whom the judgment was obtained to show within 30 days why execution should not issue on the judgment; and
- (ii) giving notice that in default of appearance an order for execution of the judgment will be issued.

(4) In default of appearance within 30 days, or if the person served with such summons fails to show sufficient cause against it, the judgment will be registered.

(5) No order of registration shall be issued where a judgment creditor has shown that the judgment –

- (i) has been wholly satisfied; or
- (ii) could not be enforced in the courts of the country where the judgment was originally made.

(6) Where a judgment has been partially satisfied, it shall be registered only in respect of a sum remaining unpaid under it.

(7) After registration the judgment may be enforced in the same manner as if it were a judgment originally given in the High Court on the date of registration.

(8) No foreign judgment shall be enforced in Niue other than by way of registration under this section.

(9) A judgment shall be recognised by a court of Niue as conclusive between the parties in a case founded on the same cause of action and as a defence or counter-claim if it satisfies subsection (2) (i) (ii) and (iii).

### *Absconding Debtors*

#### **96 Order of arrest of absconding debtor**

Where in any action in the High Court for the recovery of any debt, damages, or other sum of money the plaintiff proves to the satisfaction of the Court, at any time before final judgment, that he has a good cause of action against the defendant to the amount of 0.5 penalty units or upwards, and that there is probable cause for believing that the defendant is about to leave Niue unless he is apprehended, and that his absence from Niue will materially prejudice the plaintiff in the prosecution of his action, the Court may order the defendant to be arrested and imprisoned for a period not exceeding 3 months unless and until he sooner give security to the satisfaction of the Court that he will not leave Niue without the leave of the Court.

#### **96A Commissioner and Justices’ authority**

Any power conferred by this Act on the Court to make an order under section 96 may be exercised by a Commissioner of the High Court or any 2 Justices of the Peace if when the power is exercised there is not present in Niue a Judge who is able to exercise it.

#### **97 Security to be given**

The security to be so given shall, as the Court directs, be either the payment into Court of a sum not exceeding the amount claimed in the action or a bond executed by the defendant with one or 2 sureties in favour of Her Majesty in the like amount.

**98 Enforcement of security**

If after such security has been given the defendant leaves Niue without the leave of the Court, all money so paid into Court or recovered in pursuance of the bond shall become available as the Court directs for the satisfaction of any sum recovered in the action.

**99 Arrest in actions for penalties**

Where the action is for a penalty at the suit of the Crown, it shall not be necessary to prove that the absence of the defendant as aforesaid will materially prejudice the Crown in the prosecution of the action, and the security to be given shall be security that any sum recovered against the defendant in the action will be paid or that the defendant will be rendered to prison.

**100 Enforcement of security in actions for penalties**

If, after such security has been given, any sum recovered in the action remains unpaid and the defendant is not rendered to prison, all money so paid into Court or recovered in pursuance of the bond shall become available as the Court directs for the satisfaction of the sum recovered in the action.

*Contempt of the High Court*

**101 Contempt of Court defined**

Every person is guilty of contempt of the High Court who –

- (a) Disobeys any judgment or order of that Court, or of any Judge, otherwise than by making default in the payment of a sum of money (other than a penalty) or compensation payable under the judgment or order; or
- (b) Uses any abusive, insulting, offensive, or threatening words or behaviour in the presence or hearing of the Court; or
- (c) Assaults, resists, or obstructs, or incites any other person to assault, resist, or obstruct, any constable or officer of the Court in serving any process of the Court, or executing any warrant of the Court or of a Judge or executing any judgment or order of the Court or of a Judge; or
- (d) By words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court; or
- (e) Does any other thing which elsewhere in this Act or in any other Act is declared to be a contempt of the High Court; or
- (f) Aids, abets, counsels, procures, or incites any other person to commit contempt of the High Court.

**102 Penalty for contempt**

Every person who commits contempt of the High Court is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding 1 penalty unit.

**103 Jurisdiction in contempt**

The offence of contempt of the High Court shall be punishable by the High Court either

- (a) In the ordinary course of the criminal jurisdiction of that Court; or
- (b) Under section 104.

**104 Contempt in the face of the Court**

(1) If the contempt is committed in the presence or hearing of the Court, any Judge then and there sitting in Court may, without order or warrant, direct any constable, officer of the Court, or other person to arrest the person so guilty of contempt and to bring him before the Court.

(2) The Court may thereupon, after giving the person so arrested a reasonable opportunity of being heard in his defence, either commit him to prison for a term not exceeding 6 months or order him to pay a fine not exceeding 1 penalty unit.

**105 Discharge of persons in contempt**

A person imprisoned for contempt, or for default in payment of a fine imposed upon him for contempt, may be at any time discharged, and any fine so imposed may be at any time remitted in whole or in part by order of the Court.

PART 4

THE HIGH COURT

**106** [Repealed]

**107 Declarations**

A person may apply to the High Court for a declaration where the applicant –

- (a) has done or desires to do an act the validity, legality, or effect of which depends on the construction or validity of an enactment or of any document; or
- (b) claims to have acquired any rights under any such enactment or document, or in any other manner to be interested in its construction or validity; or
- (c) wishes to have a formal statement as to the existence or non-existence of a marriage or the validity of a dissolution of marriage.

**108** [Repealed]

**109 Cases stated**

(1) The High Court may in any proceedings before it, either on the application of a party or of its own motion, state a case on a question of law for determination by the Court of Appeal.

(2) In the order of the Court of Appeal which determines the case stated, the Court of Appeal may fix the costs of the argument and determination of the case stated.

**110** [Repealed]

*Appeals from the High Court*

**111-112** [Repealed]

**113 Transmission of record**

Where an appeal is made to the Court of Appeal against a final judgment of the High Court, a copy of the record of the proceedings in which the judgment appealed against was given (including the reasons for the judgment, and, where necessary, a statement of the facts or of the evidence) shall be prepared by the appellant and transmitted to the Registrar of the Court of Appeal.

**114 Dismissal of appeal for non-prosecution**

If the appellant does not prosecute his appeal with due diligence, the respondent may apply to the High Court for an order dismissing the appeal for non-prosecution; and, if such an order is made, the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as that Court may direct.

**115 Procedure on appeal**

The procedure on the hearing of any such appeal and in all matters incidental to any such appeal, whether in the High Court or in the Court of Appeal shall, subject to this Act, be determined by the rules of the High Court or the Court of Appeal and in default of such rules, or so far as they do not extend, shall be determined in such manner as the Court thinks fit.

**116** [Repealed]

**117 Powers of Court of Appeal**

(1) On any appeal from the High Court, the Court of Appeal may affirm, reverse, or vary the judgment appealed from, or may order a new trial, or may make any such order with respect to the appeal as the Court of Appeal thinks fit, and may award such costs as it thinks fit to or against any party to the appeal.

(2) Without limiting the general powers conferred by subsection (1), the Court of Appeal on any appeal against sentence, if it thinks that a different sentence should have been passed, shall quash the sentence passed and pass such other sentence warranted by law (whether more or less severe) in substitution therefore as the Court thinks ought to have been passed, and in any other case shall dismiss the appeal.

**118 Evidence on appeal**

Every such appeal shall, so far as it relates to any question of fact, be determined by the Court of Appeal by reference to the evidence heard at the trial as certified to the Court of Appeal under the seal of the High Court, and no further evidence shall, without the leave of the Court of Appeal be heard or admitted.

**119 Stay of execution**

An appeal to the Court of Appeal shall not operate as a stay of execution, unless the High Court or the Court of Appeal otherwise orders.

**120 Release of appellant from custody**

(1) When an appeal is made to the Court of Appeal from any conviction in the High Court, the High Court may release the appellant from custody on bail pending the determination of the appeal.

(2) Any person so released on bail may be at any time, and for any reason which the High Court thinks sufficient, arrested by warrant and committed to prison, there to undergo his sentence.

(3) Any period during which an appellant has been so at large on bail shall not be computed as part of the term of imprisonment to which he has been sentenced.

**121 Appeal not to be allowed for irregularities**

No judgment of the High Court shall, on appeal to the Court of Appeal, be set aside on the ground of any error or irregularity in the proceedings of the High Court, or on the ground of any defect of form or substance in the judgment, unless the Court of Appeal is of opinion that the proceedings of the High Court were not in conformity with natural justice or that a substantial miscarriage of justice has taken place.

**122 Right of audience on appeal**

On every case stated for the Court of Appeal and in every appeal to that Court, the parties may either appear in person or be represented by a person who has right of audience in the High Court, or may submit their arguments to the Court of Appeal in writing.

**123 Transmission of order of Court of Appeal**

The determination of the Court of Appeal on any appeal from the High Court shall be entered in the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by the determination.

**124-125** [Repealed]

*Enforcement in Niue of Judgments of New Zealand Courts*

**126 Judgments of High Court or a District Court in New Zealand may be enforced by the High Court**

(1) Any person in whose favour any judgment whereby any sum of money is made payable has been obtained in the High Court of New Zealand or in a District Court in New Zealand in civil proceedings may cause a memorial of it, authenticated by the seal of the High Court of New Zealand or of the District Court, as the case may be, to be filed in the High Court of Niue.

(2) Judicial notice may be taken by the High Court of Niue of the seal of the New Zealand Court so affixed to any such memorial.

(3) Every such memorial shall set forth the names and additions of the parties to the proceedings in which the judgment was given, the form or nature of the proceedings, the date on which the judgment was given, and the amount payable under it.

(4) Every such memorial being so filed shall thenceforth be a record of the judgment, and execution may issue on it with the leave of the High Court in the same manner as if the like judgment had been given by the High Court, subject to such terms and conditions as the High Court may impose.

(5) Leave to issue such execution may be given by the High Court on the application of the party by whom the memorial was filed, and either *ex parte* or on notice to the party against whom execution is to be issued, as the High Court thinks fit.

**127 Enforcement of judgments of the High Court of New Zealand by High Court by way of proceedings for contempt**

(1) When by any judgment of the High Court of New Zealand any person has been ordered to do or abstain from doing any act in Niue other than the payment of money, the High Court of New Zealand may then or at any time thereafter direct a memorial of the judgment under the seal of the court to be filed in the High Court of Niue.

(2) On the filing of such a memorial, any disobedience to the judgment, whether before or after the filing of the memorial, shall be deemed to be a contempt of the High Court of Niue.

**128** [Repealed]

PARTS 5-6

**129-287** [Reprint – see now Criminal Law Code 2007]

PART 7

LAW OF EVIDENCE

**288 Definitions**

In this Part –

“Court” includes any person acting in any judicial capacity or having by law or by consent of parties authority to hear, receive, and examine evidence;

“proceedings” includes any action, trial, inquiry, cause, or matter, whether civil or criminal, depending or to be inquired of or determined in or by any Court.

**289 Discretionary power to admit or reject evidence**

(1) Subject to this Act, a Court may in any proceedings admit and receive such evidence as it thinks fit, and accept and act on such evidence as it thinks sufficient, whether that evidence is or is not admissible or sufficient at common law.

(2) A Court may in any proceedings refuse to receive any evidence, whether admissible or not at common law, which it considers irrelevant, or needless, or unsatisfactory as being hearsay or other secondary evidence.

**290 All witnesses competent**

Subject to this Part no witness in any proceedings shall be deemed incompetent by reason of interest or on any other ground whatever.

**291 Evidence of parties and their spouses**

In any civil proceedings the parties and the persons on whose behalf the proceedings are brought or defended, and the husbands and wives of those parties or persons respectively, shall be competent and compellable to give evidence on behalf of either or any of the parties to the proceedings.

**292 Evidence of accused persons and their spouses**

(1) Every person charged with any offence shall be a competent but (except where the contrary is expressly provided by any enactment) not a compellable witness upon his trial for that offence.

(2) The wife or husband of any person charged with an offence shall be a competent witness on the trial of that person, but shall not be a compellable witness, except in the following cases –

(a) When called as a witness by the accused;

(b) When the offence of which the accused is charged is an offence against the wife or husband of the accused or against a child of the accused.

(3) If any witness who under this section is competent but not compellable gives evidence on any such trial, he shall be liable to cross-examination in the same manner as if he were a compellable witness, whether the matter on which he is so cross-examined arises out of his examination in chief or not.

**293 Cross-examination as to credit**

In any proceedings the Court may limit in any manner and to any extent which it thinks fit the cross-examination of any witness as to credit, and shall refuse to permit any such cross-examination which is needlessly offensive or injurious to the witness, having regard to the nature or gravity of the imputations made against him, to the importance of his evidence, and to the effect of those imputations upon his credibility.



**294 Criminating questions**

Nothing in this Part shall take away or affect the privilege of any witness to refuse to answer any question which may tend to criminate him.

**295 Evidence of prisoners**

(1) On application made in that behalf by any person who states on oath that any prisoner can give material evidence in any proceedings in any Court, a Judge of the High Court may, by order under his hand, require the prisoner to be brought up for examination as a witness in the proceedings.

(2) In every such case the Judge may, before making such an order, require the applicant to deposit a sum sufficient to pay the expense of bringing up the prisoner, maintaining him while out of prison, and returning him thither, including the expense of his custody in the meantime.

**296 Judicial notice of enactments**

In all proceedings the Court shall take judicial notice of all enactments.

**297 Judicial notice of seals**

In every proceeding the Court shall take judicial notice of the Seal of Niue and of the seal of any Court, officer, or other person authorised or required by law to use any such seal, and of the signature of any Judge or any officer, whether judicial or not, of the Niue Public Service, and of the Public Seal of New Zealand, and of the signature of the Governor-General.

**298 Power to administer oaths**

All Courts are hereby empowered to administer an oath to all such witnesses as are lawfully called or voluntarily come before them, or to take the affirmation of any such witness instead of an oath.

**299 Form of oath**

Except when the person making the oath consents to any other form of oath, an oath shall, whether in judicial or other proceedings, be made in the following form:

The officer administering the oath shall address to the person making the oath the following words: "Do you swear by Almighty God that the evidence you are about to give touching the matter now before the Court shall be the truth, the whole truth, and nothing but the truth?", or words to the like effect, and the person making the oath shall thereupon, while holding in his hand a copy of the Bible, Old Testament, or New Testament, indicate his assent to the oath so administered by uttering the words "I do", or other words to the like effect.

**300 Absence of religious belief**

Where an oath has been duly made, the fact that the person making it had at the time of making it no religious belief shall not for any purpose affect the validity of the oath.

**301 Affirmation may be made instead of oath**

Every person shall be entitled as of right to make his solemn affirmation instead of an oath in cases in which an oath is required or allowed by law, and that affirmation shall be of the same force and effect as an oath.

**302 Form of affirmation**

The officer administering an affirmation shall address to the person making the affirmation the following words: "Do you solemnly, sincerely, and truly declare and affirm that the evidence you are about to give touching the matter before the Court shall be the truth, the

whole truth, and nothing but the truth?” or words to the like effect, and the person making the affirmation shall thereupon indicate his assent to the affirmation so administered by uttering the words “I do” or other words to the like effect.

**303 Evidence of children without oath**

In any proceedings all witnesses who are or appear to be under the age of 12 years may be examined without oath, but any such witness shall in that case be required before being examined to make the following declaration: “I promise to speak the truth, the whole truth, and nothing but the truth”, or a declaration to the like effect; and such a declaration shall be of the same force and effect as if the witness had taken an oath.

**304 Necessity of oath**

Subject to this Act, all witnesses in any judicial proceedings, civil or criminal, shall be examined on oath.

PARTS 8-15

**305-460 [Repealed]**

PART 16

LAND DEVELOPMENT

**461 Application of this Part**

(1) The Court may, with the consent of the *Leveki Magafaoa* or a majority of the owners, by order declare that any Niuean land shall be subject to this Part for such period as may be defined in that order, and the period fixed by the order may be extended by the Court.

(2) The Court may by order direct that any land shall be no longer subject to this Part, and thereupon the Cabinet shall cease to have any right of control in respect of it, but without releasing the land or any of the parties from any antecedent liability incurred to or by the Cabinet and the Cabinet may, notwithstanding the order of the Court, continue to exercise the Cabinet’s powers of creation and enforcement of charges hereunder so long as any such liability remains.

**462 Cabinet may cultivate land on behalf of owners**

(1) Where any land has been declared by the Court to be subject to this Part, the Cabinet may, subject to any lease, licence, or other alienation to which the land is subject, cultivate, use, and manage the whole or any part or parts of the land, and may carry on any agricultural business or any other business or occupation connected with the land and the produce of it on behalf of and for the benefit of the *Leveki Magafaoa* or the owners or such Niueans as may be interested in the business carried on.

(2) For the purpose of such business, the Cabinet may –

- (a) Purchase or otherwise acquire implements or other personal property as the Cabinet thinks expedient, and may also sell or otherwise dispose of all crops or other personal property acquired, held, grown, or produced by the Cabinet in the course of the business;
- (b) Provide, erect, maintain, and equip stores, factories, sheds, offices, or buildings of any kind;
- (c) Do all other things reasonably necessary for the development and operation of the business, and for the improvement of the land.

(3) The Public Service Commission may employ all such servants or agents as the Cabinet thinks necessary for this section.

(4) (a) The Cabinet may enter into an agreement in writing with any *Leveki Magafaoa* for farming, or farming on shares, or cropping on shares with reference to any land being administered or dealt with under this Part, for such period and upon such conditions as to remuneration or otherwise as the Cabinet thinks fit.

(b) Any such agreement shall be in the name of the Cabinet and shall be as effective as if the Cabinet were the legal owner of the land mentioned in it.

(5) The Cabinet may retain any part of the revenue derived from the operation of any business as a reserve fund for expenditure in the management of the business and may, as the Cabinet thinks fit, either expend the reserve fund accordingly or may apply it or any part of it in any other manner under this Part.

(6) The Cabinet may expend such sum or sums as the Cabinet considers expedient for the purposes of carrying on any business.

(7) The Cabinet shall be entitled to make a reasonable charge for administration, and all expenses and liabilities (including administration expenses) incurred by the Cabinet in the conduct of any business shall be a charge upon the revenue received by the Cabinet from the business as well as upon the lands on which the business is conducted.

(8) The Cabinet may make advances to the *Leveki Magafaoa* or any Niuean beneficiary in respect of the Cabinet's share or interest in the profits of the business, either by way of anticipation or otherwise.

(9) (a) All sums of money advanced by the Cabinet whether on account of the business generally or to the *Leveki Magafaoa* or any owner, shall constitute a charge upon the land and shall bear interest at such rate as the Cabinet shall determine.

(b) The High Court may make separate orders evidencing any charge in respect of different pieces of land or in respect of different parts of or interests in any piece of land, and for that purpose may apportion, in such manner and in such proportions as it thinks just and equitable, any money secured or proposed to be secured by any charge.

(10) (a) The provisions of any enactment prohibiting the assignment of rents or profits shall apply to all advances or other money which are or may become payable to the *Leveki Magafaoa* or any owner in respect of his share or interest in the profits of the business.

(b) No person other than the *Leveki Magafaoa* or a Niuean beneficiary shall be capable of acquiring any beneficial interest except by will or by order of the Court in any crops or chattels held by the Cabinet or in any revenue derived or to arise therefrom, nor shall the interest of the *Leveki Magafaoa* or the beneficial interest of any Niuean beneficiary be liable to be taken in execution or attached or become assets in the bankruptcy of a Niuean beneficiary.

(11) Nothing in any Act prohibiting alienation by way of security shall apply to any land that is subject to this Part.

#### **463 Disposal of revenues received by Cabinet**

All revenues received by the Cabinet from any land subject to this Part or from any business carried on under this Part shall be applied as follows –

- (a) In defraying the cost of the administration of the land or business;
- (b) In paying all rates, taxes, and other assessments and outgoings payable by the Cabinet in respect of the land or business;
- (c) In the discharge, to such extent as may be required or as the Cabinet thinks fit, of any mortgage, charge, encumbrance, or liability to which the land or business is subject;

- (d) In payment of sums (if any) set apart to meet any charge for improvements made upon the land;
- (e) For any other purposes in connection with the administration, improvement, and settlement of the land from which the revenues are derived, or for any other purposes of general utility to the *Leveki Magafaoa* or the Niuean owners of that land;
- (f) In paying at the times and in the manner prescribed the residue of the revenues to the *Leveki Magafaoa* or the Niuean owners or other persons having any estate or interest in the land or business in accordance with their respective interests.

**464 Money to be paid out of or into Niue Government Account**

(1) All money expended or advanced by the Cabinet under this Part shall be paid out of the Niue Government Account.

(2) All money received by the Cabinet under this Part shall be paid into the Niue Government Account.

**465** [Repealed]

**466 Interference and obstruction prohibited**

(1) Except with the consent of Cabinet, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this Part.

(2) Every person is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding 0.5 penalty units who –

- (a) Wilfully trespasses on any such land, and neglects or refuses to leave the land after being warned to do so by any person authorised in that behalf by the Cabinet;
- (b) Wilfully obstructs, hinders, or delays any officer, servant, or workman in the performance or intended performance of his duties under this Part, or otherwise obstructs or interferes with the carrying out of any works under this Part.

(3) In any proceedings for an offence against this section in respect of any land, the fact that the defendant has an interest in the land shall not be a defence.

(4) No proceedings shall be commenced under this section except with the consent of the Cabinet.

**467** [Repealed]

PARTS 17-18

**468 –488** [Repealed]

PART 19

NIUEAN SUCCESSION

**489-499** [Reprint – see now Family Law Code 2007]

PART 20

TRUSTEES FOR NIUEANS

**500 Definition of “person under disability”**

In this Part, “person under disability” means any person who is a minor, or of unsound mind, or in prison, or who is subject to any physical or mental infirmity which in the opinion of the Court renders him unfit to have the management of his property.

**501 Trustee orders**

If any Niuean, being a person under disability, is entitled to any interest in any property (other than an interest in Niuean land), the Court may on the application of that person or of any other person, make an order (a trustee order) appointing any person or persons to be the trustee or trustees of the person so under disability in respect of the property or any part of it to which he is so entitled (the trust property).

**502 Matters to be set forth in trustee orders**

(1) Every trustee order shall state the nature of the disability of the beneficiary and, if that disability consists in minority, the order shall state the age of the beneficiary.

(2) Except where the order states the day of the birth of the beneficiary, any such statement as to his age shall be construed as meaning that he attained that age on the date of the order, but it shall not be necessary for the Court in making any such order to make any inquiry as to the day of the birth of the beneficiary.

(3) Any such statement as to the age of the beneficiary may be amended, but, notwithstanding any error in that statement, every act done at any time by the trustee shall be as valid as if the statement for the time being contained in the trustee order was correct, and no act done by the beneficiary in respect of the property comprised in the order after the date indicated in it as the date of his majority shall be invalidated on the ground that the beneficiary was not in fact of the age of 21 years.

(4) Every trustee order shall define the nature of the property in respect of which it was made and the nature of the interest of the beneficiary in it.

**503 Appointment of new trustees**

(1) Where it is made to appear to the Court that it is expedient to appoint a new trustee, the Court may, by a trustee order, appoint a new trustee or new trustees either in substitution for or in addition to any existing trustee, and whether there is any existing trustee or not at the time of making the order.

(2) Any person so appointed shall, unless otherwise provided by the order, have the same powers as if appointed by the original order.

**504 Orders restricting powers of trustees**

By a trustee order or by any subsequent order, the Court may prohibit or restrict the exercise by the trustee of any powers which would otherwise be vested in him under this Act, and the Court may remove or vary any such prohibition or restriction.

**505 Cancellation of trustee orders**

The Court may make an order cancelling or varying a trustee order.

**506 Determination of trustee orders**

When a trustee order has been made on the ground of the minority of the beneficiary, the powers of the trustee shall cease and determine, without any order in that behalf, so soon as the beneficiary attains his majority, and the trustee order shall thereupon cease to be in force.

**507 Trust property not to vest in trustee**

Notwithstanding anything to the contrary in any rule of law or equity, the trust property shall not vest in a trustee appointed by a trustee order, but shall remain vested in the beneficiary for the same estate and interest as if no such order had been made.

**508 Administration of property by trustee**

Subject to this Part and to any order of the Court to the contrary, every such trustee shall be entitled to the possession, receipt, and administration of the trust property and of all revenues to be derived from it, and he shall in the exercise of all powers conferred upon him by this Act be deemed to be the agent of the beneficiary.

**509 Alienation of property by trustee**

(1) Except so far as expressly provided by order of the Court, any such trustee shall, in respect of the alienation or other disposition of any property included in the trust (other than an alienation or disposition by will), represent the beneficiary, and may accordingly exercise in the name and on behalf of the beneficiary all powers in respect of the alienation or other disposition of any such property which the beneficiary might himself have exercised had he been under no disability and had no such trustee been appointed.

(2) So long as any trustee order remains in force, the beneficiary shall not be capable of exercising any powers in respect of the alienation or disposition of the trust property, other than a disposition by will if he is possessed of testamentary capacity.

**510 Powers of trustee**

Except so far as otherwise provided by order of the Court, any such trustee may do, in the name and on behalf of the beneficiary, all things in relation to the trust property which he considers necessary or expedient for the advantageous administration of that property in the interests of the beneficiary, and which the beneficiary could himself have done had he been under no disability and had no such trustee been appointed.

**511 Expenditure of revenues of trust property**

(1) The Court may make such orders as it thinks fit for the payment or expenditure of any of the revenues of the trust property to or for the benefit of the beneficiary, or for the maintenance of the children, adopted children, wife, or husband of the beneficiary.

(2) The right of the beneficiary to the receipt or expenditure of any such money, and his right in any other respect to control the administration of the trust, shall at all times while the trustee order remains in force be subject to the discretion of the trustee and to the order of the Court.

**512 Enforcement of trusts**

The Court shall have jurisdiction to enforce, by injunction or otherwise, as against any trustee under this Part, the obligations of his trust, and to hear and determine as against any such trustee any pecuniary claim arising out of a breach of trust.

**513 Co-trustees must act jointly**

When two or more trustees hold office under any trustee order in respect of the same property, those trustees must act jointly in the exercise of the trust, and no such powers shall be exercisable by less than the full number of trustees so appointed, notwithstanding the existence of any vacancy in that number.

**514 Remuneration of trustees**

Any such trustee may be allowed out of the revenues or proceeds of the trust property, by way of remuneration for his services in administering that property, such reasonable sums as the Court orders, in addition to all costs, charges, and expenses incurred by him in the execution of his trust.

Niue Act

PARTS 21-25

MARRIAGE

515-599 [Reprint – see now Family Law Code 2007]

PART 26

PERSONS OF UNSOUND MIND

*Orders of Medical Custody*

**600 Application by Medical Officer to Court**

Any Medical Officer may make application to the Court for an order committing any person to medical custody under this Part on the ground that that person is of unsound mind.

**601 Medical certificates as to persons of unsound mind**

No such order shall be made except on examination of the person alleged to be of unsound mind, and upon production to the Court of a certificate by the Director of Health or by two Medical Officers that the person in respect of whom the order is to be made is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons.

**602 Order of medical custody**

If the Court is satisfied on the examination of the person so alleged to be of unsound mind, and on hearing such further evidence (if any) as the Court thinks necessary, that he is of unsound mind and that his detention in medical custody is necessary in his own interests or for the safety of other persons, the Court may make an order (hereinafter called an order of medical custody) committing him to medical custody for such period as the Court thinks fit, not exceeding 6 months.

**603 Renewal of order**

Any such order may, whether before or after the expiry of it, be renewed for such further period, not exceeding 6 months, as the Court on a further application and certificate as aforesaid thinks fit.

**604 Cancellation of order**

Any such order may be at any time cancelled by the Court.

**605** [Repealed]

**606 Arrest and detention of persons committed to medical custody**

Any person against whom an order of medical custody has been so made may thereupon be arrested by any constable or Medical Officer, and shall, while the order remains in force, be detained at such hospitals or other places in Niue, and in the custody of such Medical Officer, as may be determined in that behalf by the Director of Health, either generally or in respect of any particular case or class of cases.

**607** [Repealed]

**608 Removal from Niue to New Zealand**

When an order of medical custody has been so made against any person, the High Court may, at the same time or at any time after it while the order remains in force, issue under the seal of the Court a warrant for the removal of that person from Niue to New Zealand.

**609 Conditions of removal**

No such warrant shall be issued unless the Court is satisfied, on the certificate by the Director of Health or by two Medical Officers, and on the examination of the person alleged to be of unsound mind, that his removal from Niue to New Zealand is necessary in his own interests or for the safety of other persons.

**610 Method of removal**

On the issue of any such warrant for the removal of any person to New Zealand, he may be taken to New Zealand in the custody of any person appointed in that behalf by a Medical Officer in any ship belonging to Her Majesty or in any Commonwealth ship or in any aircraft which is approved by the Director of Health or two Medical officers as suitable for the purpose.

**611 Admission to hospital of persons removed to New Zealand**

*[This section is not Niue law.]*

**612** [Repealed]

**613 No committee of estate of person of unsound mind**

The High Court may appoint a committee of the person or estate of a person of unsound mind.

**614 Warrant for arrest of persons of unsound mind**

Any person against whom an application has been made for an order of medical custody may be arrested by any constable or other person under a warrant issued by a Judge or the Registrar of the High Court.

**615 Arrest without warrant of persons of unsound mind**

Any person believed on reasonable grounds to be of unsound mind and to be dangerous to himself or others may be arrested without warrant by a constable, and shall be forthwith brought before a Judge or the Registrar of the High Court, who may make such order for his custody as is thought fit, pending the making and determination of an application for an order of medical custody.

**615A Commissioner and Justices may act for Judge**

(1) Any power conferred by this Act on the Court to make an order under sections 602, 603, 604 or 608 may be exercised by a Commissioner of the High Court or any two Justices of the Peace if at the time when the power is exercised there is not present in Niue a Judge who is able to exercise it.

(2) In any such order made by the Commissioner or two Justices of the Peace, a statement that, or to the effect that, to the best of his or their knowledge and belief, at the time of making of the order there is not present in Niue a Judge who is able to make it shall be conclusive proof of the jurisdiction of the Commissioner or Justices as the case may be so far as the requirements of this section are in question.

(3) Any proceedings commenced before a Commissioner or two Justices of the Peace under this section may be continued and completed before a Judge.

(4) No Commissioner or Justice shall exercise any power under this section in any matter in which he has signed an application for a reception order or a medical certificate.



Niue Act

*Persons of Unsound Mind Charged with Offences*

616-620 [Reprint – see now Criminal Law Code 2007]

PARTS 27-29

621-653 [Repealed]

PART 30

CUSTOMS

654-655A [Repealed]

**656 Goods may be imported from New Zealand or Cook Islands free of duty**

(1) All goods imported into Niue from New Zealand or the Cook Islands, whether the produce or manufacture of New Zealand or the Cook Islands or not, shall be admitted into Niue free of duty.

(2) Nothing in this section shall apply to—

- (a) Goods in respect of which on their exportation from New Zealand or the Cook Islands any claim for drawback of duty has been made and allowed;
- (b) Goods which by reason of warehousing or for any other reason have been exported from New Zealand or the Cook Islands without payment of duty on their importation into New Zealand or the Cook Islands;
- (c) Goods produced in a manufacturing warehouse in New Zealand or the Cook Islands, unless they have been entered in New Zealand or the Cook Islands for home consumption and the duty (if any) paid on it;
- (d) Goods subject to any excise duty in New Zealand under the Customs Acts (as defined in section 3 of the Customs Act 1966) or in the Cook Islands under the law in force in the Cook Islands, unless such duty has been paid on it as if they had not been exported;
- (e) Goods on which a rate of duty has been paid in New Zealand or the Cook Islands lower than that to which the goods are subject in Niue at the time of their importation into Niue.

657-658 [Repealed]

PART 31

659-671 [Repealed]

PART 32

THE LAWS OF NIUE: GENERAL PROVISIONS  
*Application of the Laws of New Zealand*

672-677 [Repealed]

678 [Reprint – see now Criminal Law Code 2007]

679-705 [Repealed]

**706 Limitation of actions**

(1) The law of Niue as to prescription and the limitation of actions shall be the same as that which is in force for the time being in New Zealand.

(2) For the purposes of the law as to prescription and the limitation of actions, New Zealand shall in Niue be deemed to be parts beyond the seas, and Niue shall in New Zealand be deemed to be parts beyond the seas.

(3) No right, title, estate, or interest in Niuean land shall be acquired or lost by prescription or limitation.

*Miscellaneous Rules of Law*

**707-708** [Reprint – see now Family Law Code 2007]

**709 Joint liability**

A judgment against one or more of several persons jointly or jointly and severally liable shall not operate as a bar or defence to an action or other proceeding against any of those persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied, any rule of law notwithstanding.

**710 Contracts of guarantee**

No special promise by any person to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged with it or some other person lawfully authorised by him, shall be deemed invalid to support an action or other proceedings to charge the person by whom the promise was made by reason only that the consideration for the promise does not appear in writing or by necessary inference from a written document.

**711–713** [Repealed]

**714 Liability of owners of dogs**

In any action for damages for the act of a dog in attacking a human being or any animal, it shall be no defence that the defendant had no knowledge of the dangerous or mischievous character of the dog.

**715 Distress for rent abolished**

(1) Notwithstanding anything to the contrary in any Act, or in any rule of law or in any lease to the contrary, it shall not be lawful for any person to distrain for rent.

(2) This section shall extend and apply to leases granted by the Crown.

**716 Libel and slander**

In any action in the Court for defamation (whether libel or slander), it shall not be necessary to allege or prove special damage.

**717-719** [Repealed]

**720 Statutory declarations**

(1) Any Judge of the Court, any Commissioner, the Registrar of the Court, the Controller of Customs, or any law practitioner entitled to practice in the courts of Niue may take and receive the declaration of any person, in the form in the Schedule 2.

(2) If any person wilfully makes a declaration that is false in any material particular, he is liable to imprisonment for a term not exceeding 2 years.

**721** [Repealed]

**722 Taxes on Niuean land**

All taxes imposed by any Act, or other lawful authority upon Niuean land or upon any person in respect of the ownership or occupation of Niuean land shall constitute a charge upon that land.

**723** [Repealed]

**724** [Reprint – see now Criminal Law Code 2007]

**725 Trespass *ab initio***

No lawful entry, seizure, arrest, or other act shall by reason of any unlawful act subsequent to it be deemed to have been a trespass *ab initio*.

**726-727** [Repealed]

**727A** [Reprint – see now Family Law Code 2007]

**728–735** [Repealed]

**736 Contributory negligence**

Where a person suffers loss or damage as the result partly of personal fault and partly of the fault of any other person, a claim in respect of that loss or damage shall not be defeated by reason of the fault of the person suffering the loss or damage, but the compensation recoverable shall be reduced to the extent the Court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

**737 Protection of intellectual property**

(1) A copyright, design, patent, or trademark protected by New Zealand law shall be accorded the same protection by the courts of Niue as that available in New Zealand under the laws of New Zealand for the time being in force. [*See also Act 2006/280/section 12*]

(2) However, the courts of Niue must not protect a copyright, design, patent, or trademark if it would be offensive to Niue culture to do so.

(3) The courts of Niue must not protect a copyright, design, patent, or trademark which affects traditional knowledge or expression of culture unless the requirements in relation to prior and informed consent under the Tāoga Niue Act 2012 are satisfied in relation to that traditional knowledge or expressions of culture.

(4) In this section, "expression of culture", "prior and informed consent", and "traditional knowledge" have the same meaning as in section 3(1) of the Tāoga Niue Act 2012.

**738 Aerodromes**

(1) For the purposes of ensuring the safety of flight operations into, out of, and in the vicinity of any aerodrome, Cabinet may, by notice published in the *Gazette*

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- (a) Prohibit, either absolutely or beyond a height specified in the notice, the erection or placing or extension of any building, pole, mast, or other structure of any kind on the land described in the notice;
  - (b) Limit the height to which trees, shrubs, vegetation, or foliage may be permitted to grow on the land described in the notice;

(c) Limit and specify the purposes for which land described in the notice may be used, and the species and varieties of trees, shrubs, vegetation, or foliage which may be grown or permitted to grow on any land described in the notice.

(2) Where any land, building, pole, mast, or other structure interferes in any way with the use by aircraft of any aerodrome, Cabinet may, by notice in writing served on the *Leveki Magafaoa* and the occupier of the land and on all other persons known to have any right or estate in it, require the removal or lowering of the land or of the building, pole, mast, or other structure to the satisfaction of the Cabinet within 2 months after service of the notice.

(3) Cabinet may, if there is a failure to comply with any notice served under subsection (2) take any steps Cabinet considers necessary to ensure compliance with the terms of the notice.

(4) Cabinet may take any steps the Cabinet considers necessary to remove, top, or trim any tree, shrub, vegetation, or foliage on any land for the purpose of ensuring the safety of flight operations into, out of, and in the vicinity of any aerodrome. Before exercising the powers conferred by this subsection Cabinet shall give not less than one month's notice in writing to the *Leveki Magafaoa* and to the occupier of the land.

(5) Every person having any right or interest in any land injuriously affected, or suffering any damage, from the exercise of any powers given by this section shall be entitled to compensation, which shall be determined by the Court in the same manner as is prescribed by section 13 of the Niue Amendment Act (No2) 1968 in the case of land taken under that Act.

(6) In the case of any claim to compensation for restrictions placed upon the use of land, the Court shall, in assessing compensation, take into account not only the loss caused by the restrictions but also the cost of labour reasonably incurred by any *Leveki Magafaoa* or occupier in ensuring compliance with the restrictions.

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SCHEDULE 1

[Repealed by 1974/43 (NZ)]

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SCHEDULE 2

FORM OF DECLARATION

I, A.B. [*Insert place of abode and occupation or description*], solemnly and sincerely declare that [*Insert facts*]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Niue Act 1966.

Declared at \_\_\_\_\_ in Niue this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me - \_\_\_\_\_ A.B.

\_\_\_\_\_  
C.D.  
Judge of the High Court of Niue, or Commissioner of the High Court, Registrar of the High Court, member of Cabinet, Finance Secretary of Customs, Justice of the Peace, Medical Officer of Niue, Solicitor of the Supreme Court of New Zealand, as the case may be.