

Court of Appeal Act

Principal Act

Act. No. 1969-28	<i>Commencement</i>	11.8.1969
	<i>Assent</i>	18.12.1969

Amending enactments	Relevant current provisions	Commencement date
Act. 1977-34	ss. 9(2)-(3), 10, 16(3), 17(1), 22	
1980-08	ss. 2, 4(2)	
1983-12	s. 25	
1988-35	ss. 8A, 9(1)(b), 10A, 11(1)-(2), 12(1), 13	15.12.1988
2004-11	s. 22(iv)	1.9.2004
2008-04	s. 7	31.1.2008
2010-15	s. 22A	8.7.2010
2012-16	s. 3A	22.11.2012

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AN ACT TO MAKE PROVISION FOR A COURT OF APPEAL FOR GIBRALTAR.

PART I.
GENERAL PROVISIONS.

Short title.

1. This Act may be cited as the Court of Appeal Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

“appeal” means an appeal from the Supreme Court to the Court of Appeal;

“Constitution” means the Constitution for Gibraltar as set out in Annex I to the Gibraltar Constitution Order 1969;

“informant” means a person who has laid an information in a prosecution before the magistrates’ court;

“interlocutory matter” includes a reference under section 13 or section 24 of the full Court from a decision of a single judge;

“judgment”, in relation to a civil appeal, includes any decree, order or decision and, in relation to a criminal appeal, includes a conviction, sentence or order;

“President” means the person appointed to be President of the Court of Appeal under section 58 of the Constitution.

Constitution, jurisdiction and powers.

3. The Court of Appeal established by section 57 of the Constitution shall be a superior court of record and, subject to the provisions of the Constitution, shall be constituted and have the jurisdiction and powers hereinafter specified.

Appeal before two judges.

3A.(1) The President or the Chief Justice may certify that a particular appeal may be heard, or continue to be heard, by two members of the Court of Appeal.

(2) Section 61(4)(a) of the Constitution does not apply to the hearing of an appeal certified under subsection (1).

Sessions.

4.(1) The Court of Appeal shall sit in Gibraltar for the hearing of appeals at such place and times as the President, in consultation with the Chief Justice, may from time to time appoint.

(2) The Court of Appeal may, if the President on the application of any party and with the consent of every other party shall so order—

- (a) sit in the United Kingdom for the hearing of any interlocutory matter; or
- (b) decide any interlocutory matter on considering such written submissions as each party may make, but without personally hearing the parties or their counsel.

(3) Nothing in this section shall be construed so as to affect the powers of the Court of Appeal to adjourn, postpone or cancel any sitting of the Court of Appeal appointed by the President under this section.

Powers of the court.

5. Subject to the provisions of this Act and any rules, in the determination of appeals before it the Court of Appeal shall have all the powers and duties conferred or imposed on the Supreme Court in the exercise of its original or appellate jurisdiction.

Seal.

6. The Court of Appeal shall have and use as occasion may require a seal bearing the impression “The Seal of the Court of Appeal for Gibraltar”.

Appointment of Registrar.

7. The Governor, acting on the advice of the Judicial Service Commission, may appoint a Registrar of the Court of Appeal.

Rules.

8. The President (or any judge of the Court of Appeal appointed by the President for that purpose) may make rules of court for carrying this Act into effect and for regulating generally the practice and procedure under this Act.

Fees to be taken in Court of Appeal.

8A. The President has, and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken in the Court of Appeal.

PART II.
APPEALS IN CRIMINAL CASES.

Right of appeal.

9.(1) A person convicted on indictment or a person convicted by the magistrates' court and whose appeal to the Supreme Court under the provisions of the Criminal Procedure Act¹ has not been allowed may appeal to the Court of Appeal—

- (a) against his conviction in the Supreme Court, or in any other case, against the decision of the Supreme Court, upon any ground of appeal involving a question of law alone; and
 - (b) with the leave of the Court of Appeal or upon the certificate of the Supreme Court that it is a fit case for appeal against conviction, upon any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or with the leave of the Court of Appeal on any other ground which appears to that court to be a sufficient ground of appeal; and
 - (c) with the leave of the Court of Appeal, against the sentence passed on his conviction unless the sentence is one fixed by law.
- (2) In any of the following cases, that is to say—
- (a) where an accused person tried on indictment is discharged or acquitted or is convicted of an offence other than the one with which he was charged;
 - (b) where an accused person tried before the magistrates' court is acquitted and an appeal to the Supreme Court has not been allowed;
 - (c) where an accused person whose appeal to the Supreme Court against conviction by the magistrates' court has been allowed;
 - (d) where an accused person has been tried before the magistrates' court and acquitted and an appeal to the Supreme Court against such acquittal has been allowed,

the Attorney-General, the informant or the accused person, as the case may be, may appeal to the Court of Appeal against the judgment of the Supreme Court on any ground of appeal which involves a question of law alone.

¹ 1961-24

(3) For the purpose of this section “conviction” includes a special verdict that the appellant was not guilty by reason of mental disorder of the act or omission charged against him and “appeal” includes an appeal by case stated.

Appeal in cases of contempt of court.

10.(1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of the Supreme Court, including any order or decision on appeal from any other court or tribunal, in the exercise of jurisdiction to punish for criminal contempt of court.

(2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant.

(3) The Court of Appeal may reverse or vary the order or decision of the Supreme Court or make such other order as may be just.

Appeals against judgment, etc of Supreme Court exercising powers of review.

10A.(1) Appeal shall lie to the Court of Appeal at the instance of a defendant or the Attorney-General against any judgment or order (including an order to remit a case or matter to an inferior court with or without directions) passed or made by the Supreme Court in exercise of its jurisdiction under section 17 of the Supreme Court Act.

(2) The Court of Appeal may reverse or vary the judgment or order of the Supreme Court or pass or make such other judgment or order as may be just.

Procedure on appeal.

11.(1) Where a person is aggrieved by a judgment of the Supreme Court and wishes to appeal to the Court of Appeal under the provisions of section 9, he shall give notice of appeal ... in such manner and within such time as may be prescribed by rules.

(2) Where an appeal lies only with leave or on a certificate that the case is a fit case for appeal, it shall not be necessary to obtain such leave or certificate before giving notice of appeal.

Effect of notice of appeal.

12.(1) In any case where notice of appeal has been given by a convicted person in accordance with the provisions of section 11(1), then—

- (a) in the case of a conviction involving sentence of death, the appellant shall be detained in prison pending the abandonment or determination of the appeal;

- (b) in the case of a conviction involving a sentence of imprisonment, the Court of Appeal may, upon the application of the appellant, release him from custody on such terms and conditions as the court thinks fit pending the abandonment or determination of the appeal;
 - (c) in the case of a conviction of an offence under the Traffic Act² where an order has been made disqualifying the convicted person from holding or obtaining a driving licence, any such order shall have effect pending the abandonment or determination of the appeal;
 - (d) in the case of a conviction involving any other sentence or order, the Court of Appeal may, subject to the provisions of any rules, make such order as they think fit.
- (2) In any case where an appellant is released from custody under the provisions of paragraph (b) of subsection (1) any period of time spent by the appellant at large shall not count as part of the sentence of imprisonment imposed upon him.

Powers which may be exercised by a judge.

13. The powers of the Court of Appeal under this Part to give leave to appeal, to extend the time within which notice of appeal ... may be given, to admit an appellant to bail and to grant a stay of execution may be exercised by any judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions; but if the judge of the Court of Appeal refuses an application made under this section, the person aggrieved by such refusal shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determining of appeals.

Determination of appeals by convicted persons.

14.(1) Upon the hearing of an appeal under paragraph (a) or (b) of section 9(1), the Court of Appeal shall, subject to the provisions of section 16, allow the appeal if they think—

- (a) that the verdict should be set aside on the ground that in all the circumstances of the case it is unsafe or unsatisfactory; or
- (b) that the judgment of the Supreme Court should be set aside on the ground of a wrong decision of any question of law; or
- (c) that there was a material irregularity in the course of the trial, and in any other case shall dismiss the appeal:

² 1957-04

Provided that the court may, notwithstanding that they are of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no miscarriage of justice has actually occurred.

(2) In the case of an appeal against conviction, the court shall, if they allow an appeal, quash the conviction.

(3) An order of the Court of Appeal quashing a conviction shall, except where under section 15 the appellant is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of conviction, a judgment and verdict of acquittal.

(4) Upon the hearing of an appeal under this Part, the Court of Appeal shall, if they think that a different sentence should have been passed, quash the sentence imposed on the appellant, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed:

Provided that the court shall not, unless the appellant has appealed under paragraph (c) of section 9(1), so exercise their powers that, taking the case as a whole, the appellant is more severely dealt with on appeal than he was dealt with by the court below.

Power to order a retrial.

15.(1) Where the Court of Appeal allows an appeal against conviction they may, in an appropriate case and if the interests of justice so require, order that the appellant be retried.

(2) A person who is to be retried for an offence in pursuance of an order made under subsection (1) shall be tried on indictment or information before the court by which he was originally tried.

(3) The Court of Appeal may, on ordering a retrial make such orders as appear to them to be necessary or expedient—

- (a) for the custody or admission to bail of the person to be retried pending his retrial; or
- (b) for the detention pending the retrial of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

Powers of the court in special cases.

16.(1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some count or part of the indictment, has been properly convicted on some other count or part of the indictment, the court may either affirm the sentence passed on the appellant at the trial

or pass such sentence in substitution therefor as they think proper and as may be warranted in law by the verdict on the count or part of the indictment on which the court consider that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the findings of the jury it appears to the Court of Appeal that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by such jury a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If, on any appeal, it appears to the Court of Appeal that although the appellant committed the act or made the omission charged against him, he was suffering from mental disorder at the time the act was committed or omission made so as not to be responsible according to law for his actions, the court may quash the conviction and sentence passed at the trial and substitute therefor a special verdict to the effect that the appellant was not guilty by reason of mental disorder of the act or omission charged against him, and order the appellant to be kept in custody as a criminal person of unsound mind in a mental hospital until the pleasure of the Governor is known.

(4) In any case where the appellant was convicted before the magistrates' court, all references in this section to the indictment shall be deemed to be references to the information and all references to the verdict of the jury shall be deemed to be references to the decision of the magistrate.

Determination of appeals under section 9(2).

17.(1) Upon the hearing of an appeal brought under the provisions of section 9(2) the Court of Appeal shall allow the appeal if it appears that the discharge or acquittal of the accused, the dismissal of the information or, in the case where an appeal against an acquittal of an accused tried before the magistrates' court has been allowed, the conviction of the accused, should be set aside on the ground of a wrong decision of law and in any other case shall dismiss the appeal:

Provided that in the case where an appeal against an acquittal of an accused tried before the magistrates' court has been allowed by the Supreme Court, the Court of Appeal shall, notwithstanding there has been no wrong decision of law, allow the appeal if in all the circumstances of the case the conviction is unsafe or unsatisfactory.

(2) In any case where the Court of Appeal allows an appeal under the provisions of subsection (1) then—

- (a) in a case which was tried before the magistrates' court, the Court of Appeal may set aside the dismissal of the information and remit the matter to the magistrates' court with a direction to that court to convict the respondent or otherwise to proceed according to law, and the magistrates' court shall act accordingly or make such other order as it may consider just; or
- (b) in a case which was tried on indictment, the Court of Appeal may, in an appropriate case and if the interests of justice so require, set aside the discharge or acquittal of the accused person and remit the case to the Supreme Court to be retried or make such other order as it may consider just.

Supplementary powers of the court.

18.(1) In the exercise of their jurisdiction under this Part the Court of Appeal may, if they think it necessary or expedient in the interest of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to them necessary for the determination of the case; and
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court, or in the absence of rules of court making provision in that behalf, as they may direct, before any officer of the court or magistrate or other person appointed by the court for the purpose, and allow the admission of any depositions so taken as evidence before the court; and
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application; and
- (d) where any question arising in the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot in the opinion of the court conveniently be conducted before the court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the court, and act upon the report of any such commissioner as far as they think fit to adopt it; and
- (e) appoint any person with special expert knowledge to act as assessor to the court in any case where it appears to the court that such special knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the court any other powers which may for the time being be exercised by the Court of Appeal on appeals in civil matters and issue any warrants necessary for enforcing the orders or sentences of the court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

(2) Where evidence is tendered to the Court of Appeal under subsection (1) the court shall, unless they are satisfied that the evidence if received would not afford any ground for allowing the appeal, exercise their power of receiving it if—

- (a) it appears to them that the evidence is likely to be credible and would have been admissible at the trial on an issue which is the subject of the appeal; and
- (b) they are satisfied that it was not adduced at the trial but that there is a reasonable explanation for the failure so to adduce it.

Right of appellant to be present.

19.(1) An appellant, notwithstanding that he is in custody, shall be entitled to be present at the hearing of his appeal.

(2) The power of the Court of Appeal to give judgment or make any order or pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

Power of Governor to refer case to the court.

20. On the consideration of any petition for the exercise of the prerogative of mercy, the Governor may, if he thinks fit, at any time either—

- (a) refer the whole case to the Court of Appeal and the case shall then be heard and determined by the Court of Appeal as in the case of an appeal by a person convicted; or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case with a view to the determination of the petition, refer that point to the Court of Appeal for their opinion thereon, and the Court of Appeal shall consider the point so referred and furnish the Governor with their opinion thereon accordingly.

Saving for Royal prerogative.

21. Nothing in this Part shall be construed so as to affect Her Majesty's prerogative of mercy or any power vested in the Governor acting as the representative of Her Majesty, to exercise such Royal prerogative on behalf of Her Majesty, or to grant a pardon either free or subject to conditions or any remission of sentence or any respite of the execution of the sentence.

PART III.
APPEALS IN CIVIL CASES.

Right of appeal.

22. Without prejudice to anything contained in the Constitution of Gibraltar an appeal shall lie to the Court of Appeal from any decision of the Supreme Court other than—

- (i) an order allowing an extension of time for appealing from a judgment or order;
- (ii) an order giving unconditional leave to defend an action;
- (iii) a decision of the Supreme Court where it is provided by any Act that the decision is to be final;
- (iv) *Repealed*
- (v) an order absolute for the dissolution or nullity of a marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
- (vi) without the leave of the Supreme Court or of the Court of Appeal, an order made with the consent of the parties or as to costs only which by law are left to the discretion of the court;
- (vii) without the leave of the Supreme Court or of the Court of Appeal, any interlocutory order or judgment made or given except in the following cases:—
 - (a) where the liberty of the subject or the custody of minors is concerned;
 - (b) where an injunction or the appointment of a receiver is granted or refused;
 - (c) in the case of a decree nisi in a matrimonial cause or a judgment or order in an Admiralty action determining liability; or

- (d) in the case of an order on a special case stated under the Arbitration Act³.

Appeal to Court of Appeal and to Her Majesty in Council.

22A. For the purposes of section 66(1)(b) of the Constitution, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal and thence to Her Majesty in Council as of right in respect of all final decisions in any civil proceedings where the matter in dispute on the appeal is of a value of £50,000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of a value of £50,000 or upwards.

Determination of civil appeals.

23. Upon the hearing of a civil appeal the Court of Appeal may allow the appeal in whole or in part or may dismiss the appeal in whole or in part or may remit the case to the trial court to be retried in whole or in part and may make such order as the Court of Appeal may consider just.

Powers of judge in interlocutory matters.

24. Subject to the provisions of any rules, the powers of the Court of Appeal to hear and determine any interlocutory matter may be exercised by any judge of the Court of Appeal in the same manner as they may be exercised by the Court of Appeal and subject to the same provisions:

Provided that every order made by a single judge of the Court of Appeal in pursuance of this section may, on the application of an aggrieved party and subject to compliance with any procedure prescribed by rules, be discharged or varied by the Court of Appeal as duly constituted for the hearing and determination of appeals.

Procedure with respect to civil appeals.

25. Subject to the provisions of any rules, all civil appeals shall be by way of re-hearing.

Wrong ruling as to sufficiency of stamp.

26. The Court of Appeal shall not grant a new trial or reverse any judgment by reason of the ruling of a court that the stamp upon any document is sufficient or that the document does not require a stamp.

Power for Chief Justice to reserve questions of law for the court.

³ 1895-10

27. In addition and without prejudice to the right of appeal conferred by the Constitution, the Chief Justice may, if he thinks fit, reserve for consideration by the Court of Appeal, on a case to be stated by him, any question of law which may arise on the trial of any civil cause or matter, and may give any judgment in such cause or matter subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine every such question.