

CHAPTER 11:01
COMMONWEALTH AND FOREIGN LAW ASCERTAINMENT
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Remitting facts in a case for opinion of Commonwealth or foreign court
3. Ascertainment of facts to be remitted
4. Approval and settlement of questions of law arising from facts ascertained by court
5. Delivery of certified copies to party in action
6. Application by party to apply opinion to pending case
7. Discretion of court to apply opinion
8. Remittance of a case from Commonwealth or foreign court for opinion of a court in Botswana
9. Non-application of Act

(22 & 23, Vict. c. 63),
(24 & 25, Vict. c. 11),
HCN 68, 1910,
S.I. 22, 1969,
S.I. 29, 1969.

An Act to consolidate the enactments relating to the ascertainment of the laws in a Commonwealth or a foreign country and other matters connected therewith.

[Date of Commencement: 5th September, 1910]

1. Short title

This Act may be cited as the Commonwealth and Foreign Law Ascertainment Act.

2. Remitting facts in a case for opinion of Commonwealth or foreign court

A court may, if it is of the opinion that it is necessary or expedient for the proper disposal of any action pending before it to ascertain the law applicable to the facts of the case as administered in a Commonwealth or a foreign country, as the case may be, on a point on which the law of such country is different from that in Botswana, remit the case stating the facts to one of the superior courts of that country for its opinion on the law.

3. Ascertainment of facts to be remitted

The facts to be stated in the case may be ascertained by the court or other competent mode or may be agreed to by the parties or settled by such persons as may be appointed by the court for the purpose in the event of the parties failing to agree.

4. Approval and settlement of questions of law arising from facts ascertained by court

When the case has been prepared, the court or judge thereof must approve of it and settle the questions of law arising upon the facts stated and such questions of law, together with the case, shall be remitted to the court whose opinion is being sought.

5. Delivery of certified copies to party in action

When an opinion has been pronounced by the court to which the case was remitted, a certified copy of the opinion shall be given to each of the parties requiring it.

6. Application by party to apply opinion to pending case

Any of the parties to whom a certified copy of the opinion is given under section 5 may lodge it with the court in which the action is pending and that party may move the court to apply the opinion to the facts stated in the case.

7. Discretion of court to apply opinion

(1) Subject to the provisions of subsection (2), the court may, if it thinks fit, apply the opinion to the facts of the case.

(2) Where the court is not satisfied that the facts have been properly understood by the court to which the case was remitted, or is doubtful whether the certified opinion does correctly represent the law of that country, it may remit the case with or without amendments to the same or any other superior court in that country as often as may be necessary or expedient.

8. Remittance of a case from Commonwealth or foreign court for opinion of a court in Botswana

(1) Where a Commonwealth or a foreign court seised with a case in similar circumstances as described in section 2 remits the case to a court in Botswana for its opinion, the court in Botswana may-

- (a) hear the parties or counsel in the case; or
- (b) pronounce its opinion without so doing; and
- (c) take such further procedure as it thinks proper for pronouncing its opinion.

(2) Upon the opinion being pronounced, a copy, certified by an officer of the court pronouncing it, shall be given to each of the parties to the action requiring it.

9. Non-application of Act

The provisions of this Act shall not apply to a foreign country or state with the government of which Botswana has not entered into a convention for the ascertainment of the law of such country or state.