

SOLOMON ISLANDS GOVERNMENT



**LOCAL COURTS
HANDBOOK
2005**

**THE JUDICIARY
HONIARA**

Foreword

This is the latest edition of the *Local Courts Handbook*.

I am confident that this Handbook will assist the Local Courts in dispensing justice and making sound decisions in that regard.

I would like to thank Mr. David Chetwynd, Mr. Rex Foukona and Mr. Errol Gibson, a Prosecutions Adviser, Solomon Islands Law and Justice Sector Institutional Strengthening Program for their work in updating this Handbook.

Finally, the work of the late Mr. Takoa, MBE, the Local Courts Officer who wrote the 1979 version of this Handbook should not be forgotten.

**Sir Albert R PALMER CBE
CHIEF JUSTICE
HIGH COURT OF SOLOMON ISLANDS**

Draft Only

Table Of Contents

	Page
[1] Introduction To Law	7
[2] The Different Kinds of Courts	
[2.0] Introduction	8
[2.1] Local Courts	8
[2.2] Magistrates' Courts	10
[2.3] High Court	10
[2.4] Court of Appeal	10
[3] Miscellaneous Rules	
[3.0] Location of the Court	11
[3.1] Setting Up Of Court	11
[3.2] Fairness	11
[3.3] Stories Outside	11
[3.4] Case Discussions	12
[3.5] Decision	12
[3.6] Politeness	12
[3.7] Adjournment	12
[3.8] Bail	12
[3.9] Agreement	12
[3.10] Presence	13
[3.11] Double Punishment	13
[3.12] Slow But Sure	13
[3.13] Lawyers	13
[3.14] Perjury	13
[3.15] Best Evidence Rule	14
[3.16] Compellability Of Husbands & Wives	14
[3.17] Hostile Witnesses	14
[3.18] Right Of Police To Enter Buildings	14
[3.19] Right Of Police To Search	14
[3.20] Right Of Police To Arrest	15
[3.20] Right To Interview	15
[3.21] Informers	16
[3.22] Identification Evidence	16
[4] Responsibilities Of A Clerk Of The Court	
[4.0] Generally	17
[4.1] Maintaining Court Records	17
[4.2] Collecting Fees & Fines	17

Table Of Contents

	Page
[5] Criminal Cases	
[5.0] Introduction	18
[5.1] Investigation Procedure	18
[5.2] Calling The Court	19
[5.3] What Cases Can Be Heard	20
[5.4] Presumption Of Innocence	22
[5.5] General Court Procedure	
[5.5.0] Court Record	23
[5.5.1] Charge	23
[5.5.2] The Plea	23
[5.5.3] Plea of Guilty	24
[5.6] Trial Procedure	
[5.6.0] Introduction	24
[5.6.1] Examination – in – Chief	26
[5.6.2] Cross - examination	27
[5.6.3] Re – examination	28
[5.7] Judgment	28
[5.8] Sentencing	
[5.8.0] Introduction	29
[5.8.1] What Sentences May Be Imposed	31
[5.8.2] Binding Over	31
[5.8.3] Fine	32
[5.8.4] Imprisonment	33
[5.8.5] Communal Work	35
[5.8.6] Compensation	36
[5.8.7] Sending Home	37
 [6] Civil Cases	
[6.0] Introduction	38
[6.1] Calling The Court	38
[6.2] What Cases May Be Heard	
[6.2.0] Introduction	39
[6.2.1] Debts	39
[6.2.2] Contracts	40
[6.2.3] Property	40
[6.2.4] Wrongs	40
[6.2.5] Sexual Cases	40
[6.2.6] Affiliation	41
[6.3] Court Procedure	45
Example of a Civil Case	46
[6.4] What Orders May Be Made	52

Table Of Contents

	Page
[7] Review & Appeal Of Cases	
[7.0] Introduction	53
[7.1] Review	53
[7.2] Appeal	54
Local Court Warrant	55
Local Court Forms	56
Criminal Jurisdiction	
Summons To Attend Court	57
Warrant Of Imprisonment	58
Bond To Be Of Good Behaviour	59
Warrant Of Imprisonment For Failure To Pay Fine	60
Order As To Residence	61
Civil Jurisdiction	
Summons To Defendant In Civil Case	62
Summons To Witness In Civil Case	63
Criminal Charges	64
Penal Code	
Affray, s. 87	65
Threatening Violence, s. 89	66
Judicial Proceedings Offences, s. 121	68
Resisting Arrest and Escape, s. 125	76
Idle and Disorderly Persons, s. 175	77
Damaging Signboard, s. 178(f)	83
Indecency and Obscenity, s. 178(m)	84
Threatening, Abusive or Insulting Behaviour, s. 178(n)	85
Drunk and Incapable, s. 179	87
Polluting or Obstructing Watercourses, s. 181	88
Dangerous Dogs and Other Animals, s. 183	89
Libel, s. 191	93
Danger or Obstruction in Public Way or Line of Navigation, s. 243	95
Common Assaults, s. 244	96
Simple Larceny, s. 261	97
Larceny of Cattle, etc, s. 274	99
Larceny of Dog, s. 275	100
Larceny of Creatures not the subject of Larceny at Common Law, s. 276	101
Larceny of Fish, s. 277	102
Larceny, etc of Trees, etc, s. 279	103
Larceny, etc of Fences, s. 280	105

Table Of Contents

	Page
Larceny of Fruit and Vegetables, s. 281	107
Damaging Fixtures, Trees, etc, with Intent to Steal, s. 282	110
Killing Animals with Intent to Steal, s. 289	120
Unlawful Use of Vehicles, Animals, etc, s. 292	121
Injuring Animals, s. 325	122
Wilful and Unlawful Damage or Destruction, s. 326(1)	123
 Firearms & Ammunitions Act	
Security of Firearms and Ammunition, s. 39	125
Loss of Firearms or Ammunition to be Reported, s. 40	127
Carrying Firearm While Drunk or Disorderly, s. 41	129
 Local Courts Act	
Absent from Communal Work, s. 19(2)	129
Failure to Attend Court, s.25	131
 Environmental Health (Public Health Act) Regulations	
Premises to be kept free from long grass and receptacles likely to facilitate breeding of mosquitoes, s. 35	132
Water tanks, etc., to be covered and screened	134
Septic tanks, soakaways, etc., to be screened	136
Mere presence of mosquito larvae	138
Pollution of water supply	140
Protection of public sewers and drain	142

Introduction To Law

The sources of law which currently apply in Solomon Islands are as follows:

- the *Constitution*;
- the Acts of the Parliament of Solomon Islands [statute law], such as the Acts referred to in this handbook;
- some Acts of the Parliament of the United Kingdom [statute law] which were in effect on 1 January 1961;
- the '*Common Law*', also referred to as 'case law' or 'judge – made law'. It is the law made by the courts. Some of such law is contained in law reports; and
- The '*Customary Law*'. However, custom which calls for action which is a criminal offence is not part of the law of Solomon Islands, see clause 3(2) of Schedule 3 to the *Constitution*.

All courts are bound by and therefore must follow the statute law and only the Parliament may change it. If a Local Court considers that a particular law is incorrect it should seek advice from the Clerk of the Court. The Clerk may seek advice from a Magistrate.

A Local Court cannot change the decision given in another Local Court, Magistrate's Court, Customary Land Appeal Court, or High Court. Neither can it change a decision given by itself already. Once any court has given its decision it cannot rehear the case unless it is being reviewed by another court or as a consequence of a successful appeal.

The law relating to 'Reviews' and 'Appeals' is examined commencing on page **53**.

Considering that Solomon Islands was a British colony it inherited an adversarial legal system. Such a system has two opposing parties arguing law and presenting evidence which is determined by a court of law. However, a Court should never be seen to be acting for either side whether in a criminal case or a civil case. Therefore, a Court should allow the parties to present their cases to the court without too much interference.

The Different Kinds Of Courts

[2.0] Introduction

The following courts operate in Solomon Islands:

1. Local Courts
2. Magistrates' Courts
3. The High Court
4. The Solomon Islands Court of Appeal

The law dealing with customary land cases is currently being reviewed.

[2.1] Local Courts

The Local Courts are established under the *Local Courts Act* (Cap. 19), see section 2.

For each Local Court the Chief Justice signs a Warrant which says what the membership of the Court shall be, where it will operate and what its powers will be, see sections 2 and 3 of the *Local Courts Act* (Ch. 19).

Section 2 of the *Local Courts Act* (Ch. 19) states:

'(1) By warrant under his hand the Chief Justice may establish in Solomon Islands such local courts as he shall think fit which shall exercise over *Islanders* within limits as may be defined by such warrant the jurisdiction therein defined and such jurisdiction as may be conferred by any Act on local courts generally.

(2) The Chief Justice may at any time suspend, cancel or vary any warrant establishing a local court or defining the jurisdiction of any such court or the limits within such jurisdiction may be exercised.'

An 'islander' is defined in section 17 of the *Interpretation and General Provisions Act* (Ch. 85) as meaning:

(a) any person both of whose parents are or were members of a group, tribe or line indigenous to Solomon Islands; or

(b) any other person at least one of whose parents or ancestors was a member of a race, group, tribe or line indigenous to any island in Melanesia, Micronesia or Polynesia and who is living in Solomon Islands in the customary mode of life of any such race, group, tribe or line.'

If a party in a criminal or civil case is not an 'islander' or a complainant in a criminal case is not an 'islander' then a Local Court has no authority to hear the case, see section 7 of the *Local Courts Act* (Ch. 19).

In a civil case a defendant may appeal a decision on the basis that he/she was not ordinarily resident in the area of the jurisdiction of the court, see section 10 of the *Local Courts Act* (Ch. 19) which is on page **53**.

That section states:

'The criminal jurisdiction of a local court shall extend, subject to the provisions of this Act, to the hearing, trial and determination of all criminal charges and matters in which any Islander is accused of having wholly or in part within the jurisdiction of the court, committed or been accessory to the committing of an offence against an Islander.'

The Different Kinds Of Courts

Section 3 of the *Local Courts Act* (Ch. 19) states:

‘A local court shall be constituted in accordance with the law or customs of Islanders of the area in which the court is to have jurisdiction, and a local court purporting to be so constituted shall be deemed to be lawfully constituted in accordance with this Act unless the contrary be shown:

Provided that, if he shall think fit, the Chief Justice may prescribe the constitution of any local court, or the order or precedence among the members thereof, or the powers and duties of any persons acting as assessors to any such court.’

An example of such a Warrant is on page **55**.

The constitution of Local Courts is as follows as provided for in the respective Warrants:

- (a) The Court shall consist of no more than –
 - (i) 1 President;
 - (ii) 1 Vice President; and
 - (iii) 5 Justices.
- (b) The Court may sit to hear a case provided at least three members take part; if no President or Vice – President is taking part, the members shall choose one of their number to be chairman.
- (c) In reaching a decision in any case the majority of the members sitting must agree.

In reaching a decision the President has no greater authority than any of the other members of the Court.

The Vice—President takes the place of the President when that person cannot attend. At other times the Vice – President sits as a member. When a Court sits it must have a President, two members (no more and no less), and the Clerk of the Court to write it all down.

However, the Clerk of the Court is not a member of the Court and cannot decide a case.

The Chief Justice also appoints the Clerks of the Local Courts.

All members of Local Courts and Clerks of Local Courts should be people who are highly respected in the community. If any such person does something shameful, it should be reported to the Chief Justice.

Section 5 of the *Local Courts Act* (Ch. 19) states:

‘The Chief Justice shall appoint for each local court a fit and proper person to be the clerk thereof, who shall keep proper minutes and records of all proceedings of the court. The clerk shall be responsible for the collection of all fines imposed by the court and he shall keep such registers and furnish such returns as the Chief Justice may from time to time prescribe.’

When cases are ready to proceed the Clerk of the Court must advise the President of the Local Court. The President advises the Clerk of the Court what day the court will hear the case and at what place. The workload of the court will determine how often it sits. However, it usually helps everyone if there is a regular arrangement about sittings so that people know when the Court will sit.

The Different Kinds Of Courts

The Clerk of the Court is responsible for advising the other two other members of the court and the relevant parties of the court date.

The responsibilities of the Clerk of the Court are outlined on page 17.

Court proceedings should always be written down, see section 5 of the *Local Courts Act* (Ch. 19). If the proceedings cannot be recorded in English, it can be written down in the local language and translated later.

Members of a Local Court do not have any power when they are not holding a case. They cannot give orders if not sitting as a Court.

[2.2] Magistrates' Courts

The Magistrates' Courts are established under the *Magistrates' Courts Act* (Cap. 20). Magistrates are appointed by the Judicial and Legal Services Commission.

Depending on whether a Magistrate is Principal Magistrate or a First Class or Second Class Magistrate will determine what cases that Magistrate can hear.

Each Magistrate may review decisions made in the Local Courts and hear appeals from the Local Courts, see sections 27 and 28 of the *Local Courts Act* (Ch. 19). The law relating to 'Reviews' and 'Appeals' is examined commencing on page 53.

[2.3] High Court

The High Court is established under the *Constitution*, see section 77. The Chief Justice sits in the High Court. The Chief Justice and the other Judges of the High Court are appointed by the Governor—General on the advice of the Judicial and Legal Service Commission.

The High Court can hear trials and appeals from the Customary Land Appeals Court and the Magistrates Court.

[2.4] Court of Appeal

The Court of Appeal is also established under the *Constitution*, see section 85. The Chief Justice and other judges of the High Court may sit on the Court of Appeal. The other Judges of the Court of Appeal are appointed by the Governor—General on the advice of the Judicial and Legal Service Commission.

The Court of Appeal can only hear appeals.

Miscellaneous Rules

[3.0] Location of the Court

The proper place to hold Court is in a Court House, but it may be necessary to hold Court somewhere else.

The place does not matter as long as it is within the area the Court's Warrant has set out for the Court.

[3.1] Setting Up Of Court

At one end of the court there should be a table called the 'bench' and chairs for the President and the two Members of the Court.

In front of the bench, where the President and Members sit, there should be a table and chair for the Clerk of the Court. In front of the bench on the right hand side there should be a seat for the accused person that is referred to as the 'dock', and on the left, a chair for the witnesses to sit on whilst giving evidence.

In front of the Clerk of the Court's table there should be a table for the respective parties. It is referred to as the 'bar table'.

A Bible should be kept ready for the swearing in of witnesses, and there should be a Board hanging up somewhere with a copy of the Court Warrant.

Considering that each case is heard separately, those accused persons whose cases are not being heard at the time can wait outside the court for their cases to be called.

Generally, members of the public should be allowed to hear the cases, see section 10(9) of the *Constitution*. However, if the Court believes that it would be proper to exclude the public from hearing a particular case it may do so if it is necessary for the protection of the private lives of the persons concerned in the case. Furthermore, members of the public, other than immediate family, should not be allowed to hear cases involving an accused who is under the age of eighteen years.

[3.2] Fairness

A Court must impose justice. Justice means applying the law equally to all people, irrespective whether a person is male or a female. Like a referee of a football match, the Court should never take sides whether in a civil or a criminal case. In a criminal case it should be fair to the accused person as well as to the prosecution side. It is important that the Court should not only act fairly but people should see and know that it does so. People should be encouraged to come to Court and watch cases being heard.

Fairness also requires that the court must be independent and impartial, see section 10(1) of the *Constitution*. That means that no member who is sitting in a Local Court should be closely related to or very friendly with, or a known enemy of a person bringing a case or of the accused person in a criminal case, or of either side in a civil case. In such a case that member should not hear it.

[3.3] Stories Outside

A court should only consider what it hears in the Court House during the case. All members of a Local Court must shut out of his/her mind any stories he/she has heard before the Court starts. After the case has finished he/she should not listen to any further stories about it.

Miscellaneous Rules

[3.4] Case Discussions

The President and the other members of the Court should never talk about a case unless they are sitting down together to hear it. A case should never be discussed with any other person outside court other than with other members of the court until it is finalised in court and a judgment has been given. It is however good practice to never discuss a case with any person after it has been finalised.

[3.5] Decision

A Court should always give a clear decision, 'Guilty' or 'Not Guilty' in a criminal case, or which side the court is ruling in favour of in a civil case.

[3.6] Politeness

No member of a Local Court should ever be cross or angry in Court. All members should always be ready to listen politely and always be calm.

[3.7] Adjournment

Cases should generally be adjourned if the party which is applying for the adjournment has a proper reason for asking for it. If the party is being slack then the granting of an adjournment should be strict. That party should be warned that the case may be dismissed because of their slackness.

In a criminal case,

- the case should only be adjourned for a period of no more than 30 clear days if the accused person is not in custody; and
- if the accused person is in custody, the case can only be adjourned for a period not exceeding 15 clear days, see section 191 of the *Criminal Procedure Code* (Ch. 7).

[3.8] Bail

Bail should be granted to an accused person unless the court is satisfied that the accused person will not appear in the court if the case is adjourned to another date. If a Local Court is considering not granting bail it should ask the Clerk of the Court for advice.

[3.9] Agreement

The President and two members should all agree about the Court's decision if possible. If they cannot, then the decision of the Court must be what two of the three members decide. Members must not be changed during the hearing of a case.

The members may retire to consult among themselves during the course of a case.

Miscellaneous Rules

A Court can always adjourn or stop a case if it is in difficulty. Members of a Local Court should not be afraid to do this or to ask a Magistrate for advice on law, or old men about custom.

[3.10] Presence

The accused person in a criminal case, and the plaintiff and also preferably the defendant in a civil case, should be present in Court all the time when the case is being heard, but a civil case may be heard in the absence of the defendant if he/she has been summoned and fails to turn up.

The only time a criminal case can be heard in the absence of an accused person is if that person misbehaves himself/herself and has had to be removed from the court, see section 10(2)(f) of the *Constitution* and section 179 of the *Criminal Procedure Code* (Ch. 7).

[3.11] Double Punishment

No person can be punished twice for the same offence, see section 10(5) of the *Constitution* and section 121 of the *Criminal Procedure Code* (Ch. 7).

But a person may still be summoned in civil court after he/she has been imprisoned. For example, if a person is found guilty of not paying his/her basic rate and is sent to prison, he/she can still be summoned to court after his/her release, and ordered to pay his/her rates in a civil case.

[3.12] Slow but Sure

It is better for any Court to go slowly and consider cases properly than to go fast and make mistakes.

[3.13] Lawyers

Lawyers are allowed to appear in Local Courts.

In a criminal trial an accused person has the right to use the services of a lawyer, see section 10(2) of the *Constitution*.

Lawyers are required to provide submissions on legal issues if a Court wants their opinion.

[3.14] Perjury

Sometimes people tell lies in Court. This is often hard to prove. However, if the Court is sure that someone is telling lies, for instance, if a witness after he/she has sworn to tell the truth says quite different things about the same happenings. Telling lies in a court is a serious crime, and can only be punished by the Principal Magistrate's Court or High Court. If there is a suspicion that a person has lied to the Court then the police should be advised.

Miscellaneous Rules

[3.15] Best Evidence Rule

Always try to get the best evidence or proof available.

All exhibits should be produced to the court, if available. If not available, a witness should explain why the exhibit can not be produced to the Court.

[3.16] Compellability Of Husbands & Wives

In a criminal case the husband or wife of an accused person can only give evidence for the prosecution without the consent of their spouse if the spouse is charged with an offence relating to their property or their children, see section 136(3) of the *Criminal Procedure Code* (Ch. 7).

Prior to giving evidence in such cases, the witness should be advised by the President that he/she has the right to refuse to give evidence and that if he/she chooses to give evidence he/she will be treated like any other witness and may be cross – examined by the prosecutor if he/she lies.

[3.17] Hostile Witnesses

If a witness, other than an accused person, tells a lie in court which can be proven by referring to that person's previous prior statement, then that person is referred to as a 'Hostile Witness'.

The advice of the Clerk of the Court should be sought if a party is submitting that a witness is 'hostile'.

[3.18] Right Of Police To Enter Buildings

Police can only enter the building of a person if:

- that person agrees;
- they have a search warrant issued by a magistrate, see section 101 of the *Criminal Procedure Code* (Ch. 7); or
- they are intending to arrest a person in the building, see section 11 of the *Criminal Procedure Code* (Ch. 7).

[3.19] Right Of Police To Search

Police can only search the building of a person if:

- that person agrees; or
- they have a search warrant issued by a magistrate.

Miscellaneous Rules

Police can only search a person without a search warrant if:

- that person agrees; or
- that person has been arrested and if the police believe that he/she has on him/her:
 - [i] stolen articles;
 - [ii] instruments of violence;
 - [iii] tools connected with the kind of offence which he is alleged to have committed; or
 - [iv] other articles which may furnish evidence against him in regard to the offence which he/she is alleged to have committed, see section 14 of the *Criminal Procedure Code* (Ch. 7); or
- that person has any article suspected of having been stolen or unlawfully obtained, see section 15 of the *Criminal Procedure Code* (Ch. 7).

[3.20] Right Of Police To Arrest

A police officer may arrest without warrant a person:

- who commits the offences that can be dealt with in a Local Court in the presence of a police officer;
- who obstructs a police officer while in the execution of his/her duty or who has escaped or attempts to escape from lawful custody;
- who has possession of anything that is reasonably suspected to be stolen property or who may reasonably be suspected of having committed an offence in relation to that property;
- who is found in any yard or other place during the night, ie, between 6.30pm and 6.30am, and whom the officer suspects upon reasonable grounds of having committed or being about to commit a felony, as defined in the *Penal Code* (Ch. 26);
- who is found in possession of an implement of housebreaking; or
- whom the police have reasonable cause to believe that there is a warrant issued for his/her arrest, see section 18 of the *Criminal Procedure Code* (Ch. 7).

If the police do not have the power to arrest without warrant they must arrange with the Clerk of the Court for a 'Summons To Attend Court' to be issued. The form for that summons is on page 57.

[3.21] Right To Interview

The police may only interview or take a caution statement from an accused person if he/she consents. That is referred to as the 'Right to Silence'.

When interviewing an accused person the police must follow the Judges Rules of Solomon Islands and not force the accused person to confess.

Miscellaneous Rules

[3.22] Informers

If the police are investigating an offence because of what a person told them and that person does not want to give evidence, then that person is referred to as an 'informer'.

The name of an 'informer' should generally never be said in a court if the 'informer' wishes to keep his/her name a secret from the accused person.

[3.23] Identification Evidence

In a criminal case the identification of the accused person must be proved by the prosecution.

If an offence occurs in darkness or in circumstances that made it difficult to identify the accused person then the benefit should be given to the accused person and he/she should be found not guilty.

Responsibilities Of A Clerk Of The Court

[4.0] Generally

The primary responsibilities of a Clerk of the Court are as follows:

- [i] managing the operation of Local Court together with the President;
- [ii] advising all parties of the dates of court sittings;
- [iii] maintaining court records;
- [iv] completing the Local Court forms as required. Those forms commence on page **56**;
- [v] providing legal advice to the members of the Local Court;
- [vi] maintaining the financial records of the Local Court;
- [vii] providing advise as to what matters may be heard in a Local Court; and
- [viii] monitoring the performance of communal work.

[4.1] Maintaining Court Records

It is the responsibility of the Clerk of the Court to maintain the court records of the Local Courts, see section 5 of the *Local Courts Act* (Ch. 19).

All court records must be available to be reviewed by a Magistrate whenever that person chooses.

The completed record of each case must be signed by the Clerk of the Court and President or Vice—President.

[4.2] Collecting Fees and Fines

It is the responsibility of the Clerk of the Court to maintain the financial records of the Local Courts, see section 5 of the *Local Courts Act* (Ch. 19).

A receipt must always be given for fees and fines by the Clerk of the Court as soon as he/she receives the money. Each Court has a receipt book and the first copy of the receipt should be given to the person paying the fee or fine and the second copy stays in the Receipt Book. On the receipt should be shown the name of the Court, the name of the payer, the date and amount paid, and the number of the case.

The money collected from fees and fines should be paid as often as possible to the Clerk of the District Magistrate, who will issue a receipt for the amount received.

Criminal Cases

[5.0] Introduction

The Local Court has power to hear all offences which are written into its warrant by the Chief Justice or for which the Chief Justice may give it power under a special or general order.

Section 6 of the *Local Courts Act* (Ch. 19) states:

‘Every local court shall have full jurisdiction, to the extent set forth in its warrant and subject to the provisions of this Act, over causes and matters in which all the parties are Islanders resident or being within the area of the jurisdiction of the court.’

The area of jurisdiction of a local court is specified in the Warrant.

A criminal case involves the police charging a person with committing an offence.

In a criminal case, the Court should always start by believing the accused person is innocent. It is the duty of the prosecution to prove to the Court that he/she is guilty.

In a criminal case the prosecution must prove the charge to the Court beyond reasonable doubt.

To prove a case beyond reasonable doubt the prosecution must:

- prove each and every element of a charge beyond reasonable doubt. The elements for all charges that may be heard in a Local Court commence on page **64**; and
- disprove any defence raised by an accused person beyond reasonable doubt. For example, if an accused person states to the investigating police officer or to the Court that he/she was protecting himself/herself when he/she assaulted the complainant, then the prosecution must prove that he/she was not protecting himself/herself by calling evidence from the complainant and any other person who saw what happened.

Even if a Court thinks that an accused person is guilty, but there is not enough evidence to prove him/her so, the Court should find that person ‘Not Guilty’.

When deciding whether to find an accused person guilty a Court should always consider whether the constitutional rights and freedoms of the accused person as outlined in this Handbook have been complied with.

[5.1] Investigation Procedure

The police must make an enquiry as soon as someone has reported any trouble which may amount to an offence.

All offences which can be dealt with in a Local Court must be reported to the Clerk of the Court within 6 months from the date of the alleged offence, see section 206 of the *Criminal Procedure Code* (Ch. 7).

Criminal Cases

The police should go straight to the place and enquire from all the people:

- What is the trouble?;
- Who made the trouble?;
- At what place did the trouble take place?;
- At what time and on which day did the trouble happen; and
- Who saw this trouble and exactly what did they see (not what they heard about it from others).

The police officer should then report to the Clerk of the Court. They should check in this Handbook to see if this trouble is the kind that can be decided in the Local Court.

However, all offences do not have to go to court. If a police officer is not sure whether a particular case should go to court he/she should seek advice from the Director, Prosecutions.

The police officer who can also act as the prosecutor can then, with the help of the Clerk of the Court, draw up a charge. To comply with section 117 of the *Criminal Procedure Code* (Ch. 7) they should make sure that:

- the charge is absolutely clear; and
- the name of the accused person is straight.

The correct wording for all charges that may be heard in a Local Court is outlined commencing on page **64**.

The fact that the date of an alleged offence may not be clear is not generally important, see section 201(2) of the *Criminal Procedure Code* (Ch. 7).

As regards taking the 'plea' refer also to page **23**.

If the case can not be heard in a Local Court then it must be taken to a Magistrate's Court to be heard.

[5.2] Calling The Court

In criminal cases the prosecutor and the accused person need to be advised by the Clerk of the Court.

When a police officer or other person tells the accused person to come to court it is called a 'Summons'. Sometimes it is written down but even if it is only spoken, the accused person must be told why he/she is to come to Court, at what time the Court will sit, and where.

Section 25 of the *Local Courts Act* (Ch. 19) states:

'The attendance of accused persons and witnesses before a local court shall be secured in accordance with the custom prevailing in the area of the court, and any person summonsed to attend, who fails so to do shall be liable to a fine of twenty dollars and in default of payment to imprisonment for three months.'

Therefore, if the accused person or a witness fails to turn up after being summoned, the Court should issue a written summons or another written summons instructing him/her to come to court. If the accused person or a witness still refuses to come to court then that person should be arrested and charged with the offence of 'Failing To Attend Court', as provided for by section 25 of the *Local Courts Act* (Ch. 19). The wording of the charge for that offence is outlined on page **131**.

A form for a summons is on page **57**.

Criminal Cases

[5.3] What Cases Can Be Heard

Section 7 of the *Local Courts Act* (Ch. 19) states:

‘The criminal jurisdiction of a local court shall extend, subject to the provisions of this Act, to the hearing, trial and determination of all criminal charges and matters in which any Islander is accused of having wholly or in part within the jurisdiction of the court, committed or been accessory to the committing of an offence against an Islander.’

Section 17 of the *Local Courts Act* (Ch. 19) states:

‘The Chief Justice may by order confer on any local court jurisdiction to enforce all or any of the provisions of any law specified in such order subject to such restrictions and limitations, if any, as the Chief Justice may specify.’

See also section 9 of that Act.

Section 2 of the *Local Courts (Criminal Jurisdiction) Order* states:

‘The criminal jurisdiction of a local court shall extend to the hearing, trial and determination of all criminal charges and matters in which any person subject to the jurisdiction of the court is accused of having wholly or in part within the jurisdiction of the court committed or been accessory to the committing of an offence under the provisions specified in the Schedule to this Order or under the provisions of any by-law made by any local government council.’

An ‘accessory’ is a person who did assist a person who he/she knows committed an offence to enable that person to escape punishment, see section 386 of the *Penal Code* (Ch. 26). However, a husband or wife should not be charged with being an ‘accessory’ for their spouse.

The Schedule to that Order specifies that the following offences may be dealt with in a Local Court:

Section	Title of Section	Act
87	Affray	<i>Penal Code</i> (Ch. 26)
89	Threatening Violence	
121	Offences Relating To Judicial Proceedings	
125	Resisting Arrest & Escape	
175	Idle & Disorderly Persons	
178(f), (m), (n)	Offences in Public Ways, etc	
179	Drunk & Incapable	
181	Polluting Or Obstructing Watercourses	
183	Dangerous Dogs & Other Animals	

Criminal Cases

Section	Title of Section	Act
191	Libel	<i>Penal Code (Ch. 26)</i>
192	Defamatory Matter	
243	Danger Or Obstruction In Public Way Or Line Of Navigation	
244	Common Assaults	
261(1)	Theft	
274	Larceny Of Cattle	
275	Larceny Of Dog	
276	Larceny Of Creatures Not Subject Of Larceny At Common Law	
277	Larceny Of Fish	
279	Larceny Of Trees	
280	Larceny Of Fences	
281	Larceny of Fruit & Vegetables	
282	Damaging Fixtures, Trees, Etc With Intent To Steal	
289	Killing Animals With Intent To Steal	
292	Unlawful Use Of Vehicles, Animals, Etc	
325	Injuring Animals	
326(1)	Malicious Injuries -- Wilful Damage & Destruction Of Property	

SHOULD THESE OFFENCES BE DEALT WITH IN THE LOCAL COURT?

85	Refusal to pay rates and wilful misrepresentation	<i>Local Government Act (Ch. 117)</i>
86	Inciting a person to refuse to pay rates	
88	Duty to give information	
90	Rate collectors	
115(4)	Service of notice by the Council	
120	Obstruction of officers, etc	

Criminal Cases

Section	Title of Section	Act
39	Security Of Firearms & Ammunition	<i>Firearms & Ammunition Act (Ch. 80)</i>
40	Loss Of Firearms & Ammunition To Be Reported	
41	Carrying Firearms While Drunk Or Disorderly	

35	Premises to be kept free from long grass and receptacles likely to facilitate breeding of mosquitoes	<i>The Environmental Health (Public Health Act) Regulations (Ch. 99)</i>
36	Water tanks, etc, to be covered and screened	
37	Septic tanks, soakways, etc. to be screened	
39	Mere presence of mosquito larvae	
49	Pollution of water supply	
80	Protection of public sewers and drain	

An examination of each of those offences commences on page **64**.

No person should be prosecuted in a Local Court for an offence for which he/she has been previously convicted or acquitted, unless such conviction or acquittal has been reversed or set aside, see section 10(5) of the *Constitution* and section 121 of the *Criminal Procedure Code* (Ch. 7).

The law relating to 'Reviews' and 'Appeals' is examined commencing on page **53**.

[5.4] Presumption of Innocence

The accused person is presumed innocent until the prosecution has proven his/her guilt.

A Court must only make up its mind from what evidence the witnesses give in the Court and not stories that any of the members of the Court may hear outside of the court.

It is necessary for the Court to be sure that the accused person meant to do wrong. There is a difference between person charged with breaking a window who throws a stone through it, and one who is carrying a piece of bamboo which goes through it by accident in the dark.

It is dangerous to convict a person or to accept something as proven on the evidence of only one witness. A Court should generally not take something which is said by a witness as proven unless:

- another witness says so, too; or
- it is made strong by other facts. For example, if A accused B of hitting him in the face, the fact that A shows the Court a bruised face is good proof that he/she was struck — but not necessarily by B; or

Criminal Cases

- it is proved or made strong by other things, for example A hit B with a stick and the broken stick is able to be produced as an exhibit and identified by B.

If a Court knows that a person is a bad sort or has been in prison or otherwise punished by a Court before that does not automatically mean that the accused person is guilty of the offence charged. The criminal history of an accused person may only be considered after the Court has found him/her guilty of the offence and are considering what sentence or punishment to impose.

[5.5] General Court Procedure

[5.5.0] Court Record

Each Court Record Book has two pages for each entry. There should be a piece of carbon paper between the two pages so that whatever is written shows on the page below as well. This is so that a copy of every page can be given to a Magistrate after each case. The Court Record for each case must show what Court it was, where it was sitting, when it was sitting, who the Justices were, and who the Clerk of the Court was.

Imaginary Case:

Bauro Local Court	No. 5/77 Criminal at Hurnou 29 February 1977
Before	B Tar, president H Haga, member W Rora, member Clerk: H Watea

[5.5.1] Charge

The charge is the first part of the case. This is the business of the Clerk of the Court. The Clerk of the Court must get it right. The Clerk of the Court must be sure that it is a case that a Local Court can hear. The accused person must know exactly what wrong he/she is supposed to have done, and what law he/she is supposed to have broken. The Charge must show this. The correct wording of all charges that may be heard in a Local Court is provided for commencing on page 64.

The Clerk of the Court should read out the charge to the accused person and ask that person if he/she understands it. If the accused person does not understand the charge it should be explained to him/her.

[5.5.2] The Plea

The 'plea' is when the accused person in a criminal trial is asked by the President whether he/she did or did not do the wrong in the charge. The President must ask the accused person whether he/she plead 'Guilty' or 'Not Guilty'. Most people do not know the words 'guilty' or 'not guilty' and will say 'true' or 'not true' or something like that.

If possible the Clerk of the Court should write down the actual words of the accused person, followed by what the words mean, see section 195 of the *Criminal Procedure Code* (Ch. 7).

Criminal Cases

If there is more than one accused person, each accused person must be asked separately if he/she pleads 'Guilty' or 'Not Guilty'.

If an accused person says 'true' and so pleads guilty, the President should be sure that the accused person really means this. The Prosecutor should then be asked to tell the court the alleged facts of the case. If the accused person then does not agree that he/she committed the offence, then a plea of 'Not Guilty' should be recorded and the case should be set for trial.

[5.5.3] Plea Of Guilty

The Court must now hear about the facts.

If the accused person has pleaded guilty the Court he/she must hear exactly what has happened. The prosecutor should therefore tell the Court the story about the trouble. There is no need to call witnesses in this case.

The Clerk of Court is responsible for recording what is said.

Witnesses are called only after a plea of 'Not Guilty' is recorded.

[5.6] Trial Procedure

[5.6.0] Introduction

If the accused person pleads 'Not Guilty' the Court must hear all the evidence.

The procedure during a trial is as follows:

- [i] The Clerk of the Court reads out the charge to the accused person and if necessary explains to the accused person what it means.
- [ii] The President takes the 'plea' from the accused person, refer to page **23**.
- [iii] The Prosecutor provides what is called an 'Opening' by telling the court the name of each witness to be called by the prosecution followed by what each witness will say, briefly.
- [iv] The President tells all the witnesses except the first witness to be called by the prosecution to go away from the Court House so that they cannot hear other witness's evidence. The accused person should be asked if he/she has any witnesses in court. If a witness remains in the court after being told to leave he/she is committing an offence under section 121(1)(e) of the *Penal Code* (Ch. 26). The wording for that charge is on page **70**.
- [v] The prosecutor calls each witness to tell the court their story of what happened, referred to as 'giving evidence', in what order he/she chooses. This is referred to as 'Examination – in – Chief'.
- [vi] After the 'examination – in – chief' of each prosecution witness, the accused person is entitled to question them. This is referred to as 'Cross – Examination'.

Criminal Cases

- [vii] After the cross – examination of each prosecution witness, the prosecutor may ask questions to make clear any issues raised in cross – examination. This is referred to as ‘Re – examination’.
- [viii] After the prosecutor has called all of his/her witnesses, the Court should decide whether there is a ‘case to answer’. The Court has to decide whether is evidence capable of proving each element of the charge.

Section 197 of the *Criminal Procedure Code* (Ch. 7) states:

‘If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit the accused.’

Provided the Court believes that there is some evidence to prove each element then the charge should still proceed.

- [ix] The President should then ask the accused person whether he/she wishes to:
- give evidence;
 - not give evidence; or
 - give a story from the bar table where he/she is sitting.

If the accused person wishes to give evidence he/she must be told that the normal procedure in ‘Examination – in – Chief’ will be followed and therefore, he/she can be ‘cross – examined’ by the prosecutor, see section 198(1) of the *Criminal Procedure Code* (Ch. 7).

If the accused person does not wish to give evidence the Court can not require him/her to do so. Each accused person has what is called the ‘Right to Silence’, see section 10(7) of the *Constitution*.

If the accused person wishes to tell his/her story from the bar table or dock and not be cross – examined he/she should be allowed to do so. That is called ‘Unsworn Evidence’. Such evidence should not be considered as trustworthy as sworn evidence because the accused person can not be cross – examined by the prosecutor if he/she chooses to give unsworn evidence.

- [x] The President should then ask the accused person whether he/she wants to call any witnesses. If those witnesses are not available then the Court should grant an adjournment so that those witnesses can be called. Such an adjournment should be for enough time so that the accused person can call those witnesses. Such adjournments may be for a period of one day or longer.
- [xi] When each witness for the accused person gives evidence, it is also called ‘Examination – in – Chief’.
- [xii] After the examination – in – chief of each defence witness, the prosecutor is entitled to question them. This is also referred to as ‘Cross – Examination’.
- [xiii] After the cross – examination of each defence witness, the accused person may ask questions to make clear any issues raised in cross – examination. This is also referred to as ‘Re – examination’.
- [xiv] After the final witness to be called by the accused person, the Court should decide whether they are satisfied beyond reasonable doubt that the prosecution has proven the charge in private by discussing the case themselves.

Criminal Cases

An accused person is entitled to be in court for the entire trial, except if he/she causes trouble during the trial, see section 10(2) of the *Constitution*. If however he/she misbehaves then the trial should be adjourned and the accused person should be held in custody for 'Contempt of Court' and charged under section 121(1)(a) of the *Penal Code* (Ch. 26). The wording of that charge is on page 68.

[5.6.1] Examination – in - Chief

Each witness other than the accused person must give evidence in the witness box or on a chair used for that purpose.

Before a witness gives evidence he/she must promise to tell the truth.

Section 15 of the *Local Courts Act* (Ch. 19) states:

'Any person appearing before a local court to give evidence in any case, civil or criminal, may be examined or give on oath in the form, or with the ceremony, that he declares to be binding on his conscience.'

Before a witness gives evidence the President should ask the witness whether he/she believes in the Almighty God. If the witness believes in the Almighty God, the President should ask the witness to take the bible in his/her right hand and to repeat the following:

'I swear by Almighty God that the evidence which I shall give to this Court shall be the truth, the whole truth and nothing but the truth so help me God.'

If the witness is not religious, the President should ask the witness to repeat the following affirmation:

'I solemnly and sincerely truly declare and affirm that the evidence which I shall give to this Court shall be the truth, the whole truth and nothing but the truth.'

If a child is to give evidence and the child does not prove to the Court that he/she believes in God then the Court may take unsworn evidence from that witness.

The prosecutor or the accused person should follow the following procedure for each witness:

- [a] Ask 'What is your name?'
- [b] Ask 'What is your occupation?'
- [c] Ask 'Do you remember the [date in the charge]?'
- [d] Ask 'What occurred at about [time of the alleged offence]?'
- [e] Ask a series of questions commencing with words, 'What happened then / next?'

The witness should then tell his/her whole story to the Court.

- [f] Ask 'Can you see any person involved in this Court?'

When it is the turn of the accused person to give evidence, he/she should be asked by the President to tell the Court his/her story about the charge.

Criminal Cases

Each member of the Court may ask questions to make clear in their mind what was said by the witness.

When giving evidence a witness should not be allowed to tell any story which they were told. That is called 'hearsay evidence'. A witness should only give evidence or a story on what he/she saw and heard.

During examination – in – chief a 'leading question' should not be asked. A 'leading question' is a question which suggests the desired answer or assumed that certain things occurred. For example, it is not permissible to ask the following question:

'Do you remember going to your pig fence and finding one pig missing?'

Rather, it is correct to ask:

'Did you go to your pig fence?'

and

'Was there anything missing there?'

There is no need for any witness to go outside the court again after he/she has told his/her story to the court. Each witness can stay and listen to the rest of the case if they chose.

[5.6.2] Cross - examination

After each witness has given evidence, the President should ask the opposing side, that is the prosecution or the accused person, whether they wish to ask the witness questions.

Section 196(3) of the *Criminal Procedure Code* (Ch. 7) states:

'If the accused person does not employ an advocate, the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any questions to that witness and shall record his answer.'

The purpose of 'cross – examination' is to:

- try to show that the evidence of a particular witness should not be believed; or
- clarify, that is 'make clear', the story given by the witness; and
- put to the witness their side of the story so that the witness can either agree or disagree.

Often the accused person will try to tell his/her story when questioning the first witness called by the prosecutor. But at this stage the accused person is only allowed to ask questions. The accused person should be told that he/she can tell his/her story later.

A Court should not stop 'cross – examination', unless the questioning is not relevant.

When cross – examining witnesses, the prosecutor and accused person should:

[a] only ask 'relevant' questions;

Criminal Cases

- [b] give the witness time to answer the questions, before asking further questions;
- [c] not include statements of opinion, just facts, that is what actually happened;
- [d] never ask insulting questions with the intention of insulting or annoying the witness;
- [e] should not argue with the witness; and
- [f] never repeat the same question.

[5.6.3] Re - examination

After the completion of cross – examination, the opposing party is entitled to ask questions in re – examination.

The purpose of such questioning is to explain matters that arose during cross – examination.

However, new stories should be asked of the witnesses.

[5.7] Judgment

After hearing evidence from the prosecution and the defence, the President and the other members of the court must now decide together if the accused person is 'Guilty' or 'Not Guilty'. The Clerk of the Court can stay with them to read out any point from the record and provide legal advice, but that person must not try to judge the case.

It is not a decision solely of the President but of all the members of the Court.

The Court should ask itself –

- [a] Is there evidence to show that some wrong was done?;
- [b] Is this wrong against the law that the accused person is charged under?;
- [c] Is there evidence to show that the accused person did this wrong?;
- [d] Is there evidence to prove each element of the charge?; and
- [e] Is there evidence to show that the accused person wanted to do this wrong or did not care what he/she did?

If the Court is not sure or has any doubt, the accused person should be told he/she is free and find him/her 'Not Guilty'.

It is better to let a person who has done a bad thing to go free than to punish someone who has done no wrong.

Each member of the Court can decide what 'weight' or importance they place on the evidence of each witness. When considering the importance of each witness the Court should consider the relationships between the witnesses. A court simply has to use its common sense and good judgment in deciding who to believe.

But the Court must only consider the evidence given in court when making that decision.

Criminal Cases

After the Court has made its decision the President should tell the Clerk of the Court that Court will resume and when the prosecutor and the accused person are ready the decision will be delivered. The President must explain to the prosecutor and the accused person why the Court has found the accused person 'Guilty' or 'Not Guilty', see section 150 of the *Criminal Procedure Code* (Ch. 7).

A judgment must state:

- what charge the accused person has been found 'Guilty' or 'Not Guilty'; and
- what evidence the Court relies on to make that decision.

Those reasons must be recorded because:

- the decision may either reviewed by a Magistrate or the accused person or prosecutor may appeal the decision. The law relating to 'Reviews' and 'Appeals' commences on page **53**; and
- the accused person is entitled to a copy of the judgment on application, see section 10(3) of the *Constitution*.

If the accused person has been found 'Guilty' then the Court must:

- advise the accused person of his/her right to appeal to a Magistrates' Court; and
- then pass a sentence, see section 203 of the *Criminal Procedure Code* (Ch. 7).

[5.8] Sentencing

[5.8.0] Introduction

After the Court has found the accused person to be 'Guilty', or if the accused person pleads 'Guilty', the Court must next think of what sentence to give, that is what punishment to be imposed.

Punishment is supposed to do three things –

- [1] To punish the accused person for the wrong he/she has done;
- [2] To stop the accused person doing it again because he/she knows he/she will get an even bigger punishment next time; and
- [3] To stop other people from doing the same wrong.

The procedure for sentencing is as follows:

Firstly, the Court should find out a little more about the accused person. The President should ask the accused person:

- Whether he/she is married?
- How many children?
- How old are the children?

Criminal Cases

- How much money does he/she earn?
- Has he/she anything to say?

When considering what punishment should be imposed the Court should also consider the following 'mitigating factors':

- Whether the guilty person pleaded guilty;
- Whether the guilty person is of good character;
- Whether the guilty person did co – operate with the police in their investigation;
- The family circumstances of the guilty person;
- The age of the guilty person;
- Whether the guilty person was really sorry for what he/she had done;
- Whether the guilty person has a good work record;
- Whether customary compensation has been paid;
- The poor health of the guilty person;
- The motive of the guilty person for committing the offence; and
- The risk that such an offence will again be committed by the guilty person.

Secondly, the President should ask the Prosecutor whether the accused person has any previous convictions, ie., has the accused person done any criminal behaviour before. If any previous convictions are alleged then the President must ask the accused person whether he/she agrees. If the accused person does not agree then the prosecution must prove that the accused person is the person alleged to have the previous conviction by calling evidence from the prosecutor who prosecuted the guilty person on that occasion. Otherwise the previous conviction must be ignored.

When considering what punishment should be imposed the Court should consider the following 'aggravating factors':

- The seriousness of the offence committed;
- How the offence was committed;
- Whether any weapons were used to commit the offence;
- How responsible was the guilty person in committing the offence;
- Any previous convictions; and
- Whether alcohol was consumed immediately prior to committing the offence.

Thirdly, on some occasions it may be good practice to call the complainant to give evidence in order to find out how the commission of the offence has affected him/her.

Fourthly, the members of the Court must now talk together in private (the Clerk of the Court can be present) about the sentence. The Clerk of the Court should advise the Court what is the highest punishment that can be given. But the highest punishment is not often given, it is for really bad cases, and usually after several previous convictions.

Criminal Cases

[5.8.1] What Sentences May Be Imposed

Section 18 of the *Local Courts Act* (Ch. 19) states:

‘For offences against the law or custom of Islanders a local court may, subject to the provisions of this Act, impose a fine or may order imprisonment or both a fine and imprisonment, or may inflict any punishment authorised by the law or custom of Islanders, provided that such punishment is not repugnant to natural justice and humanity, and the fine or other punishment shall in no case be excessive but shall always be proportioned to the nature and circumstances of the offence.’

The Court can impose one or more different kinds of punishment as follows:

- [1] Bind the guilty person over to be of good behaviour;
- [2] Fine the guilty person not exceeding \$200;
- [3] Advise the guilty person to do communal work;
- [4] Send the guilty person to prison for a period not exceeding 6 months;
- [5] Order the guilty person to pay compensation; and
- [6] Send the guilty person to his/her own home district.

In most cases a Local Court should find that ordering a guilty person to pay a fine is the appropriate punishment, but it should be remembered that it is not always suitable. Remember too that in serious cases, the guilty person can be fined or ordered to pay compensation (or both) as well as sent to prison.

Remember always that a court should be ready to punish hard when it is necessary, and to be kind when an guilty person is deserving.

[5.8.2] Binding Over

Section 21 of the *Local Courts Act* (Ch. 19) gives the Court the power to let a guilty person free from any prison or fine if he/she makes a promise not to make any other trouble for a period decided by the Court.

That section states:

‘A local court may, in any case, in lieu of fine or imprisonment, in view of the age of the accused or because of the trivial nature of the offence bind over the accused in such sum either in custom money or in the currency which for the time being is legal tender in Solomon Islands, as the court may prescribe, to be of good behaviour for such period as to the court seems fit, but not exceeding a period of one year.’

The Court should consider using this ‘binding over order’ when the guilty person is very young, or the trouble is a minor or where it is the first time the person has been in trouble.

The amount of money should be proportionate to the seriousness of the offence and the period to be of good behaviour must not exceed a period of one year. Remember that the guilty person does not have to pay the money if he/she is of good behaviour for the period specified.

The President may say to the guilty person —‘You are bound over in the sum of \$..... to be of good behaviour for one year. If you do anything wrong in this year you will be resentenced for this offence and you will receive a heavier punishment. Do you fully understand?’

Criminal Cases

The Clerk of the Court then completes a 'Bond To Be Of Good Behaviour' together with the President and gives a copy to the guilty person. That form is on page 59. The original of that form should stay with the Court Record.

[5.8.3] Fine

As specified in the Warrant and section 3 of the *Local Courts (Criminal Jurisdiction) Order*,

'a local court may pass sentences [...] imposing a fine not exceeding two hundred dollars'.

In all circumstances the fine imposed must not exceed the maximum fine that is specified for the offence. If no specific fine is provided then the maximum fine can be imposed which is two hundred dollars, see the Warrant and section 3 of the *Local Courts (Criminal Jurisdiction) Order*. The fines specified for each offence are outlined in this Handbook.

A Local Court can give a lesser penalty than the maximum allowed if it thinks fit, but it cannot give a larger fine than that.

The highest fine should only be imposed in serious cases or when the guilty person has a criminal history.

It does not matter what the sentence is provided for in the statute because the fine that may be ordered can not exceed two hundred dollars, under any circumstances.

How big the fine to be imposed depends on a number of factors including:

- how serious the offence is;
- whether the guilty person has been in trouble before;
- what are the family and other responsibilities of the guilty person; and
- how much the law says can be imposed.

When a fine is imposed the President should advise the guilty person:

- the amount of fine to be paid;
- the length of the term of imprisonment if the fine is not paid or the communal work to be performed;
- when the fine must be paid (now, next week or end of the month); and
- if he/she does not pay in the time given he/she will be imprisoned.

As provided for by section 22 of the *Local Courts Act* (Ch. 19), upon imposing a fine to be paid a Local Court may:

- order that the guilty person be imprisoned, unless the money is paid forthwith;
- allow time for the payment of the fine; or
- direct that payments of the fine to be made by instalments.

Criminal Cases

However, as provided for by section 23 of the *Local Courts Act* (Ch. 19), the period of imprisonment imposed in respect of non – payment of a fine shall be according to the scale prescribed by section 26(1) of the *Penal Code* (Ch. 26) as follows:

Amount	Maximum Period Of Imprisonment
Not exceeding \$2	7 days
Exceeding \$2, but not exceeding \$4	14 days
Exceeding \$4, but not exceeding \$20	6 weeks
Exceeding \$20, but not exceeding \$180	2 months
Exceeding \$180, but not exceeding \$200	3 months
Exceeding \$200	6 months

If the guilty person does not pay his/her fine within the time allowed, the Clerk of the Court must complete a 'Warrant of Imprisonment For Failure To Pay A Fine', see page 60.

That warrant must be correctly completed. The 'Statement of offence(s)' refers to the section number(s) and the name(s) of the Act(s) that the guilty person was charged with and the 'Particulars of offence(s)' refers to the full wording of the charge(s).

If the warrant is not correctly completed the staff at the Prison will not accept the guilty person.

The police officer then arrests the person with this warrant and takes him/her to prison. As that person has been told in court about what will happen if he/she does not pay, this will come as no surprise to the guilty person. If the guilty person decides to pay the fine when the constable arrives or before reaching prison, the fine should be accepted by the Clerk of the Court who must write out a receipt for it and the guilty person is then free.

[5.8.4] Imprisonment

As specified in the Warrant and section 3 of the *Local Courts (Criminal Jurisdiction) Order*,

'a local court may pass sentences ordering imprisonment of a term not exceeding six months [...]'.

In all circumstances the term of imprisonment imposed must not exceed the maximum term of imprisonment that is specified for the offence. If no specific term of imprisonment is provided then the maximum term of imprisonment can be imposed which is a term of six months imprisonment, see the Warrant and section 3 of the *Local Courts (Criminal Jurisdiction) Order*. The terms of imprisonment specified for each offence are outlined in this Handbook.

A Local Court can give a lesser penalty than the maximum allowed if it thinks fit, but it cannot give a longer period of imprisonment than that.

The maximum term of imprisonment should only be imposed in serious cases or when the guilty person has a criminal history.

Criminal Cases

It does not matter what the sentence is provided for in the statute because the term of imprisonment that may be ordered can not exceed six months, under any circumstances.

An order of imprisonment should only given:

- for serious offences;
- if the guilty person has a bad criminal record; or
- when a fine is not paid.

If a guilty person is sent to prison for two different charges at the same time, the Court can say whether it wants to add the two terms of imprisonment together or whether one should cover up the other. For example if a person was given one month for 'assault' and two months for 'theft/larceny', the Court could say that the guilty person should:

- serve two months imprisonment. In that case the sentences are referred to as 'concurrent sentences' and the guilty person only serves the longest term of imprisonment; or
- serve three months imprisonment. In that case the sentences are referred to as 'consecutive sentences'.

The President should advise the guilty person whether the terms of imprisonment are 'concurrent' or 'consecutive'.

If the guilty person is to serve a term of imprisonment a '*Warrant of Imprisonment*' must be completed by the President and Clerk of Court. The form for that Warrant is on page **58**.

The '*Warrant of Imprisonment*' to be correctly completed must show:

- The name of the Local Court;
- The case number;
- The name and address of the guilty person;
- The Charge;
- The section of the law broken;
- The sentence; and
- The date.

A Magistrate must also sign the '*Warrant of Imprisonment*' after seeing the court record if the period exceeds two months.

Section 20 of the *Local Courts Act* (Ch. 19) states:

'Where a local court sentences a person to imprisonment for any period exceeding two months he shall, upon confirmation of the sentence by a Magistrate, be detained in a prison established under the Prisons Act, and the term of imprisonment shall commence on the day on which the person sentenced is taken into custody in pursuance of the confirmation of the sentence as aforesaid.'

If the '*Warrant of Imprisonment*' is not correctly completed the staff at the Prison will not accept the guilty person.

Criminal Cases

A guilty person who is sentenced to a term of imprisonment for a period of less than two months does not have to go to prison.

[5.8.5] Communal Work

If the Court thinks that a period of less than two months is sufficient it is usually best to advise the guilty person that he/she can perform communal labour rather than being sent to prison. It is at the discretion and direction of the Court.

However, the order of the Court must specify a term of imprisonment.

Section 19(1) of the *Local Courts Act* (Ch. 19) states:

‘Notwithstanding any law, Act or Rule to the contrary in force in Solomon Islands, a person sentenced by a local court to a term of imprisonment of two months or less shall be deemed to be undergoing such imprisonment if on every day, exclusive of Sundays, during the term of imprisonment imposed, he performs such communal work as the court prescribes for a period of nine hours daily:

Provided that the court may in its discretion order such person to be detained in a prison established under the provisions of the Prisons Act.’

By virtue of that section the accused person is deemed to be serving a term of imprisonment if he/she performs communal work each day exclusive of Sundays.

Communal work can only be given for up to two months but it is usually better than sending a person to prison where he/she may learn other ways of crime and costs the Government a lot of money to keep.

If the Court intends to order that the guilty person performs communal work it must have his/her consent to perform the work. However, the only other option for the guilty person is imprisonment.

Furthermore, the guilty person must understand that:

- the work is unpaid;
- he/she must provide his/her own food; and
- he/she must work nine hours a day for six days a week, not his/her day of worship.

The guilty person should also be warned that, as provided for by section 19(2) of the *Local Courts Act* (Ch. 19):

‘Any person undergoing imprisonment as aforesaid [by performing communal work], who absents himself from such work without lawful excuse when he should be engaged thereat, shall be guilty of an offence, and shall, on conviction before a local court, be liable to a further term of imprisonment not exceeding one month.’

The President is to give a direction to the accused person specifying:

- What date the communal work was to commence;
- What date the communal work was to finish;
- Where the communal work was to be performed;
- What communal work was to be performed;

Criminal Cases

- The accused person must work each day, except Sundays; and
- The accused person must work for nine hours between what hours the communal work was to commence and finish each day.

If a guilty person absents himself/herself from communal work without lawful excuse then a police officer can arrest him/her so that he/she can be sentenced for that offence. The correct wording of charge for that offence is on page **129**.

The Court should arrange with the Provincial Assembly or Area Council what work can be done. The sort of work that guilty persons may do include:

- fixing a road;
- carrying water to the village for all;
- building a visitor's house;
- working on a school;
- building lavatories; and
- building a wharf.

The work must always be for the benefit of the community and not a single person. Therefore, the guilty person should not be made to work in the President's garden, or plant a hedge round the Clerk of Court's house.

It is the responsibility of the Clerk of the Court to monitor the work performed.

[5.8.6] Compensation

Under section 24 of the *Local Courts Act* (Ch. 19) the Court can order that the fine or part of the fine can be paid to the person who was hurt by the offence.

As provided for by that section (in part):

'A local court may direct any fine, or such part thereof as it shall deem fit, to be paid to the person injured or aggrieved by the act or omission [the offence] in respect of which such fine has been imposed.'

In all cases in which a Local Court is considering whether or not to direct any fine or part thereof to a complainant it must warn that person that as provided for by section 24 of that Act, the condition of such payment is that such person shall not have or maintain any suit for the recovery of damages for the loss or injury sustained by him/her by reason of such act or omission. Therefore, such persons cannot take civil action against the guilty person as a consequence of what occurred.

For example, if the guilty person stole a pig worth \$10 and ate it, the Court could fine him/her \$20 and order that \$10 out of that fine be paid to the owner of the pig as compensation.

If the guilty person does not pay the fine, the same procedure applies as if it was a straightforward fine. The guilty person goes to prison.

When compensation is paid the guilty person cannot later be taken to court in a civil case by the person who owned the pig. A Court should therefore always explain this to the complainant, and the Court should ask him/her whether or not he/she wishes to be paid compensation before it makes any order.

Criminal Cases

[5.8.7] Sending Home

If a guilty person is found guilty of the offence of being an 'Idle or Disorderly Person' under section 175 of the *Penal Code* (Ch. 26), a Local Court may instead of imposing any other penalty direct that he/she be conveyed to:

- his/her place or province in Solomon Islands; or
- the place or province in Solomon Islands in which he/she normally resides;

and reside there for such period not exceeding three years as may be specified in the Order.

If any such Order is made additional to a sentence of imprisonment, the Order shall take effect forthwith upon the termination of such sentence.

An '*Order As To Residence*' must be completed by the Clerk of Court and then signed by the President and the Clerk of Court, see page **61**. A copy must be given to the guilty person and the original stays with the court record.

If the guilty person fails to comply with the terms of such Order he/she shall be guilty of an offence and shall be liable to imprisonment for six months. The wording of that charge is on page **82**.

Furthermore, section 177 of the *Penal Code* (Ch. 26) states:

'(1) Where the Magistrate makes an order under section 175 or 176, he may in the order direct that the person convicted be subject to the supervision of a suitable person nominated for the purpose by the court, for such period as may be specified in the order, not exceeding the period under which the convicted person is required to reside in the place or province.

(2) The person nominated pursuant to subsection (1) of this section shall be responsible to the supervision of the convicted person and submit to the court such reports and information as may be required in terms of the order.'

Civil Cases

[6.0] Introduction

A civil case is a row between two people about land, money, a contract, or a civil wrong that one person has done to another. In civil cases the wrong only hurts the people concerned. The Court usually fixes the trouble by telling one person he/she must pay money to the other person, or must give the thing to this other person. There is no punishment in a civil case unless the person disobeys the Court's order.

The court must be satisfied on the balance of probabilities, ie., more probable than not, that the parties has made out its case before ruling in its favour.

The Court charges a fee for hearing the case, see section 30 of the *Local Courts Act* (Ch. 19).

Those fees are outlined in the *Local Courts (Fees in Civil Cases) Rules* as follows:

On application for a witness summons, summons to defendant or a summons to judgment debtor.	\$5
On any cause or matter where the value of the subject matter, other than land, is capable of being estimated in money, and (a) does not exceed \$50 (b) exceeds \$50 but does not exceed \$150 (c) exceeds \$150	\$5 \$10 \$15
On any other cause or matter	\$15
On any application or summons not specifically provided for above	\$5

Fees paid may be refunded if in the opinion of the Court the payment of such fees would cause hardship or are too much, see Rules 3 and 4 of the *Local Court (Fees in Civil Cases) Rules*.

An example of a Court Record is as follows:

Name of Local Court	Malaita Local Court
Location	held at Malu'u
Date	3 March 2003
Civil Case No.	1/03
Names of Members of the Court	J. Fiu -- President
	B. Ndai -- Member
	F. Tarapaina -- Member
Name of Clerk of Court	J. Tiuni
Name of Plaintiff	John Thomas of Malu'u
Name of Defendant	Benjamin Takwa of Malu'u
Brief Details of Claim	\$24 for unpaid wages for two weeks' work
Payment of Court Fee	\$2 paid; Receipt No. GIO7

[6.1] Calling The Court

If the plaintiff fails to turn up without good reason, the Court can hear the case without him/her, but it is usually better to strike the case out.

Civil Cases

If the plaintiff wants to go on with the case he/she must take out, and pay for, another summons unless he/she can explain well why he/she did not turn up on the first occasion.

If the defendant does not turn up, the Court should go ahead and hear the case if the Court is satisfied that the defendant has been properly served. That is, the plaintiff should tell his/her story on oath. The Court should be sure though that the defendant was properly summoned so that he/she knew the time and place of hearing.

A form for a summons is on page 62.

A Court should never give civil judgment in the absence of the defendant without hearing the whole story from the plaintiff and being convinced by his/her evidence that he/she is right.

[6.2] What Cases May Be Heard

[6.2.0] Introduction

Section 8(1) of the *Local Courts Act* (Ch. 19) states:

'The civil jurisdiction of a local court shall extend, subject to the provisions of this Act, to the hearing, trial and determination of all civil suits and matters in which the defendant is ordinarily resident within the area of the jurisdiction of the court or in which the cause of action shall have arisen within the said area, provided that civil proceedings relating to immovable property shall be taken in the local court within the area of whose jurisdiction the property is situated.'

As provided for by section 2(1) of that Act, the Chief Justice by warrant under his hand

'establish in Solomon Islands such local courts as he shall think fit which shall exercise over *Islanders* within limits as may be defined by such warrant the jurisdiction therein defined and such jurisdiction as may be conferred by any Act on local courts generally.'

The respective Warrants establishing Local Courts in Solomon Islands specify as follows:

'The Court may hear any civil case where not more than \$1000 is claimed in money (subject to any general order made by the Chief Justice varying the amount which may be claimed).'

Local Courts cannot hear divorce cases under the *Islanders Divorce Act* (Ch. 171), except where the marriage is by custom and has not been registered under the *Islanders Marriage Act* (Ch. 170).

See also sections 6 and 9 of that Act.

[6.2.1] Debts

The Court must find out if the defendant borrowed the money or bought the article.

The Court must make sure how much the money or goods were. If the defendant has to pay money the Court should say how and when it is to be paid. If the defendant disobeys the Court then the plaintiff should go back to the Court to ask it for an order to make the defendant pay his debt to the plaintiff.

Civil Cases

[6.6.2] Contracts

The Court must first of all find out if a contract or agreement was made. It does not have to be a written contract, Then the Court has to find out what the contract was about and what points the defendant has not carried out. If the Court really thinks that the contractor could do the job but has willfully failed to do so it can order him/her to do so. But it is difficult to see that this order is carried out. It is usually better to have the contractor pay compensation to the plaintiff for the trouble caused by the contractor not doing the work he agreed to do.

[6.2.3] Property

Find out the true owner of the canoe or money or box or fishing net or whatever the row is about. The Court can give a person an order to hand it back to the proper owner.

[6.2.4] Wrongs

The Court must find out what the wrong is that has been done and whether the defendant has done this wrong. It might be a swear, or spoiling someone's name, or some custom matter. The Court can order the defendant pay money to make the plaintiff satisfied if the plaintiff wins and the Court must decide the amount. A Local Court can not make an award which is in excess of \$1000. If there has been a criminal case, such as stealing a pig, then after the accused has come out of prison, or paid his fine, the owner of the pig can sue him for the value of the pig. But if the Court finds a person guilty of stealing a pig it is best if the Court orders the guilty person to pay compensation to the owner as well as his/her punishment. This compensation will be taken into consideration by the Court in the civil case and if the Court thinks that the plaintiff has already received enough compensation or his/her pig, it should give him/her no more.

[6.2.5] Sexual Cases

Civil cases quite often come to the Local Courts about fornication or adultery. It is very easy for a girl to get up and say "James slept with me two times last November." James, if he was in the area that month cannot possibly prove that he was not in the bush with her some time that month. Since it is so easy to say, the Court should not find James liable on the word of the girl alone. There must be something (called corroboration) to back up her evidence — that is to make what she says stronger or more likely to be believed. The fact that her father or brother says that she confessed that she had slept with James does not make the story any stronger. It is just as easy for her to lie to them as it is for her to lie to the Court. There should be something else — somebody who saw them together in the bush or under suspicious circumstances or someone to say they were friends already, or perhaps a letter from James to the girl.

A very bad thing has started in some parts of the Solomon Islands — some men are starting to live on the earnings of women's bodies, and are using the Local Courts to get their money for them. In one case a girl slept with three different men in two months and her brother got \$20 each time by suing them in a Local Courts. The man in fact was making profit from the woman selling her body. If a woman is merely sleeping with anyone who asks her, it is her business and there should be no question of compensation.

A man who causes a woman, who is not his wife, to have a child can be made by the Local Court to support that child. This is called "Affiliation".

The law relating to 'Affiliation' is dealt with in Part II of the *Affiliation, Separation and Maintenance Act* (Ch. 1).

Civil Cases

A man who is separated from his wife can be made to support his wife. This is called "Maintenance". This can only be dealt with by the Magistrates' Court not the Local Courts.

[6.2.6] Affiliation

Affiliation, Separation and Maintenance Act (Ch. 1)

Commencement of affiliation proceedings

Section 3 states:

'A single woman who is with child, or has been of a child, may --

- (a) before the birth of the child; or
- (b) at any time within three years after the birth of the child; or
- (c) at any time thereafter upon proof that the man alleged to be the father of the child has before or within three years after the birth of the child paid money or has otherwise made provision for its maintenance; or
- (d) at any time within twelve months after the return to Solomon Islands of the man alleged to be the father of the child, upon proof that he ceased to reside in Solomon Islands within the three years next after the birth of the child,

make an application to a court having jurisdiction in the place where she resides, for a summons to be served on the man alleged by her to be the father of the child.

Provided that the High Court may at any for good cause enlarge the period within which an application may be made under this section.'

What is means

If a woman has a child by a man and he fails to support that child, she has the right to go to the Local Court to complain.

She must make her complaint either before the child is born or within 3 years of the birth unless the father has already been supporting the child, or has been outside the Solomon Islands. The High Court may make the period in which the application is made longer if it feels there is good cause.

NB. The Local Courts Act applies only to Islanders. If the father is not an islander then the woman must take proceedings to the Magistrate's Court.

Court may refuse to issue summons

Section 4 states:

'It shall be lawful for a Court, on any application for a summons under this Act, to refuse to issue the summons if its is not satisfied that there is reasonable cause to believe that the man alleged to be the father of the child and that the application is made bona tide and not for any purpose of intimidation or extortion.'

Civil Cases

Power of Court on hearing of complaint

Section 5 states:

- (1) On the hearing of the complaint, the court shall hear the evidence of the complainant and such other evidence as may be produced in support, and shall also hear any evidence tendered by or on behalf of the defendant.
- (2) If the evidence of the complainants corroborated in some material particular by other evidence to the satisfaction of the court, it may adjudge the defendant to be the putative father of the child, and may also, if it sees fit in all the circumstances of the case, proceed to make against the putative father an order for the payment by him --
 - (a) of such sum of periodic payment money as the court, having regard to his means, considers reasonable, for the maintenance and education of the child.;
 - (b) the expenses incidental to the birth of the child;
 - (c) the funeral expenses of the child if it has died before the making of the order; and
 - (d) such costs as may have been incurred in obtaining order,
- (3) If the application is made before or within two months of the birth after the birth of the child, such periodical payments may, if the Court thinks fit, be calculated from the date of the birth.
- (4) The court, if it thinks fit, may, in lieu of periodic payments, order that a lump sum such amount as the court, having regard to all the circumstances of the case, including the means of the putative father, considers reasonable, be paid into court and such sum shall be expended on the maintenance of that the child in such a manner as the court may direct.
- (5) The court may also order that a portion of the periodic payments or of any lump sum awarded shall be expended on the education of the child in such school as it may nominate.
- (6) The court, on the hearing of the complaint, may, if the complaint is dismissed, order that the complainant pay to the person alleged to be the father reasonable costs incurred by him in defending the proceedings.'

Money to be paid to the custodian

Section 6 states:

- (1) Subject to the provisions of this Act, the person entitled to any payments to be made under an affiliation order shall be the child's mother, and the order shall make provision accordingly.
- (2) An affiliation order may, on the application of a custodian, be made or varied by a court so as to entitle the custodian to any payments to be made under the order.
- (3) A court when making or varying an affiliation may order that the money shall be paid into court then paid to the mother or any custodian entitled thereto in such manner and subject to such conditions it may direct.

Civil Cases

- (a) Any custodian entitled to receive monies under an affiliation order shall have the same power to recover the as the mother would have if the monies had been able to her.'

Duration of the Order

Section 7 states:

'Subject to the provisions of this Act, an affiliation order shall not, except for the purposes of recovering money previously due under the order, be of any force or validity after the child has attained the age of sixteen years or has died:

Provided that after the child has attained the age of thirteen years the court may order that an affiliation order may cease to be of any force or validity if it is satisfied that the child is in receipt of sufficient income to maintain himself.'

What the Court can do

If a woman complains to the Court, but the Court does not believe that the man complained against is really the father, or if the Court thinks the woman has bad things in her mind and is not being straight, it can refuse to do anything about the complain. ("Bona Fide" means "in good faith").

The Court should hear the stories of the mother, and any witnesses she may have, and of the man said to be the father, and any witnesses he has.

The Court should, not decide the case just on the story of the mother alone, but if her story is supported by other evidence, it can decide that the man she complains about is indeed the father of her child. The Court can then make an order for him to pay:-

- (a) Some money every week or every month for looking after the child, and sending it to school.
- (b) anything which was spent for the birth of the child.
- (c) If the child died, the funeral expenses
- (d) The costs of the case in the Court (such as witnesses' expenses and Court fee).

Any money ordered to be paid under (a) can be calculated from the date of birth if the complaint was made within two months of the birth.

Another way is that instead of regular payments, the father can be made to pay a lump sum into the Court to be spent on the child as the Court decides

If the Court thinks that the woman is making a false complaint, it can order her to pay the man she said was the father whatever it cost him to come to Court and defend himself.

Money to be paid to someone else looking after the child

Usually it is the mother herself who is entitled to receive any money which the Court orders the father to pay but if someone else is looking after the child, that person can ask the Court to order that the money be paid to himself or herself instead. This can be done when the original case is before the Court, or later on.

Civil Cases

The Court can order that the money be paid into the Court and then paid out to the mother or whoever else is looking after the child.

A person looking after the child who has been ordered by the Court to receive the money has the same power to recover the money from the father of the child as the mother herself.

How long the order lasts

Once the child has reached sixteen years the mother has no more claim from the father (unless of course he still owes her money, which should have been paid before).

If the child has reached thirteen years and getting enough money to look after itself, the Court may cancel its order and tell the father he can stop paying

Appointment of custodian and provisions relating thereto

Section 9 states:

- (1) A court may, at the time of making an affiliation order or thereafter, on being satisfied that —
- (a) the mother of the child is not a fit and proper person to have the custody of the child; or
 - (b) the mother has died or become of unsound mind or is in prison,
- appoint some person other than the mother to have custody of the child.
- (2) The appointment of a custodian may be made on the application of a social welfare officer or of the clerk to a Provincial Assembly, or any other public officer appointed by him in that behalf, or of the putative father, or of the mother if she is alive, and such appointment may be revoked and another person appointed to have custody of the child.
- (3) When making an order as to custody under this section, the court may order the child to be delivered to the person in whose custody the child is to the person entitled to the custody.
- (4) If a child in respect of whom an affiliation order has been made or is sought is wrongfully taken out of the custody of its mother or custodian, a court may, on the application of the mother or custodian, make an order that the child be returned to such custody as aforesaid, and any person who fails to comply with such an order shall be guilty of an offence and liable to a fine of two hundred dollars or to imprisonment for three months, or to both such fine such imprisonment.'

Civil Cases

Variation of order

Section 10 states:

'A court having jurisdiction in the place in which affiliation order has been made may, on the application of the mother, or any custodian entitled to payments under such order, or the putative father, after enquiring into the circumstances, make an order either increasing or decreasing the amount previously ordered to be paid by the putative father.'

Putting the child in someone else's care (not the mother)

If there is some good reason why the mother should not look after her own child (she may be dead, sick, a drunkard or a prostitute) the Court can appoint someone else to take care of it (a custodian)

This may be suggested by a Social Welfare Officer, the Clerk of a Provincial Assembly or an Assembly Officer, appointed by the Clerk, the father of the child or the mother herself.

Later on the Court may find reason to appoint someone else again.

The Court can order that the child be sent to the custodian it has decided on. If anyone takes the child out of the keeping of the mother, or the person appointed by the Court to look after the child, the Court can make an order that the child be returned to the proper person. Anyone who fails to act as the order directs is guilty of a criminal offence and can be fined \$200 or sent to prison for three months, or both.

Changing the amount to be paid

After the order has been made, circumstances may change. The mother (or custodian) may ask for payments to be increased. The father may ask for payments to be reduced. The Court must look into this and decide whether to make a change.

[6.3] Court Procedure

A civil case can be divided into the following parts like a criminal case:

- [1] The 'Statement of the Claim' (like the charge in a criminal case)
- [2] The plea: 'Liable', 'Not Liable' or 'Partly Liable' (like 'Guilty' or 'Not Guilty' in a criminal case)
- [3] The Facts -- The Plaintiff's side
- [4] The Facts -- The Defendant's side
- [5] The Judgment. (The same as the Judgment in a criminal case)
- [6] The Decision; What the Court says should be done about the case.

Civil Cases

The following is an example of a civil case:

STATEMENT OF THE CLAIM		
All about it	What the Clerk writes (an example)	Please Note
<p>This is why the plaintiff has brought defendant before the Court. The statement must be quite clear otherwise the Court and the defendant do not know what the plaintiff is complaining about and what he wants done about it.</p>	<p>John Thomas (the plaintiff) of Malu'u claims that Benjamin (the defendant) of Takwa owes him \$24 for his wages when he worked for two months on Ben's plantation.</p> <p>\$2 Court fee paid — Receipt No.G107</p> <p>(There is also a fee of \$1 for each summons issued by the Court)</p>	<p>The clerk should help the Plaintiff make his statement of claim quite clear.. He must collect the appropriate fee before he brings the case to the Court. (See Appendix C.)</p>

Civil Cases

THE PLEA		
All about it	What the Clerk writes (an example)	Please Note
<p>Defendant can give a short answer to this statement as soon as it has been read out by the Court Clerk. He can say:</p> <p>“Not Liable” (I don’t owe him anything), or “Liable” (Yes, the claim is true and I will pay), or “Partly Liable” (I only owe part of that amount)</p> <p>or he may make a counter—claim like “true I owe him \$24 but he owes me \$30 for bride price for my daughter</p>	<p>Plaintiff present Defendant present Plea, Not liable (“I don’t owe him any money”)</p>	<p>The defendant should not give his story yet but he may have to explain a bit so that the Court understands his plea.</p>

Civil Cases

THE FACTS – THE PLAINTIFF’S SIDE		
All about it	What the Clerk writes (an example)	Please Note
<p>The plaintiff promises to tell the true and gives his story. Usually he swears on the Bible. Before he does so his witnesses, if he has any, leave the Court so that they cannot hear what is said until their time to story comes.</p> <p>When the plaintiff has finished the defendant is given the chance to ask any questions,</p> <p>Then the plaintiff's witnesses give their stories one by one after swearing to tell the truth. The Defendant, and the Court, can ask questions of any witness,</p>	<p>Plaintiff John of Malu'u sworn states:-</p> <p>Last year Ben asked me to work in his garden and promised to pay me \$12 each month. He has still paid me nothing.</p> <p>Cross - examination by Defendant. Q. Did you work hard? A. Yes, very hard.</p> <p>Plaintiff's 1st Witness (PW1) Alice of Malu'u, Sworn, States</p> <p>I saw John in Ben's garden last year and he was working very hard all the time,</p> <p>Cross - examination by Defendant. Q. Are you related to John A. He is my brother.</p> <p>End of Plaintiff's side.</p>	<p>In civil cases the plaintiff and defendant should normally be present in Court all the time, but if the defendant will not come to Court, the Court can go ahead without him. If it does so, it is still up to the plaintiff to state his case after promising to tell the truth. The Court must make sure that the defendant has not got a good excuse.</p> <p>If he is sick or didn't hear about the case the Court should put off for another day (that is "adjourn") the case so that he can come. Are you related to John?</p> <p>Witnesses must stay out of hearing until they have given their stories (or "evidence").</p>

Civil Cases

THE FACTS – THE DEFENDANT’S SIDE		
All about it	What the Clerk writes (an example)	Please Note
<p>The defendant promises to talk the truth and gives his story (evidence). The plaintiff can ask him any questions when he has finished which might show the Court that the plaintiff is not telling a true, or all of, story.</p> <p>Then the defendant can call his first witness who promises to tell the truth and tells his story. After each witness has spoken, the plaintiff and the Court have the chance to ask questions.</p>	<p>Defendant Ben of Takwa sworn states —</p> <p>It is true I asked John to work in my garden, but he only turned up on about six days and helped himself to more potatoes than his work was worth.</p> <p>Cross - examination by Plaintiff Q. Did you promise me \$12 each month? A. Yes, but only if you worked for it. Defendant’s first witness (DW1)</p> <p>Sale of Takwa sworn states —</p> <p>I saw John in Ben’s garden last year but he never worked and I saw him taking away lots of potatoes.</p> <p>Cross - examination by Plaintiff. Q. Did you go to the garden every day? A. No.</p> <p>Cross - examination by Court. Q. How many days did you go to the garden? A. I have forgotten</p> <p>End of Defendant’s side</p>	<p>Witnesses must stay out of the hearing of the Court until they give their stories.</p>

Civil Cases

THE JUDGEMENT		
All about it	What the Clerk writes (an example)	Please Note
<p>When all the evidence is finished the Court can clear the Courthouse while the two Justices and the President talk about all the evidence and decide which side has the strongest case and wins.</p> <p>The Clerk should write down the reasons why the Court thinks that one side is stronger than the other side.</p>	<p><u>Judgment</u></p> <p>The Court is sure that Ben asked John to work in his garden and promised to pay him \$12 each month. Ben says that John didn't work properly and stole potatoes. If Ben saw this he should have warned John -not just let him go on and then refuse to pay him. The Court thinks that John did the work and should be paid accordingly. The Court finds John has won his case and gives judgment against Ben for \$24</p>	<p>The Judgment is a little different from one in a criminal case. The Court has first to say what it thinks are the facts. -</p> <p>The Court must make it clear what it believes the true story to be in respect of every fact that is argued about.</p>

Civil Cases

THE DECISION		
All about it	What the Clerk writes (an example)	Please Note
<p>After deciding who has won, the Clerk calls everyone back into the house and the President tells them that a decision has been decided, If the case is about a debt the Court must say how and when the money must be paid.</p>	<p>Ben must pay John \$24. He must pay him \$12 by the end of this month, and \$12 by the end of next month. He should pay it in front of the Clerk of the Court.</p>	<p>If the case is about ground the Court must give out the spear lines of the ground and must say what rights and powers over the ground the person who wins the case has over the ground.</p> <p>Sometimes if the winning side has spent a lot of money to pay witnesses' expenses for the case, the Court can order the other side to pay "costs to the winning side to cover these expenses.</p>

Civil Cases

[6.4] What Orders May Be Made

In a civil case, the court does not impose a sentence or a fine. It gives a judgment to settle the row between two people or two groups of people.

Section 8(2) of the *Local Courts Act* (Ch. 19) states:

'In any civil suit or matter in which a local court has jurisdiction under subsection (1), the court shall also have jurisdiction within the area of jurisdiction of the court --

- (a) to enforce by attachment and sale or delivery any order or decision of the court; and
- (b) to commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or decision of the court or any other local court;

Provided that such jurisdiction shall only be exercised where it is proved to the satisfaction of the court that the person making default has, or has had since the date of the order or decision, the means to pay the sum in respect of which he has made default, and has refused or neglected or refuses or neglects to pay the same.

For the purposes of this paragraph, any local court may direct any debt due from any person, in pursuance of any order or decision of that court, or any other local court, to be paid by instalments, and may, from time to time, vary or rescind such order.'

Sometimes after a Local Court has made an order in a civil case or has given its judgment, the person against whom the order or judgment was given does not obey it.

For instance, in the case of John Thomas against Benjamin discussed earlier the Court ordered that Ben must pay John \$24 within 2 months from the date of the judgment of the Court. If Ben does not pay this money, then John can go to the Local Court and ask the Court to enforce (to make Ben obey) its judgment.

The Clerk of the Local Court should write down on the Local Courts record of John and Benjamin's case that John has asked the Court to enforce its judgment against Ben, and he should ask John to sign or put his mark in the Court record. The Clerk should then report the matter to the Magistrate of the Province, and the Magistrate will then arrange to enforce the Local Court's judgment against Ben.

The Magistrate's Court will do this by ordering that Ben's goods (such as his bicycle, sewing machine, canoe, pigs, cattle, etc.) should be taken and sold in order that John may be paid his ~\$24; a the Magistrate's Court may order that Ben should be sent to prison for up to six weeks or until he pays John the \$24.00

But this should be done only on the order of the Magistrate. A Local Court must not try to do any of these things itself.

Review And Appeal Of Cases

[7.0] Introduction

The law is a very difficult thing and the purpose of 'review' and 'appeal' is to make sure that the accused person or loser in a civil case does not suffer because of some mistake. There are very few Courts who have never made a mistake and been over—ruled by a higher Court. If a decision of your Court is changed do not feel ashamed; remember that everyone makes mistakes sometimes.

Section 10 of the *Local Courts Act* (Ch. 19) states:

- '(1) Notwithstanding anything to the contrary in this or any other Act contained, no decision of a local court in any civil suit or matter shall be invalid by reason only of the defendant not having been resident or the cause of action not having arisen or the immovable property to which the suit or matter relates not being stipulated, within the area of the court's jurisdiction; and for this purpose, in the case of –
 - (a) civil proceedings relating to immovable property, the property shall be deemed to be and always to have been situated within the area of the court's jurisdiction, and
 - (b) other civil proceedings, the defendant shall be deemed to have been ordinarily resident at all material times, and the cause of action to have arisen, within the area of the court's jurisdiction:

Provided that this subsection shall not apply to any suit or matter in which –

- (i) any party thereto, during or immediately before the proceedings, objected to determination of the suit or matter by the court upon the ground that he being the defendant was not ordinarily resident, or that the cause of action did not arise or that the immovable property to which the proceedings related was not situated, within the area of the court's jurisdiction; or
- (ii) an *appeal* has been lodged within the prescribed period upon any of the grounds specified in the preceding paragraph of this proviso.' (emphasis added)

The law in relation to 'Appeals' is on page **54**.

[7.1] Review

To make sure that no mistakes in justice are made, cases from the Local Courts and the Magistrates' Courts can be 'reviewed' by another court. This is particularly important when the persons who make the decisions in those courts have no or limited legal training.

Section 27 of the *Local Courts Act* (Ch. 19) states:

'Every Magistrate shall at all times have access to local courts in his district and to the records of such courts, and on the application of any person concerned or of his own motion may –

Review And Appeal Of Cases

- (a) revise any of the proceedings of a local court, whether civil or criminal, and may make such order or pass such sentence therein as the local court could itself have made or passed, provided that no sentence of fine or imprisonment or other sentence in any criminal proceeding shall be increased without first giving the accused an opportunity to be heard; and provided further that if any such sentence shall be increased upon revision by a Magistrate, there shall be an appeal from the order of the Magistrate to the Chief Justice, who may reduce, remit, or increase any such sentence;
- (b) order any case to be re – tried either before the same court or before any other local court of competent jurisdiction or may at any stage of the proceedings, either before or after judgment has been delivered, transfer any case for hearing before a Magistrate’s Court.’

[7.2] Appeal

Anyone who thinks that there is something wrong with his/her trial, or that the sentence or decision of the Court is too heavy for him/her, can appeal to a Magistrate.

Section 28 of the *Local Courts Act* (Ch. 19) states:

‘Any person aggrieved by any order or decision of a local court may within thirty days from the date of such order or decision appeal therefrom to the Magistrate’s Court having jurisdiction in the area.’

An appeal should not be lodged unless there is a good reason to do so. The basis of an appeal can be either that:

- the Local Court did not apply the law correctly; or
- the Local Court did not interpret the facts correctly.

An accused person may also appeal that whilst he/she agrees that he/she was guilty, the sentence imposed was excessive or too severe in the circumstances. However, an accused person should be told before he/she makes his/her appeal that it is possible for a sentence to be increased on appeal.

Section 29 of the *Local Courts Act* (Ch. 19) states:

‘A Magistrate in the exercise of appellate jurisdiction in any cause or matter under this Act may require the aid of such persons as assessors as he shall think fit and may –

- (a) make any such order or pass any such sentence as the local court could have made or passed in such cause or matter;
- (b) order any such cause or matter to be reheard before the local court or before any other local court.’

Local Court Warrant

WARRANT ESTABLISHING THE GUADALCANAL LOCAL COURT

1. The Guadalcanal Local Court, with jurisdiction over all Wards of Guadalcanal Province, is hereby established.

2. The constitution of the Court shall be as follows --
 - (a) The Court shall consist of not more than ----
 - (i) 10 Presidents;
 - (ii) 19 Vice – Presidents; and
 - (iii) 76 Justices.
 - (b) The Court may sit to hear a case provided at least three members take part; if no President or Vice – President is taking part, the members shall choose one of their members to be chairman.
 - (c) In reaching a decision in any case the majority of the members sitting must agree.

3.
 - (1) The Court may hear any criminal case about an offence set out in the *Local Courts (Criminal Jurisdiction) Order*, or any other general order made by the Chief Justice under section 17 of the *Local Courts Act* (Ch. 19), and hear and determine criminal cases committed within the boundaries of the Santa Isabel and Central Islands Provincial Assemblies as defined in the *First Schedule to the Provincial Government Act*.
 - (2) In criminal cases, the Court may impose imprisonment for not more than 6 months, or a fine of not more than \$200, subject to any general order made by the Chief Justice varying the sentencing powers.

4. The Court may hear any other civil case where not more than \$1000 is claimed in money (subject to any general order made by the Chief Justice varying the amount which may be claimed).

Local Court Forms

The following Local Court Forms have been enclosed:

Criminal Jurisdiction

- Summons To Attend Court;
- Warrant Of Imprisonment;
- Bond To Be Of Good Behaviour;
- Warrant Of Imprisonment For Failure To Pay Fine; and
- Order As To Residence.

Civil Jurisdiction

- SummonsTo Defendant In Civil Case; and
- Summons to Witness In Civil Case.

THE LOCAL COURTS ACT
(Cap 19)

SUMMONS TO ATTEND COURT
(Section 25)

..... Local Court

To: (name) of (place)
You are hereby commanded to appear before the

above Local Court at (place)

on (date) at (time)

to give evidence/answer a charge

Statement of offence

....

contrary to (law/By-law)

Particulars of offence

.....

.....

Signed (Court Clerk)

Date 20

Note: Any person summoned to attend court who fails to do so shall be liable to a fine of twenty dollars, and in default of payment to imprisonment for three months.

.....

(Constable to tear off after service)

Name of witness/accused

Case to be heard at (place)

On (date) at (time)

Summons served by me on person named and contents explained

at (place)

on (date)

(signed)

(Constable)

LOCAL COURTS ACT
(Cap. 19)

WARRANT OF IMPRISONMENT
(Section 18)

..... Local Court

To all Area Constables and all Police Officers and to the Officer-in-Charge of the Prison at

.....

Whereas (name)

of (place)

was on 20 (date)

convicted before the Local Court of the following
offence(s):

Statement of Offence(s)

.....

Particulars of Offence(s)

.....

.....

and it was adjudged that the said (name)

for his offence(s) should be imprisoned at (prison)

and there to be kept for.....(period)*
from this day.

You are therefore ordered to take the said (name) and convey
him/her to the said prison and deliver him/her to the Officer-in-Charge thereof who is hereby directed to
imprison him/her for the time aforesaid.

Dated this day of 20.....

(signed) (President)

(signed) (Court Clerk)

*1n the case of a sentence of more than 2 months this Warrant must be countersigned by a Magistrate.

Dated this day of 20

Magistrate

THE LOCAL COURTS ACT

(Cap. 19)

BOND TO BE OF GOOD BEHAVIOUR
(Section 21)

..... Local Court

I, who have signed below, acknowledge myself to owe to our Sovereign Queen Elizabeth II the sum written opposite my signature, to be raised by seizure and sale of my goods if the condition set out below is not fulfilled.

Dated this day of 20.....

Signature

Address

Sum

The condition of this order is as follows:

If (a) keeps the public peace and is of good behaviour towards all persons (and especially towards

.....

(b) for (c) then the said order shall be void, or otherwise it shall be in force.

- (a) Write here the name of the person signing the bond.
- (b) Write here the name of any person to whom the person signing the bond has to be of specially good behaviour. Otherwise delete.
- (c) Write here the length of time for the bond.

LOCAL COURTS ACT
(Cap. 19)

WARRANT OF IMPRISONMENT FOR FAILURE TO PAY FINE
(Section 22(d))

..... Local Court

To all Area Constables and Police Officers and to the Officer-in-Charge of

..... Prison.

Whereas (name)

of (place)

was convicted before this court on (date)
of the following offences:

Statement of offence(s)

.....
.....

Particulars of offence(s)

.....
.....
.....

and it was adjudged that the said(name)

for his/her offence(s) should pay a fine of \$ (amount of fine)

or in default of payment be imprisoned for (period) and whereas
he/she has made default.

You are therefore commanded to take the said (name) and
convey him/her to prison and deliver him to the officer in charge, who is hereby directed to imprison
him/her for (period)
unless he/she shall pay the said fine.

Dated thisday of 20.....

(signed) President

..... Court Clerk

THE LOCAL COURTS ACT
(Cap. 19)

ORDER AS TO RESIDENCE
(Penal Code, Section 175)

..... Local Court

To Area Constables and to all Police Officers in Solomon Islands.

Whereas (name)

of (place)

was on (date)
convicted before this court of the following offence(s):

Statement of offence(s)

.....
.....

Particulars of offence(s)

.....
.....

and was ordered by the court to reside

at (place)

in the (province)

for a period of (months)
from this day.

You are therefore commanded to convey the said

..... (name)
to such place, and if he/she leave such place before the above period expires, he/she shall be liable to the
penalties provided by law.

Dated 20.....

(Signed) (President)

..... (Court Clerk)

THE LOCAL COURTS ACT
(Cap. 19)

SUMMONS TO DEFENDANT IN CIVIL CASE
(Section 8(1))

..... Local Court

Civil Case No.of 20

Between (plaintiff)

and (defendant)

In the matter of
(details of matter in dispute)

TO: (name) of (place)

You are required to attend this court

at (place)

on (date)

at (time)

when the case brought against you by the above-named plaintiff will be heard.

If you fail to attend as required, the court may proceed in your absence and give judgment after hearing the statement of the plaintiff.

(signed)
Court Clerk

.....
(Area Constable to tear off here)

..... (plaintiff) against (defendant)

Civil case to be heard at (place)

on (date) at (time)

Summons served on defendant at (place)

on (date).

(Signed)
Constable

THE LOCAL COURTS ACT

(Cap. 19)

SUMMONS TO WITNESS IN CIVIL CASE
(Section 8(1))

..... Local Court

Civil Case No. of 20

between

..... (Plaintiff)

and

..... (Defendant)

TO (name of witness)

You are required to attend in person before this court

at (place)

on the (date)

at (time) and so from day to day until this cause has been tried, to give evidence as to all that you know in this cause [*and also to bring with you and produce to the court at the time and place stated above the following

.....
.....
.....

[Describe briefly the document or thing the witness is to bring]

You are summoned at the request of

..... (name of Plaintiff or Defendant)

Dated 20

Signed

Court Clerk

[*Delete if the witness is not required to bring any document or thing with him/her.]

Criminal Charges

The following criminal charges may be heard in a Local Court and the maximum punishment which may be imposed as specified in the Warrant and section 3 of the *Local Courts (Criminal Jurisdiction) Order* is:

‘a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars’.

However, if a section specifies a lower penalty then that is the maximum penalty that may be imposed.

Each of the following charges commences with the following:

[Name of the accused person] of [Address of the accused person] at [Place of the alleged offence] in [Name of the Province] on [Date of the alleged offence]

If an accused person is to be charged as an ‘accessory’ then the wording of the charge should state that.

Criminal Charges

Penal Code

AFFRAY

87

Section 87 of the *Penal Code* (Ch. 26) states:

'Any person who takes part in a fight in a public place'

shall be guilty of an offence.

The wording of charge is:

'did take part in a fight in a public place to wit [specify the name of the public place].'

The elements for that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Take part
- [5] Fight
- [6] Public place

To prove this charge the prosecution must prove that the accused person did intentionally take part in a fight in a public place. An accused person is not guilty of this offence if he/she was acting in the self defence of himself/herself or any other person.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars'.

Criminal Charges

THREATENING VIOLENCE

89

Section 89(a)

Section 89 of the *Penal Code* (Ch. 26) states:

'Any person who –

(a) with intent to intimidate or annoy any person, threatens to break or injure a dwelling – house'
shall be guilty of an offence.

The wording of the charges are:

'with intent to [intimidate **or** annoy] a person namely [specify the name of the person] did threaten to [break **or** injure] a dwelling-house.'

The elements for those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Intent to intimidate
- [4] [b] Intent to annoy
- [5] Complainant
- [6] [a] Did threaten to break a dwelling - house
- [6] [a] Did threaten to injure a dwelling - house

To prove the charge the prosecution must prove that the accused person did with intent to either intimidate or annoy the complainant the accused person did threaten the damage a house.

To prove 'intent' the court can consider any admission by the accused person or by considering what the accused person did. However, when considering the actions of an accused person who has made no admissions the court must be certain that the accused person had the intent as charged namely either the intent to intimidate or annoy the complainant.

The house does not have to belong to the complainant.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars'.

Criminal Charges

THREATENING VIOLENCE

89

Section 89(b)

Section 89(b) of the *Penal Code* (Ch. 26) states:

'Any person who –

[...]

(b) with intent to alarm any person in a dwelling – house, discharges loaded firearms or commits any other breach of the peace'

shall be guilty of an offence.

The wording of that charge is:

'with intent to alarm a person namely [specify the name of the person] in a dwelling-house did [discharge a loaded firearm or commit a breach of the peace].'

The elements for that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Intent to alarm
- [5] Complainant
- [7] Dwelling – house
- [8] [a] Did discharge a loaded firearm
[b] Did commit a breach of the peace

To prove the charge the prosecution must prove that the accused person did with intent to alarm the complainant who was in a dwelling – house the accused person did either discharge a loaded firearm or acted in a disorderly manner.

To prove 'intent' the court can consider any admission by the accused person or by considering what the accused person did. However, when considering the actions of an accused person who has made no admissions the court must be certain that the accused person had the intent to scare the complainant as charged.

The house does not have to belong to the complainant.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars'.

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

Section 121(1)(a)

Section 121(1)(a) of the *Penal Code* (Ch. 26) states:

'Any person who within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken shall be guilty of an offence.'

The wording of that charge is:

'within the [premises in which a judicial proceeding to wit (specify the judicial proceeding) was being (had or taken) or precincts of premises in which a judicial proceeding to wit (specify the judicial proceeding) was being (had or taken)] did show disrespect in [speech or manner] [to or with reference to] [the said proceeding or a person namely (specify name of person) before whom the said proceeding was being (had or taken)].'

The elements for that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Within the premises in which a judicial proceeding was being had or taken
[b] Within the precincts of premises in which a judicial proceeding was being had or taken
- [5] Show disrespect in speech or manner
- [6] [a] To or with reference to the proceedings
[b] To or with reference to a person before whom the proceeding was being had or taken

To prove the charge the prosecution must prove that the accused person did either inside the Local Court building / structure or immediately outside the Local Court building / structure show disrespect by speech or by actions to the Local Court or to a member of the Local Court.

Section 121(1)(b)

If an accused person fails to attend court after being summonsed to give evidence he/she should be charged under section 25 of the *Local Courts Act* (Ch. 19) and not under section 121(1)(b) of the *Penal Code* (Ch. 26). The wording of that charge is on page **130**.

Section 121(1)(c)

Section 121(1)(c) of the *Penal Code* (Ch. 26) states:

'Any person being present at a judicial proceeding and being called upon to give evidence, refuses to be sworn or to make an affirmation shall be guilty of an offence.'

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

The wording of that charge is:

'being present at a judicial proceeding to wit [specify the judicial proceeding] and being called upon to give evidence did refuse to [be sworn or make an affirmation].'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Being present at a judicial proceeding
- [5] Being called upon to give evidence
- [6] [a] Did refuse to be sworn
[b] Did refuse to make an affirmation

To prove the charge the prosecution must prove that the accused person was present at the Court and when called to give evidence the accused person refused either to be sworn as a witness on the bible or make an affirmation that he/she would tell the truth.

It is not necessary for the prosecution to prove that the accused person had been summonsed. Any person who is at a Court may be called upon by the Court to give evidence.

Section 121(1)(d)

Section 121(1)(d) of the *Penal Code* (Ch. 26) states:

'Any person who having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document which it is within his power to produce shall be guilty of an offence.'

The wording of that charge is:

'having been [sworn or affirmed] did refuse without lawful excuse to [answer a question or produce a document which was within (his/her) power to produce].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Having Been Sworn In or Affirmed
- [5] Did Refuse Without Lawful Excuse
- [6] [a] Answer a Question
[b] Produce a Document which was within his/her Power to Produce

To prove the charge the prosecution must prove that the accused person was sworn in or affirmed as a witness to give evidence in the Local Court and the accused person did refuse without a lawful excuse to answer a question or produce a document that he/she could have.

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

The accused person must prove that he/she had a lawful excuse for refusing to answer a question or produce a document that he/she could have.

Section 121(1)(e)

Section 121(1)(e) of the *Penal Code* (Ch. 26) states:

‘Any person who having attended a judicial proceeding to give evidence, remains in the room in which such proceeding is being had or taken after the witnesses have been ordered to leave such room shall be guilty of an offence.’

The wording of that charge is:

‘having attended a judicial proceeding to wit [specify the judicial proceeding] to give evidence did remain in the room in which the said proceeding was being [had or taken] after the witnesses had been ordered to leave the said room.’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Having Attended a judicial proceeding
- [5] To give evidence
- [6] Did remain in the room in which the said proceeding was being had or taken after the witnesses had been ordered to leave the said room

To prove the charge the prosecution must prove that the accused person did attend court to give evidence and the accused person did remain inside the court after the Court told all witnesses to leave the room prior to giving evidence.

Section 121(1)(f)

Section 121(1)(f) of the *Penal Code* (Ch. 26) states:

‘Any person who causes an obstruction or disturbance in the course of a judicial proceeding shall be guilty of an offence.’

The wording of the charges are:

‘did cause [an obstruction or a disturbance] in the course of a judicial proceeding to wit [specify the judicial proceeding].’

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Cause an obstruction
[b] Cause a disturbance
- [5] Course of a judicial proceeding

To prove the charge the prosecution must prove that the accused person did either cause an obstruction or cause a disturbance whilst a Local Court was in session.

Section 121(1)(g)

Section 121(1)(g) of the *Penal Code* (Ch. 26) states:

'Any person who while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken shall be guilty of an offence.'

The wording of that charge is:

'while a judicial proceeding to wit [specify the judicial proceeding] was pending did make use of a [speech or writing] [misrepresenting the said proceeding, capable of prejudicing a person namely (specify the name of this person) (in favour of or against) a party to the said proceeding or calculated to lower the authority of a person namely (specify the name of this person) before whom the said proceeding was being (had or taken)].'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] While a judicial proceeding was pending
- [5] Did make use of a speech or writing
 - [a] Misrepresenting the said proceeding
 - [b] Capable of prejudicing a person in favour or against a party to the said proceeding
 - [c] Calculated to lower the authority of a person before whom the said proceeding was being had or taken

To prove the charge the prosecution must prove that the accused person did whilst the court case in the Local Court was still to commence did say something or write something which:

- misrepresented the Local Court;
- was capable of prejudicing a member of the Local Court in favour of or against a party in that court case; or
- was calculated to show disrespect to any member of the Local Court who was to hear the court case.

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

Section 121(1)(h)

Section 121(1)(g) of the *Penal Code* (Ch. 26) states:

'Any person who publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private [...] is guilty of an offence.'

The wording of that charge is:

'did publish a report of the evidence taken in a judicial proceeding to wit [specify the judicial proceeding] which had been directed to be held in private.'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Publish
- [5] Report of the evidence
- [6] Taken in a judicial proceeding
- [7] Which had been directed to be held in private

To prove this charge the prosecution must prove that the accused person did publish or distribute to the public a report of the evidence heard in a Local Court after the Court directed that the evidence was to remain private and therefore not told to the members of the public.

Section 121(1)(i)

Section 121(1)(i) of the *Penal Code* (Ch. 26) states:

'Any person who attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence [...] is guilty of an offence.'

The wording of those charges are:

'did attempt wrongfully to [interfere with **or** influence] a witness namely [specify the name of this person] in a judicial proceeding to wit [specify the judicial proceeding] [before **or** after] (he/she) had given evidence.'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Attempt
- [5] Wrongfully to
 - [a] Interfere with
 - [b] Influence
- [6] Witness

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

- [7] Judicial proceeding
- [8] [a] Before giving evidence
- [b] After giving evidence

To prove the charge the prosecution must prove that the accused person did attempt to wrongfully interfere or influence a witness who was to give evidence or after giving evidence in a Local Court. The accused person must attempt to convince the witness to change his/her story.

Section 121(1)(j)

Section 121(1)(j) of the *Penal Code* (Ch. 26) states:

‘Any person who dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding [...] is guilty of an offence.’

The wording of that charge is:

‘did dismiss a servant namely [specify the name of the servant] because (he/she) had given evidence on behalf of a certain party namely [specify the name of the party] to a judicial proceeding.’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Dismiss
- [5] Servant
- [6] Because he/she had given evidence on behalf of a certain party
- [7] Judicial proceeding

To prove the charge the prosecution must prove that the accused person did dismiss a person who was his/her servant because that person gave evidence for a particular person or party in a Local Court. There must be evidence that the accused person dismissed the servant because he/she did not want him/her to give evidence in the Local Court for the person or party that the accused person did not support.

Section 121(1)(k)

Section 121(1)(k) of the *Penal Code* (Ch. 26) states:

‘Any person who wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court [...] is guilty of an offence.’

The wording of that charge is:

‘did wrongfully retake possession of land from a person namely [specify the name of this person] who had recently obtained possession by a writ of court.’

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wrongfully
- [5] Retake possession
- [6] Land
- [7] From a person
- [8] Who had recently obtained possession by a Writ of Court

To prove the charge the prosecution must prove that the accused person did wrongfully retake land from the complainant by:

- forcing the complainant or his/her family or friends to leave the land;
- living on the land after being told that it was the property of the complainant; or
- other means

after the complainant had obtained lawful possession by obtaining a Writ of Court.

Section 121(1)(l)

Section 121(1)(l) of the *Penal Code* (Ch. 26) states:

‘Any person who commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken [...] is guilty of an offence.’

The wording of that charge is:

‘did commit an act of intentional disrespect to wit [specify the act] to a [judicial proceeding to wit (specify the judicial proceeding) or person namely (specify name of this person) before whom a judicial proceeding to wit (specify the judicial proceeding) was being (had or taken)].’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Commit an act of intentional disrespect
- [5] [a] To a judicial proceeding
[b] To a person before whom a judicial proceeding was being had or taken

To prove the charge the prosecution must prove that the accused person did intentionally commit an act of disrespect to:

- members of the Local Court; or
- a person before whom the Local Court was being had or taken such as another accused person or a witness.

Criminal Charges

JUDICIAL PROCEEDINGS OFFENCES

121(1)

Maximum Penalty

The maximum penalty that a Local Court can impose for those offences that are not committed in the view of the Court is:

‘imprisonment for three months’.

If a person commits an offence against paragraphs (a), (b), (c), (d), (e), (f), (g) or (l) in the view of the Court then the Court may:

[i] cause the offender to be detained in custody immediately and at any time before the closure of the court that same day; and

[ii] impose a maximum penalty of:

‘a fine of one hundred dollars or in default of payment to imprisonment for one month.’

Criminal Charges

RESISTING ARREST AND ESCAPE

125

Section 125 of the *Penal Code* (Ch. 26) states:

‘Any person who, on being arrested for an offence, violently resists any police officer arresting him, or being in lawful custody, escapes from such custody, shall be guilty of a misdemeanour.’

The wording of the charges are:

‘on being arrested for an offence to wit [specify the offence] did violently resist a police officer namely [specify the name and rank of the officer] arresting (him/her).’

‘did escape from lawful custody.’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] On being arrested
- [5] Violently resist
- [6] Police officer
- [7] Arresting him/her

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Escape
- [5] Lawful custody

To prove the charge the prosecution must prove that the accused person did:

- upon being arrested resist violently the police officer arresting him/her; or
- escape from lawful custody.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars’.

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

Section 175(a)

Section 175(a) of the *Penal Code* (Ch. 26) states:

'Any person who, having no visible means of support or insufficient lawful means, shall not (being thereunto required by any Magistrate or who, being duly summoned for such purpose, shall be brought before any Magistrate) give good account of his means of support to the satisfaction of such Magistrate'

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of the charges are:

'having [no visible means of support or insufficient lawful means] and being thereunto [required by, duly summoned or brought before] a Magistrate namely [specify the name of the Magistrate] did not give good account of (his/her) means of support to the satisfaction of the said Magistrate.'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Having no visible means of support
- [4] [b] Insufficient lawful means
- [5] [a] Required by;
- [5] [b] Duly summonsed
- [5] [c] Brought before
- [6] Court
- [7] Did not give good account of his/her means of support to the satisfaction of the court

The accused person must prove to the court on the balance of probabilities that he/she has means of support to the satisfaction of the court.

Section 175(b)

Section 175(b) of the *Penal Code* (Ch. 26) states:

'Any person wandering abroad or placing himself in any street to beg or gather alms or causing or procuring or encouraging any child so to do'

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of the charges are:

'did [wander abroad or place (himself/herself) in a street namely (specify the name of the street)] to [beg or gather alms].'

'did [cause, procure or encourage] a child namely [specify the name of the child] to [wander abroad or place (himself/herself) in a street namely (specify the name of the street)] to [beg or gather alms].'

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

The elements of the first charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Wander about
- [b] Place himself/herself in a street
- [5] [a] Beg alms
- [b] Gather alms.

To prove the charge the prosecution must prove that the accused person did either wander around or stand in a street begging or gathering donations.

The elements of the second charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Cause;
- [b] Procure
- [c] Encourage
- [5] Child
- [6] [a] To wander about
- [b] Place himself/herself
- [7] Street
- [8] [a] Beg alms
- [b] Gather alms

To prove the charge the prosecution must prove that the accused person did arrange to have a child to either wander around or stand in a street begging or gathering donations.

Section 175(c)

Section 175(c) of the *Penal Code* (Ch. 26) states:

‘Any common prostitute behaving in a disorderly or indecent manner in any public place’

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of those charges are:

‘being a common prostitute did behave in [a disorderly or an indecent manner] in a public place namely [specify the name of the public place].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Common prostitute

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

- [5] [a] Behave in a disorderly manner
- [5] [b] Behave in an indecent manner
- [6] Public place

To prove the charge the prosecution must prove that the accused person was a common prostitute and that did either behave in a disorderly or an indecent manner in a public place.

Section 175(d)

Section 175(d) of the *Penal Code* (Ch. 26) states:

'Any person who is drunk and disorderly in any public place or who, in any public place, behaves in a riotous or disorderly manner, and every person who in any other place whatsoever assembles together with others and while so assembled behaves in a riotous or disorderly manner'

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of those charges are:

'Any person who [was drunk and disorderly **or** did behave in a (riotous **or** disorderly) manner] in a public place namely [specify the name of the public place].'

'Any person who assembled with others did behave in a [riotous **or** disorderly] manner.'

The elements of the first charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Drunk and disorderly;
- [4] [b] Behave in a riotous manner
- [4] [c] Behave in a disorderly manner
- [5] Public place

To prove the charge the prosecution must prove that the accused person:

- was drunk and disorderly in a public place;
- did behave in a riotous manner in a public place by himself/herself; or
- did behave in a disorderly manner in a public place by himself/herself.

The elements of the second charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Assembled with others
- [5] [a] Behave in a riotous manner
- [5] [b] Behave in a disorderly manner

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

To prove the charge the prosecution must prove that the accused person together with other persons did:

- behave in a riotous manner; or
- behave in a disorderly manner.

Section 175(e)

Section 175(e) of the *Penal Code* (Ch. 26) states:

‘Any person who without lawful excuse publicly does any indecent act’

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of the charge is:

‘without lawful excuse did an indecent act in public.’

The elements of the charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Without lawful excuse
- [5] Indecent act
- [6] In public

To prove the charge the prosecution must prove that the accused person did an indecent act that could be seen by a member of the public. The onus is on the accused person to prove that he/she did the act with a lawful excuse.

Section 175(f)

Section 175(f) of the *Penal Code* (Ch. 26) states:

‘Any person who in any public place solicits for immoral purposes’

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of the charge is:

‘did solicit for immoral purposes in a public place to wit [specify the name of the public place].’

The elements of the charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Solicit

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

- [5] Immoral purposes
- [6] Public place

To prove the charge the prosecution must prove that the accused person did attempt or did obtain money in a public place for the purpose of performing an act of prostitution.

Section 175(g)

Section 175(g) of the *Penal Code* (Ch. 26) states:

'Any person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms'

is deemed to be an idle and disorderly person and guilty of an offence.

The wording of the charges are:

'did wander about and endeavour by the exposure of [wounds or deformation] to [obtain or gather] alms.'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wander about and endeavour by the exposure of wounds or deformation
- [5] [a] Obtain alms; or
[b] Gather alms

To prove the charge the prosecution must prove that the accused person did wander about trying to obtain or gather donations by exposing his/her wounds or deformities.

Maximum Penalty

The maximum penalty that a Local Court can impose for these offences to an accused person who has not committed these offence before is:

'a term of imprisonment not exceeding two months or to a fine not exceeding twenty dollars.'

The maximum penalty that a Local Court can impose for these offences to an accused person who has committed these offences once before is:

'a term of imprisonment not exceeding three months.'

The maximum penalty that a Local Court can impose for these offences to an accused person who has committed these offences more than once before is:

'a term of imprisonment not exceeding six months.'

Criminal Charges

IDLE AND DISORDERLY PERSONS

175

A 'residence order' may also be imposed for these offences. In that regard refer to page 38.

Section 175 of the *Penal Code* (Ch. 26) states:

'Provided that in the event of any conviction under this section the Magistrate may, in addition to or in lieu of any other penalty, by order direct that the person convicted be conveyed to his place or province or origin in Solomon Islands or the place or province in Solomon Islands in which such person is ordinarily resident and that he reside there for such period not exceeding three years as may be specified in the order, and where any such order is made additional to a sentence of imprisonment the order shall take effect forthwith upon the termination of such sentence;

If any person subject to such order fails to comply with the provisions of such order he shall be guilty of an offence and shall be liable to imprisonment for six months.'

The wording of the charge is:

'being previously convicted of an offence under section 175 of the *Penal Code* (Ch. 26) at the [insert the name] Magistrates' Court on [specify the date] and by order directed to be conveyed to a [place or province] in Solomon Islands and reside there for a period of [specify the period] did fail to comply with the provisions of the said order in that the said [insert the name of the defendant/accused] did [specify how the order was contravened].'

The elements of the charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Previously convicted of an offence under section 175 of the *Penal Code* (Ch. 26)
- [5] Order directed to be conveyed to a place or province in Solomon Islands and reside there for a period
- [6] Fail to comply with the provisions of the order

To prove the charge the prosecution must prove that:

- the accused person was previously convicted of an offence under section 175 of the *Penal Code* (Ch. 26);
- an Order was made by the court directing that the accused person be conveyed to a specified place or province and reside there for a specified period of time; and
- the accused person did fail to comply with that Order.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

'a term of imprisonment not exceeding six months.'

Criminal Charges

DAMAGING SIGNBOARD

178(f)

Section 178(f) of the *Penal Code* (Ch. 26) states:

‘Any person who –
wantonly pulls down, destroys, damages or defaces any sign or signboard’
is guilty of an offence.

The wording of the charges are:

‘did wantonly [pull down, destroy, damage or deface] a [sign or signboard].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wantonly
- [5] [a] Pull down
- [b] Destroy
- [c] Damage
- [d] Deface
- [6] [a] Sign
- [b] Signboard

To prove the charge the prosecution must prove that the accused person did intentionally pull down, destroy, damage or deface a sign or signboard without the permission of the owner.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of ten dollars or to imprisonment for one month.’

Criminal Charges

INDECENCY AND OBSCENITY

178(m)

Section 178(m) of the *Penal Code* (Ch. 26) states:

‘Any person who –

in any public place writes or draws any indecent word or representation or uses any profane, indecent or obscene language or is otherwise guilty of any obscene or indecent conduct’

is guilty of an offence.

The wording of the charges are:

‘in a public place namely [specify the name of the public place] did [(write or draw) an indecent (word or representation), use (profane, indecent or obscene) language] or conduct (himself/herself) (obscenely or indecently)].’

The elements of those charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Public place
- [5]
 - [a] write an indecent word
 - [b] write an indecent representation
 - [c] draw an indecent word
 - [d] draw an indecent representation
 - [e] use profane language
 - [f] use indecent language
 - [g] use obscene language
 - [h] conduct himself/herself obscenely
 - [i] conduct himself/herself indecently

To prove the charges the prosecution must prove that the accused person did in a public place either:

- write an indecent word or representation;
- draw an indecent word or representation;
- use profane, indecent or obscene language; or
- conduct himself/herself obscenely or indecently.

A public place is a place where any members of the public may go.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of ten dollars or to imprisonment for one month.’

Criminal Charges

THREATENING, ABUSIVE OR INSULTING BEHAVIOUR

178(n)

Section 178(n) of the *Penal Code* (Ch. 26) states:

‘Any person who –

in any public place uses threatening or abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned’

is guilty of an offence.

The wording of the charges are:

‘in a public place namely [specify the name of the public place] did use [threatening, abusive or insulting] [words or behaviour] to wit [specify the (threatening, abusive or insulting) (words or behaviour)] [with intent to provoke a breach of the peace or whereby a breach of the peace may be occasioned].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Public place
- [5]
 - [a] Use threatening words
 - [b] Use threatening behaviour
 - [c] Use abusive words
 - [d] Use threatening behaviour
 - [e] Use insulting words
 - [f] Use insulting behaviour
- [6]
 - [a] With intent to provoke a breach of the peace
 - [b] Whereby a breach of the peace may be occasioned

To prove the charges the prosecution must prove that:

[1] the accused person did intend to provoke a breach of the peace and did in a public place either:

- Use Threatening Words;
- Use Threatening Behaviour;
- Use Abusive Words;
- Use Threatening Behaviour;
- Use Insulting Words; or
- Use Insulting Behaviour

Or

[2] the accused person did

- Use Threatening Words;
- Use Threatening Behaviour;
- Use Abusive Words;
- Use Threatening Behaviour;
- Use Insulting Words; or

Criminal Charges

THREATENING, ABUSIVE OR INSULTING BEHAVIOUR	178(n)
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- Use Insulting Behaviour

and as a result a breach of the peace may occur.

A 'breach of the peace' occurs when there is words spoken or other behaviour that causes public alarm such as an assault or the damage of property.

A public place is a place where any members of the public may go.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

'a fine of ten dollars or to imprisonment for one month.'

Criminal Charges

DRUNK AND INCAPABLE

179

Section 179 of the *Penal Code* (Ch. 26) states:

‘Any person found in a public place drunk so as to be incapable of taking care of himself’
is guilty of an offence.

The wording of the charge is:

‘was found in a public place namely [specify the name of the public place] so drunk as to be incapable of taking care of (himself/herself).’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Public place
- [5] So drunk as to be incapable of taking care of himself/herself

To prove the charge the prosecution must prove that the accused person was found in a public place and was so drunk that he/she was incapable of taking care of himself/herself.

A public place is a place where any members of the public may go.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of twenty dollars.’

Criminal Charges

POLLUTING OR OBSTRUCTING WATERCOURSES

181

Section 181 of the *Penal Code* (Ch. 26) states:

‘Any person who pollutes or obstructs any aqueduct, dam, sluice, pipe, pump, watercourse or fountain’
is guilty of an offence.

The wording of those charges are:

‘did [pollute or obstruct] [an aqueduct, a dam, a sluice, a pipe, a pump, a watercourse or a fountain].’

The elements of those charges are:

- | | |
|-----|------------------------------|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | [a] Pollute |
| | [b] Obstruct |
| [5] | [a] Aqueduct |
| | [b] Dam |
| | [c] Sluice |
| | [d] Pipe |
| | [e] Pump |
| | [f] Watercourse |
| | [g] Fountain |

To prove the charge the prosecution must prove that the accused person did either pollute or obstruct either of the following:

- Aqueduct;
- Dam;
- Sluice;
- Pipe;
- Pump;
- Watercourse; or
- Fountain.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of forty dollars or to imprisonment for two months.’

Criminal Charges

DANGEROUS DOGS AND OTHER ANIMALS

183

Section 183(1)

Section 183(1) of the *Penal Code* (Ch. 26) states:

'Any person who permits any dog or other animal which he knows to be dangerous or to have injured any person or domestic animal to go at large without being under proper control is guilty of an offence.'

The wording of the first charge is:

'did permit a [dog or (specify any other animal)] which (he/she) knew to [be dangerous or have injured a person namely (specify the name of this person)] to go at large without being under proper control.'

The elements of the first charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Permit
- [5]
 - [a] Dog known to be dangerous
 - [b] Dog known to have injured a person
 - [c] Other animal known to be dangerous
 - [d] Other animal known to have injured a person
- [6] To go at large without being under proper control

To prove the charge the prosecution must prove that the accused person did permit a dog or other animal which he/she knew was dangerous or had injured a person previously to go at large and without being under proper control.

The wording of the second charge is:

'did permit a domestic animal to wit a [specify the type of domestic animal] to go at large without being under proper control.'

The elements of the first charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Permit
- [5] Domestic Animal
- [6] To go at large without being under proper control

To prove the charge the prosecution must prove that the accused person did permit a domestic animal other than a dog to go at large and without being under proper control.

Criminal Charges

DANGEROUS DOGS AND OTHER ANIMALS

183

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

'a fine of ten dollars or to imprisonment for one month.'

Section 183(2)

Section 183(2) of the *Penal Code* (Ch. 26) states:

'If any dog or other animal, which is known to its owner to be dangerous or to have injured any person or domestic animal, in any public place rushes at or attacks any person or animal whereby such person or animal is injured or endangered, the owner of such dog or animal is guilty of an offence and shall be liable to a fine of fifteen dollars or to imprisonment for six weeks, and in the event of any subsequent attack by such dog or animal its owner shall be liable to a fine of thirty dollars or to imprisonment for two months and the court may, in addition to or in lieu of any fine or imprisonment which may be imposed, order the destruction of such dog or animal.'

The wording of the charges are:

'being the owner of a [dog or a (specify any other animal)] who did know that the said [dog or animal] to [be dangerous or have injured a (person or domestic animal)] did [rush at or attack] [a person namely (specify the name of this person) or an animal to wit (specify the type of animal)] whereby the said [person or animal] was [injured or endangered] in a public place to wit [specify the name of the public place].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Being the owner of a dog
[b] Being the owner of an animal
- [5] [a] Known to be dangerous
[b] Known to have injured a person
[c] Known to have injured a domestic animal
- [6] [a] Rush at
[b] Attack
- [7] [a] Person
[b] Domestic animal
- [8] [a] Whereby the said person was injured
[b] Whereby the said person was endangered
[c] Whereby the said animal was injured
[d] Whereby the said animal was endangered
- [9] Public place

Criminal Charges

DANGEROUS DOGS AND OTHER ANIMALS

183

To prove the charge the prosecution must prove that the accused person was the owner of a dog or other animal that:

- he/she knew to be dangerous or have injured a person or domestic animal; and
- did rush at or attack a person or domestic animal in a public place

and as a consequence the person or domestic animal was either injured or endangered.

Section 183 of the *Penal Code* (Ch. 26) provides that for the purposes of subsection (2) “owner” in relation to a dog or other animal means the keeper of that dog or animal and includes the occupier of any premises in which such dog or animal is ordinarily kept or permitted to live or remain, and includes any person in whose care such dog or animal temporarily may be, whether loose or confined, and any person who may harbour such dog or animal.

A public place is a place where any members of the public may go.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of fifteen dollars or to imprisonment for six weeks, and in the event of any subsequent attack by such dog or animal its owner shall be liable to a fine of thirty dollars or to imprisonment for two months and the court may, in addition to or in lieu of any fine or imprisonment which may be imposed, order the destruction of such dog or animal.’

Section 183(3)

Section 183(3) of the *Penal Code* (Ch. 26) states:

‘Any person who incites a dog or other animal to attack, worry or frighten any person or animal is guilty of an offence and shall be liable to a fine of twenty dollars or to imprisonment for six weeks.’

The wording of the charges is:

‘did incite [a dog **or** a (specify any other animal)] to [attack, worry **or** frighten] [a person namely (specify the name of this person) **or** an animal to wit a (specify the type of animal)].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Incite
- [5] [a] Dog
- [5] [b] Other animal
- [6] [a] To attack
- [6] [b] To worry

Criminal Charges

DANGEROUS DOGS AND OTHER ANIMALS

183

[7]	[c]	To frighten
	[a]	Person
	[b]	Animal

To prove the charge the prosecution must prove that the accused person did incite a dog or other animal to either attack, worry or frighten a person or animal.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence to an accused person is:

‘a fine of twenty dollars or to imprisonment for six weeks.’

Criminal Charges

LIBEL

191

Section 191 of the *Penal Code* (Ch. 26) states:

'Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed "libel".'

The wording of the charge is:

'by [print, writing, painting, effigy, **or** means otherwise than by (gestures, spoken words **or** sounds) to wit (specify the means)] did unlawfully publish defamatory matter concerning a person namely [specify the name of this person] with intent to defame the said person.'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] By print
- [4] [b] By writing
- [4] [c] By painting
- [4] [d] By effigy
- [4] [e] By means otherwise than by gestures, spoken words or sounds
- [5] Unlawfully
- [6] Publish
- [7] Defamatory matter concerning a person
- [8] Intent to defame that person

To prove the charge the prosecution must prove that the accused person with intent to defame a person did print, write, paint, by an effigy or other means, otherwise than by gestures, spoken words or sounds, did unlawfully publish defamatory matter concerning that person in a newspaper, etc.

Section 192 of the *Penal Code* (Ch. 26) states:

'Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.'

Section 193 of the *Penal Code* (Ch. 26) states:

'(1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for libel that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.'

Criminal Charges

LIBEL

191

Section 194 of the *Penal Code* (Ch. 26) states:

'Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part of this Code, unless –

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Part of this Code. [Refer to sections 195, 196, 197 and 198.]'

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and a fine not exceeding two hundred dollars'.

Criminal Charges

DANGER OR OBSTRUCTION IN PUBLIC WAY OR LINE OF NAVIGATION

243

Section 243 of the *Penal Code* (Ch. 26) states:

'Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation'

is guilty of an offence.

The wording of the charges are:

'by [doing an act or omitting to take reasonable care with property to wit (specify the property) (in [his/her] possession or under [his/her] charge)] did cause [danger, obstruction or injury] to a person namely [specify the name of this person] in a public [way or line of navigation].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Doing an act
[b] Omitting to take reasonable care with property in his/her possession
[c] Omitting to take reasonable care with property under his/her charge
- [5] [a] Cause danger
[b] Cause obstruction
[c] Cause injury
- [6] Person
- [7] [a] Public way
[b] Public line of navigation

To prove the charge the prosecution must prove that the accused person either:

- did an act;
- omitted to take reasonable care with property in his/her possession; or
- omitted to take reasonable care with property under his/her charge

and a consequence a danger, obstruction or injury to a person in a public way or a public line of navigation.

The term 'public way' is defined in section 4 of the *Penal Code* (Ch. 26) as including 'any highway, market place, square, street, bridge or other way which is lawfully used by the public'.

A public line of navigation would include any public watercourse such as a creek.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of two hundred dollars'.

Criminal Charges

COMMON ASSAULTS

244

Section 244 of the *Penal Code* (Ch. 26) states:

‘Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for one year.’

The wording of the charge is:

‘did unlawfully assault a person namely [specify the name of this person].’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Unlawfully
- [5] Assault
- [6] Person

To prove the charge the prosecution must prove that the accused person did intentionally or recklessly cause the complainant to:

- to receive unlawful personal violence, such as being punched; or
- believe that he/she was about to receive unlawful personal violence, such as being punched.

For personal violence to be unlawful the prosecution must prove that what the accused person did was not reasonably necessary to:

- defend himself/herself;
- defend any other person; or
- defend his/her property.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

SIMPLE LARCENY

261

Section 261 of the *Penal Code* (Ch. 26) states:

‘Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny.’

The wording of the charge is:

‘did steal [specify the property] the property of [specify the name of the complainant].’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Steal
- [5] Property
- [6] Complainant

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away property belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property.

Section 258 of the *Penal Code* (Ch. 26) states:

‘(1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

(2) (a) The expression “takes” includes obtaining the possession –

(i) by any trick;

(ii) by intimidation;

(iii) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained; or

(iv) by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps.

(b) The expression “carries away” includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached.

Criminal Charges

SIMPLE LARCENY	261
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(c) The expression "owner" includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.'

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

LARCENY OF CATTLE, etc

274

Section 274 of the *Penal Code* (Ch. 26) states:

‘Any person who steals any horse, cattle, goat or pig is guilty of a felony.’

The wording of that charge is:

‘did steal [a horse, cattle, a goat **or** a pig] the property of [specify the name of the complainant].’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Steal
- [5] [a] Horse
- [5] [b] Cattle
- [5] [c] Goat
- [5] [d] Pig
- [6] Property of complainant

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a horse, cattle, a goat or a pig belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page .

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

LARCENY OF DOG

275

Section 275 of the *Penal Code* (Ch. 26) states:

‘Any person who steals any dog is guilty of a misdemeanour.’

The wording of the charge is:

‘did steal a dog the property of [specify the name of the complainant].’

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Steal
- [5] Dog
- [6] Property of complainant

To prove that charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a dog belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

LARCENY OF CREATURES NOT THE SUBJECT OF LARCENY AT COMMON LAW

276

Section 276 of the *Penal Code* (Ch. 26) states:

'Any person who steals any bird, beast or other animal ordinarily kept in a state of confinement, or for any domestic purpose is guilty of a misdemeanour.'

The wording of the charge is:

'did steal a [bird, beast or (specify other animal)] ordinarily kept [in a state of confinement or for a domestic purpose] the property of [specify the name of the complainant].'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Steal
- [5] [a] Bird
- [5] [b] Beast
- [5] [c] Other animal
- [6] [a] Ordinarily kept in a state of confinement
- [6] [b] Ordinarily kept for a domestic purpose
- [7] Property of complainant

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a bird, beast or other animal ordinarily kept in a state of confinement or for a domestic purpose belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

LARCENY OF FISH

277

Section 277 of the *Penal Code* (Ch. 26) states:

'Any person who unlawfully takes or destroys, or attempts to take or destroy, any fish in any water which is private property, or in which there is any private right of fishery, is guilty of an offence, and shall be liable to a fine of ten dollars.'

The wording of the charges are:

'did unlawfully [(take or destroy) or attempt to (take or destroy)] fish in water [which was private property or in which there was a private right of fishery] the property of [specify the name of the complainant].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Unlawfully
- [5] [a] Take
- [5] [b] Destroy
- [5] [c] Attempt to take
- [5] [d] Attempt to destroy
- [6] [a] Fish in water which was private property
- [6] [b] Fish in water in which there was a private right of fishery
- [7] Property of complainant

To prove the charge the prosecution must prove that the accused person did either:

- take;
- destroy;
- attempt to take; or
- attempt to destroy

fish in water which was private property or which there was a private right of fishery the property of the complainant.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page 97.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of ten dollars'.

Criminal Charges

LARCENY, etc OF TREES, etc

279

Section 279 of the *Penal Code* (Ch. 26) states:

‘Any person who steals, or cuts, breaks, roots up or otherwise destroys or damages, with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles or the injury done being to the amount of ten cents at the least, is guilty of a misdemeanour.’

The wording of the charges are:

‘did [steal or (cut, break, root up, destroy or damage) with intent to steal] [the whole or a part] of [a tree, a sapling, a shrub or underwood] the property of [specify the name of the complainant] to the value of at least ten cents to wit (specify the value).’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] Cut with intent to steal
 - [c] Break with intent to steal
 - [d] Root up with intent to steal
 - [e] Destroy with intent to steal
 - [f] Damage with intent to steal
- [5]
 - [a] Whole or part of a tree
 - [b] Whole or part of a sapling
 - [c] Whole or part of a shrub
 - [d] Whole or part of underwood
- [6] Property of complainant
- [7] To the value of at least ten cents

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a whole or part of a tree, sapling, shrub or underwood belonging to the complainant to the value of at least ten cents;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did cut a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did break a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did root up a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did destroy a whole or part of a tree, sapling, shrub or underwood with intent to steal; or

Criminal Charges

LARCENY, etc OF TREES, etc	279
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- did damage a whole or part of a tree, sapling, shrub or underwood with intent to steal the property of complainant and to the value of at least ten cents.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

LARCENY, etc OF FENCES

280

Section 280 of the *Penal Code* (Ch. 26) states:

'Any person who steals, or cuts, breaks or throws down, with intent to steal, any part of any live or dead fence or any metal or wooden post, pale, wire or rail set up or used as a fence, or any stile or gate or any part thereof respectively, is guilty of a misdemeanour.'

The wording of the charges are:

'did [steal or (cut, break or throw down) with intent to steal] a part of a [(live or dead) fence or (metal or wooden) (post, pale, wire or rail) (set up or used) as a (fence, stile or gate)] the property of [specify the name of the complainant].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] Cut with intent to steal
 - [c] Break with intent to steal
 - [d] Throw down with intent to steal
- [5]
 - [a] Part of a live fence
 - [b] Part of a dead fence
 - [c] Metal post, pale, wire or rail set up or used as a fence
 - [d] Wooden post, pale, wire or rail set up or used as a fence
 - [e] Metal post, pale, wire or rail set up or used as a stile
 - [f] Wooden post, pale, wire or rail set up or used as a stile
 - [g] Metal post, pale, wire or rail set up or used as a gate
 - [h] Wooden post, pale, wire or rail set up or used as a gate
- [6] Property of complainant

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away
 - [a] part of a live fence;
 - [b] part of a dead fence;
 - [c] metal post, pale, wire or rail set up or used as a fence;
 - [d] wooden post, pale, wire or rail set up or used as a fence;
 - [e] metal post, pale, wire or rail set up or used as a stile;
 - [f] wooden post, pale, wire or rail set up or used as a stile;
 - [g] metal post, pale, wire or rail set up or used as a gate; or
 - [h] wooden post, pale, wire or rail set up or used as a gate belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

Criminal Charges

LARCENY, etc OF FENCES	280
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- did cut with intent to steal;
- did break with intent to steal;
- did throw down with intent to steal;

- [a] part of a live fence;
- [b] part of a dead fence
- [c] metal post, pale, wire or rail set up or used as a fence;
- [d] wooden post, pale, wire or rail set up or used as a fence;
- [e] metal post, pale, wire or rail set up or used as a stile;
- [f] wooden post, pale, wire or rail set up or used as a stile;
- [g] metal post, pale, wire or rail set up or used as a gate; or
- [h] wooden post, pale, wire or rail set up or used as a gate belonging to the complainant

the property of complainant.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

LARCENY OF FRUIT AND VEGETABLES

281

Section 281 of the *Penal Code* (Ch. 26) states:

'Any person who steals, destroys, roots up or damages, with intent to steal, any plant, root, fruit or vegetable production, used for food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any garden, orchard, pleasure ground, green-house or conservatory, or in any land, open or enclosed, is guilty of a misdemeanour.'

The wording of the charge is:

'did [steal or (destroy, root up or damage) with intent to steal] [a plant, a root, fruit or vegetable production] the property of [specify the name of the complainant] used [for food of (man or beast), for medicine, for distilling, for dyeing or (for or in) the course of manufacture] and growing in [(a garden, an orchard, a pleasure ground, a green-house or a conservatory) or land (open or enclosed)].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] Destroy with intent to steal
 - [c] Root up with intent to steal
 - [d] Damage with intent to steal
- [5]
 - [a] Plant
 - [b] Root
 - [c] Fruit
 - [d] Vegetable Production
- [6] Property of complainant
- [7]
 - [a] Used for food of a person
 - [b] Used for food of a beast
 - [c] Used for medicine
 - [d] Used for distilling
 - [e] Used for dyeing
 - [f] Used for the course of manufacture
 - [g] Used in the course of manufacture
- [8]
 - [a] Growing in a garden
 - [b] Growing in an orchard
 - [c] Growing in a pleasure ground
 - [d] Growing in a green – house
 - [e] Growing in a conservatory
 - [f] Growing in open land
 - [g] Growing in enclosed land

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away plant, root, fruit or vegetable production
 - [a] used for food of a person;
 - [b] used for food of a beast;
 - [c] used for medicine;

Criminal Charges

LARCENY OF FRUIT AND VEGETABLES	281
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- [d] used for distilling;
- [e] used for dyeing;
- [f] used for the course of manufacture; or
- [g] used in the course of manufacture

and

- [a] growing in a garden;
- [b] growing in an orchard;
- [c] growing in a pleasure ground;
- [d] growing in a green – house;
- [e] growing in a conservatory;
- [f] growing in open land; or
- [g] growing in enclosed land;

- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did destroy with intent to steal plant, root, fruit or vegetable production;
- did root up with intent to steal plant, root, fruit or vegetable production; or
- did damage with intent to steal plant, root, fruit or vegetable production

- [a] used for food of a person;
- [b] used for food of a beast;
- [c] used for medicine;
- [d] used for distilling;
- [e] used for dyeing;
- [f] used for the course of manufacture; or
- [g] used in the course of manufacture

and

- [a] growing in a garden;
- [b] growing in an orchard;
- [c] growing in a pleasure ground;
- [d] growing in a green – house;
- [e] growing in a conservatory;
- [f] growing in open land; or
- [g] growing in enclosed land

the property of the complainant.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Criminal Charges

LARCENY OF FRUIT AND VEGETABLES

281

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL

282

Section 282(a)

Section 282(a) of the *Penal Code* (Ch. 26) states:

‘Any person who steals, or with intent to steal, rips, cuts, severs or breaks –

- (i) any glass or woodwork belonging to any building; or
- (ii) any metal or utensil or fixture, fixed in or to any building; or
- (iii) anything made of metal fixed in any land being private property, or as a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground’ is guilty of a felony.

Section 282(a)(i)

The wording of the charges for subsection (i) is:

‘did [steal **or** with intent to steal (rip, cut, sever **or** break)] [glass **or** woodwork] belonging to a building the property of [specify the name of the complainant].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Steal
 - [b] Intent to steal rip
 - [c] Intent to steal cut
 - [d] Intent to steal sever
 - [e] Intent to steal break
- [5] [a] Glass
 - [b] Woodwork
- [6] Belonging to a building
- [7] Property of the complainant

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away glass or woodwork belonging to a building
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did with intent to steal rip glass or woodwork belonging to a building;

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL	282
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- did with intent to steal cut glass or woodwork belonging to a building;
- did with intent to steal sever glass or woodwork belonging to a building; or
- did with intent to steal break glass or woodwork belonging to a building;

the property of the complainant.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Section 282(a)(ii)

The wording of the charges for subsection (ii) is:

‘did [steal or with intent to steal (rip, cut, sever or break)] [metal, utensil or fixture] fixed [in or to] a building the property of [specify the name of the complainant].’

The elements of those charges are:

- | | |
|-----|--------------------------------|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | [a] Steal |
| | [b] With intent to steal rip |
| | [c] With intent to steal cut |
| | [d] With intent to steal sever |
| | [e] With intent to steal break |
| [5] | [a] Metal |
| | [b] Utensil |
| | [c] Fixture |
| [6] | Fixed in or to a building |
| [7] | Property of complainant |

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away metal, a utensil or a fixture belonging in or to a building
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did with intent to steal rip metal, a utensil or a fixture belonging in or to a building;
- did with intent to steal cut metal, a utensil or a fixture belonging in or to a building;
- did with intent to steal metal, a utensil or a fixture belonging in or to a building; or

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL

282

- did with intent to steal metal, a utensil or a fixture belonging in or to a building;

the property of the complainant.

Section 282(a)(iii)

The wording of the charges for subsection (iii) is:

'did [steal or with intent to steal (rip, cut, sever or break)] property to wit [specify the property] made of metal [fixed in a land being the private property of (specify the name of the complainant) or as a fence (to a dwelling-house, to a garden or to an area) the property of (specify the name of the complainant) or (in a square, in a street, in a place dedicated to public [use or ornament] or in a burial ground) namely (specify the name of the [square, street, place or burial ground])].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Steal
 - [b] With intent to steal rip
 - [c] With intent to steal cut
 - [d] With intent to steal sever
 - [e] With intent to steal break
- [5] [a] Property made of metal fixed in a land being private land
 - [b] Property made of metal used as a fence to a dwelling - house
 - [c] Property made of metal used as a fence to a garden
 - [d] Property made of metal used as a fence to an area
 - [e] Property made of metal used in a square
 - [f] Property made of metal used in a street
 - [g] Property made of metal used in a place dedicated to public use
 - [h] Property made of metal used in a place dedicated to public ornament
 - [i] Property made of metal used in a burial ground

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away metal, a utensil or a fixture belonging in or to a building
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

did with intent to steal rip, cut., sever or break property made of metal

- fixed in a land being private land;
- used as a fence to a dwelling – house;

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL	282
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- used as a fence to a garden;
- used as a fence to an area;
- used in a square;
- used in a street;
- used in a place dedicated to public use;
- used in a place dedicated to public ornament; or
- used in a burial ground.

Refer also to section 258 of the *Penal Code* (Ch. 26) on page **97**.

Section 282(b)

Section 282(b) of the *Penal Code* (Ch. 26) states:

‘Any person who steals, or, with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub or underwood growing –

- (i) in any place whatsoever, the value of the article stolen or the injury done being to the amount of ten cents at the least, after two previous convictions of any such offence under section 279; or
- (ii) in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, the value of the article stolen or the injury done exceeding the amount of two dollars; or
- (iii) in any place whatsoever, the value of the article stolen or the injury done exceeding the amount of ten dollars’, is guilty of a felony.

Section 282(b)(i)

The wording of the charges for subsection (i) is:

‘did [steal **or** with intent to steal (cut, break, roots up, destroy **or** damage)] [the whole **or** a part] of [a tree, a sapling, a shrub **or** underwood growing] valued at least ten cents to wit [specify the value] in a place to wit [specify the place] the property of [specify the name of the complainant] and the said [insert the name of the defendant/accused] had been twice previously convicted under section 279 of the *Penal Code* (Ch. 26).’

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL

282

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] Cut with intent to steal
 - [c] Break with intent to steal
 - [d] Root up with intent to steal
 - [e] Destroy with intent to steal
 - [f] Damage with intent to steal
- [5]
 - [a] Whole or part of a tree
 - [b] Whole or part of a sapling
 - [c] Whole or part of a shrub
 - [d] Whole or part of underwood
- [6] Property of complainant
- [7] To the value of at least ten cents
- [8] Accused has been twice previously convicted under section 279 of the *Penal Code* (Ch. 26)

To prove the charge the prosecution must prove that the accused person who has been twice previously convicted under section 279 of the *Penal Code* (Ch. 26):

- without the consent of the complainant did take and carry away a whole or part of a tree, sapling, shrub or underwood belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did cut a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did break a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did root up a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did destroy a whole or part of a tree, sapling, shrub or underwood with intent to steal; or
- did damage a whole or part of a tree, sapling, shrub or underwood with intent to steal

the property of complainant and to the value of at least ten cents.

Refer also to:

- section 258 of the *Penal Code* (Ch. 26) commencing on page **97**; and
- section 279 of the *Penal Code* (Ch. 26) commencing on page **102**.

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL

282

Section 282(b)(ii)

The wording of the charges for subsection (ii) is:

'did [steal or with intent to steal (cut, break, roots up, destroy or damage)] [the whole or a part] of [a tree, a sapling, a shrub or underwood growing] in a [park, pleasure ground, garden, orchard or ground (adjoining or belonging to) a dwelling – house] and the value of the [article stolen or injury done] exceeded the amount of ten dollars to wit [specify the amount].'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] Cut with intent to steal
 - [c] Break with intent to steal
 - [d] Root up with intent to steal
 - [e] Destroy with intent to steal
 - [f] Damage with intent to steal
- [5]
 - [a] Whole or part of a tree
 - [b] Whole or part of a sapling
 - [c] Whole or part of a shrub
 - [d] Whole or part of underwood
- [6]
 - [a] Park
 - [b] Pleasure ground
 - [c] Garden
 - [d] Orchard
 - [e] Ground adjoining a dwelling – house
 - [f] Ground belonging to a dwelling - house
- [7] Property of complainant
- [8]
 - [a] the value of the article stolen exceeded the amount of ten dollars
 - [b] the value of the injury done exceeded the amount of ten dollars

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a whole or part of a tree, sapling, shrub or underwood belonging to the complainant in either:
 - [a] a park
 - [b] a pleasure ground
 - [c] a garden
 - [d] an orchard
 - [e] a ground adjoining a dwelling – house
 - [f] a ground belonging to a dwelling - house;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL	282
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and the value of the article stolen exceeded the amount of ten dollars

or

- did cut a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did break a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did root up a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did destroy a whole or part of a tree, sapling, shrub or underwood with intent to steal; or
- did damage a whole or part of a tree, sapling, shrub or underwood with intent to steal

the property of complainant belonging to the complainant in either:

- a park;
- a pleasure ground;
- a garden;
- an orchard;
- a ground adjoining a dwelling – house; or
- a ground belonging to a dwelling – house

and to a value of at least ten cents.

Refer also to section 258 of the *Penal Code* (Ch. 26) commencing on page **97**.

Section 282(b)(iii)

The wording of the charges for subsection (iii) is:

‘did [steal **or** with intent to steal (cut, break, roots up, destroy **or** damage)] [the whole **or** a part] of [a tree, a sapling, a shrub **or** underwood growing] at a value exceeding ten dollars to wit [specify the value].’

The elements of those charges are:

- | | |
|-----|----------------------------------|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | [a] Steal |
| | [b] Cut with intent to steal |
| | [c] Break with intent to steal |
| | [d] Root up with intent to steal |
| | [e] Destroy with intent to steal |
| | [f] Damage with intent to steal |
| [5] | [a] Whole or part of a tree |
| | [b] Whole or part of a sapling |
| | [c] Whole or part of a shrub |

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL	282
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- [d] Whole or part of underwood
- [6] Property of complainant
- [7] Value exceeding ten dollars

To prove the charge the prosecution must prove that the accused person:

- without the consent of the complainant did take and carry away a whole or part of a tree, sapling, shrub or underwood belonging to the complainant;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did cut a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did break a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did root up a whole or part of a tree, sapling, shrub or underwood with intent to steal;
- did destroy a whole or part of a tree, sapling, shrub or underwood with intent to steal; or
- did damage a whole or part of a tree, sapling, shrub or underwood with intent to steal

the property of complainant and to a value exceeding ten dollars.

Refer also to section 258 of the *Penal Code* (Ch. 26) commencing on page **97**.

Section 282(c)

Section 282(c) of the *Penal Code* (Ch. 26) states:

‘Any person who steals, or with intent to steal, destroys or damages any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, green-house or conservatory, after a previous conviction of any such offence under section 281’, is guilty of a felony.

The wording of those charges are:

‘did [steal or with intent to steal (destroy or damage)] [a plant, a root, fruit or vegetable production] growing in [a garden, an orchard, a pleasure ground, a nursery ground, a green-house or a conservatory] the property of [specify the name of the complainant] and the said [insert the name of the defendant/accused] had been previously convicted under section 281 of the *Penal Code* (Ch. 26) at the [insert the court] on [insert the date].’

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL

282

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Steal
 - [b] With intent to steal destroy
 - [c] With intent to steal damage
- [5]
 - [a] Plant
 - [b] Root
 - [c] Fruit
 - [d] Vegetable production
- [6]
 - [a] Growing in a garden
 - [b] Growing in an orchard
 - [c] Growing in a pleasure ground
 - [d] Growing in a green – house
 - [e] Growing in a conservatory
- [7] Property of the complainant
- [8] Accused previously convicted under section 281 of the *Penal Code* (Ch. 26)

To prove the charge the prosecution must prove that the accused person who has been twice previously convicted under section 281 of the *Penal Code* (Ch. 26):

- without the consent of the complainant did take and carry away plant, root, fruit or vegetable production growing in a garden, orchard, pleasure ground, green-house or conservatory;
- was acting dishonestly and with no rightful claim to the property; and
- never intended to return the property;

or

- did destroy with intent to steal plant, root, fruit or vegetable production; or
- did damage with intent to steal plant, root, fruit or vegetable production

- [a] growing in a garden;
- [b] growing in an orchard;
- [c] growing in a pleasure ground;
- [d] growing in a green – house;
- [e] growing in a conservatory;
- [f] growing in open land; or
- [g] growing in enclosed land

the property of the complainant.

Refer also to section 258 of the *Penal Code* (Ch. 26) commencing on page **97**.

Criminal Charges

DAMAGING FIXTURES, TREES, etc, WITH INTENT TO STEAL
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282

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

KILLING ANIMALS WITH INTENT TO STEAL

289

Section 289 of the *Penal Code* (Ch. 26) states:

‘Any person who wilfully kills any animal with intent to steal the carcass, skin or any part of the animal killed, is guilty of a felony, and shall be liable to the same punishment as if he had stolen such animal, provided that the offence of stealing the animal so killed would have amounted to felony.’

The wording of the charge is:

‘did wilfully kill an animal to wit a [specify the type of animal] the property of [specify the name of the complainant] with intent to steal [the carcass, the skin or a part] of the said animal.’

The elements of the charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wilfully
- [5] Kill
- [6] Animal
- [7] Property of complainant
- [8]
 - [a] Intent to steal the carcass of the animal
 - [b] Intent to steal the skin of the animal
 - [c] Intent to steal a part of the animal

To prove the charge the prosecution must prove that the accused person did wilfully or intentionally kill an animal the property of the complainant with the intent to steal the carcass, skin or a part of the animal.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

UNLAWFUL USE OF VEHICLES, ANIMALS, etc

292

Section 292 of the *Penal Code* (Ch. 26) states:

‘Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal, or any vessel, is guilty of a misdemeanour [...].’

The wording of the charges are:

‘unlawfully and without colour of right but not so as to be guilty of stealing did [take or convert to ([his/her] own use or the use of a person namely [specify the name of this person])] a [(draught or riding) animal or vessel] the property of [specify the name of the complainant].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Unlawfully and without colour of right but not so as to be guilty of stealing
- [5]
 - [a] Take
 - [b] Convert to his/her own use
 - [c] Convert to the use of another person
- [6]
 - [a] Draught animal
 - [b] Riding animal
 - [c] Vessel
- [7] Property of complainant

To prove the charge the prosecution must prove that the accused person did unlawfully and with no right either:

- take;
- convert to his/her own use; or
- convert to the use of another person

a draught animal, a riding animal or a vessel the property of the complainant.

In such circumstances the accused person would not have the intent to permanently deprive. If the accused person had that intent he/she should be charged with ‘Simple Larceny’, see page 97.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

INJURING ANIMALS

325

Section 325 of the *Penal Code* (Ch. 26) states:

‘Any person who wilfully and unlawfully kills, maims or wounds any animal or bird capable of being stolen, is guilty of a misdemeanour.’

The wording of those charges are:

‘did wilfully and unlawfully [kill, maim or wound] [an animal or a bird] to wit a [specify the type of (animal or bird)] capable of being stolen the property of [specify the name of the complainant].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wilfully and unlawfully
- [5]
 - [a] Kill
 - [b] Maim
 - [c] Wound
- [6]
 - [a] Animal
 - [b] Bird
- [7] Capable of being stolen
- [8] Property of the complainant

To prove the charge the prosecution must prove that the accused person did wilfully and unlawfully:

- kill;
- maim; or
- wound

an animal or bird capable of being stolen and the property of the complainant.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

WILFUL AND UNLAWFUL DAMAGE OR DESTRUCTION

326(1)

Section 326(1) of the *Penal Code* (Ch. 26) states:

‘Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour.’

The wording of the charges are:

‘did wilfully and unlawfully [destroy or damage] property to wit [specify the property] the property of [specify the name of the complainant].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Wilfully
- [5] Unlawfully
- [6] [a] Destroy
- [6] [b] Damage
- [7] Property of the complainant

To prove that charge the prosecution must prove that the accused person did wilfully or intentionally and unlawfully destroy or damage the property of the complainant.

The Local Courts do not have jurisdiction if the following property is destroyed or damaged:

If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive substance, and if -

- (a) any person is in the dwelling-house or vessel; or
- (b) the destruction or damage actually endangers the life of any person.

If the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or work which appertains to a dock, reservoir or inland water, and the injury causes actual danger of inundation or damage to any land or building.

If the property in question is a bridge, viaduct or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes, and the property is destroyed.

If the property in question, being any such bridge, viaduct or aqueduct, is damaged, and the damage is done with intent to render the bridge, viaduct or aqueduct, or the highway or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is rendered dangerous or impassable.

the offender is guilty of a felony, and shall be liable to imprisonment for life.

If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorized or required by law to be kept for authenticating or recording the title of any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer.

Criminal Charges

WILFUL AND UNLAWFUL DAMAGE OR DESTRUCTION	326(1)
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If the property in question is a vessel in distress or wrecked or stranded, or anything which belongs to such vessel.

If the property in question, being a vessel, whether completed or not, is destroyed.

If the property in question, being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless.

If the property in question is a light, beacon, buoy, mark or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation.

If the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purpose of loading or unloading goods.

If the property in question, being a bridge, viaduct or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes, is damaged, and the damage is done with intent to render the bridge, viaduct or aqueduct, or the highway or canal passing over or under the same, or any part thereof, dangerous or impassable.

If the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed.

If the property in question, being any such thing, machine, implement, or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless.

If the property in question is a shaft or passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working.

If the property in question is a machine, appliance, apparatus, building, erection, bridge or road, appertaining to or used with a mine, whether the thing in question is completed or not.

If the property in question, being a rope, chain, or tackle of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed.

If the property in question, being any such rope, chain or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless.

If the property in question is a well, or bore for water, or the dam, bank, wall or floodgate of a millpond or pool.

If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

Firearms & Ammunitions Act

SECURITY OF FIREARMS AND AMMUNITION

39

Section 39(1) of the *Firearms and Ammunition Act* (Ch. 26) states:

'Every person having in his possession any firearm or ammunition shall keep the same at all times securely and in safe custody and shall take all reasonable precautions to ensure that such firearm or ammunition is not lost or stolen and is not at any time available to any person not lawfully entitled to possess the same',

is guilty of an offence.

The wording of the charge is:

'did have in (his/her) possession [a firearm or ammunition] and the said [firearm or ammunition] was not kept securely and in safe custody and the said [insert the name of the accused] did fail to take all reasonable precautions to ensure that the said [firearm or ammunition] was not [lost or stolen] and was not available to any person not lawfully entitled to possess the same.'

The elements of that charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Possession
- [5] [a] Firearm
[b] Ammunition
- [6] Not securely and in safe custody
- [7] [a] Fail to take all reasonable precautions to ensure the said firearm or ammunition was not lost
[b] Fail to take all reasonable precautions to ensure the said firearm or ammunition was not stolen
- [8] Not available to any person not lawfully entitled to possess the same

To prove the charge the prosecution must prove that:

- the accused person was in possession of a firearm or ammunition. To prove possession the prosecution must prove that the accused person had knowledge of where the firearm or ammunition was and was able to exercise control over it, ie., determine who could keep it;
- the firearm or ammunition was not securely and in safe custody;
- the accused person did fail to take all reasonable precautions to ensure that the said firearm or ammunition was not lost or stolen; and
- the firearm or ammunition was not available to any person not lawfully entitled to possess the same.

Criminal Charges

SECURITY OF FIREARMS AND AMMUNITION

39

The term '*ammunition*' is defined in section 2 of the *Firearms and Ammunition Act* (Ch. 26) as meaning:

'ammunition for any firearm as hereinafter defined and includes bullets, cartridges, shells or anything designed or adapted for or capable of use with any firearm, and any ammunition containing or designed or adapted to contain any noxious liquid, gas or other thing but does not include spears discharged from a firearm solely for the purpose of killing fish nor ammunition abandoned in Solomon Islands by any armed forces during the Second World War or thereafter in consequence of that war'.

The term '*firearm*' is defined in section 2 of the *Firearms and Ammunition Act* (Ch. 26) as meaning:

'any lethal barreled weapon of any description from which any shot, bullet or other missile can be discharged, or which can be adapted for the discharge of any such shot, bullet or other missile, and any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing dangerous to persons, and includes any component part of any such weapon, and any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon, but does not include an air gun, air rifle or air pistol except where otherwise expressly provided, nor articles designed or adapted solely to discharge spears for spearing fish'.

The firearm and ammunition can be forfeited to the State by virtue of section 37 of that Act.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

LOSS OF FIREARMS OR AMMUNITION TO BE REPORTED

40

Section 40 of the *Firearms and Ammunition Act* (Ch. 26) states:

'Any person having possession of a firearm or ammunition, whether or not he holds a firearm licence therefore, shall, if such firearm or ammunition is lost, stolen or destroyed, report such loss, theft or destruction as soon as possible after its occurrence to a licensing officer or to the police officer in charge of the nearest police station, and if he fails to do so, shall be guilty of an offence.'

The wording of the charge is:

'having possession of [a firearm or ammunition] and said [firearm or ammunition] was [lost, stolen or destroyed] did fail to report the said [lost, theft or destruction] as soon as possible after its occurrence to a licensing officer or to the police officer in charge of the nearest police station.'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Possession
- [5]
 - [a] Firearm
 - [b] Ammunition
- [6]
 - [a] Lost
 - [b] Stolen
 - [c] Destroyed
- [7] Fail to report as soon as possible after its occurrence to a licensing officer or to the police officer in charge of the nearest police station

To prove the charge the prosecution must prove that the accused person was in possession of a firearm or ammunition which was lost, stolen or destroyed and the accused did fail to report as possible after its occurrence to a licensing officer or to the police officer in charge of the nearest police station.

The term '*ammunition*' is defined on page **126**.

The term '*firearm*' is defined on page **126**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars'.

Criminal Charges

CARRYING FIREARM WHILE DRUNK OR DISORDERLY

41

Section 41 of the *Firearms and Ammunition Act* (Ch. 26) states:

‘Any person who is drunk, or who behaves in a disorderly manner, while carrying a firearm shall be guilty of an offence’,

is guilty of an offence.

The wording of those charge are:

‘[was drunk **or** behaving in a disorderly manner] while carrying a firearm.’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Drunk
- [4] [b] Behaving in a disorderly manner
- [5] Carrying a firearm

To prove the charge the prosecution must prove that the accused person:

- was drunk; or
- was behaving in a disorderly manner

while carrying a firearm.

The term ‘*firearm*’ is defined on page **126**.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a term of imprisonment not exceeding six months and to a fine not exceeding two hundred dollars’.

Criminal Charges

Local Courts Act

ABSENT FROM COMMUNAL WORK

19(2)

Section 19(2) of the *Local Courts Act* (Ch. 19) states:

‘Any person undergoing imprisonment as aforesaid, who absents himself from such work without lawful excuse when he should be engaged thereat, shall be guilty of an offence.’

The wording of those charge are:

‘whilst undergoing imprisonment as provided for by section 19 of the *Local Courts Act* (Ch. 19) did absent (himself/herself) from such communal work without lawful excuse when the said [insert the name of the accused person] should have been engaged.’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Undergoing imprisonment as provided for by section 19 of the *Local Courts Act* (Ch. 19)
- [5] Absert
- [6] Communal work
- [7] Without lawful excuse

To prove the charge the prosecution must prove that the accused person:

- was performing communal work as provided for by section 19 of the *Local Courts Act* (Ch. 19); and
- was absent from that work without lawful excuse.

The prosecution must prove that a direction was given to the accused person specifying:

- What date the communal work was to commence;
- What date the communal work was to finish;
- Where the communal work was to be performed;
- What communal work was to be performed;
- The accused person must work each day, except Sundays; and
- The accused person must work for nine hours between what hours the communal work was to commence and finish each day.

The onus is on the accused person to prove that he/she had a lawful excuse for being absent from the communal work that he/she was directed to be at.

Maximum Penalty

By virtue of section 19(2) of the *Local Courts Act* (Ch. 19) the accused person is liable to a further term of imprisonment not exceeding one month in addition to the remainder of the term of imprisonment if the accused person had been sentenced to jail.

Criminal Charges

ABSENT FROM COMMUNAL WORK

19(2)

The Local Court must calculate how many days the accused person has worked and deduct that period from the original term of imprisonment imposed, see section 19(1) of that Act on page **35**.

Criminal Charges

FAILURE TO ATTEND COURT	25
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Section 25 of the *Local Courts Act* (Ch. 19) states:

‘The attendance of accused persons and witnesses before a local court shall be secured in accordance with the custom prevailing in the area of the court, and *any person summonsed to attend, who fails so to do*’ is guilty of an offence.’ (emphasis added)

The wording of those charge are:

‘did fail to attend the [Insert the name of the Local Court] Local Court after being summonsed.’

The elements of those charges are:

- [1] [a] Accused person
- [b] Witness
- [2] Place of the alleged offence – location of the Court
- [3] Date of the alleged offence
- [4] Fail to attend
- [5] Name of the Local Court
- [6] After being summonsed

To prove the charge the prosecution must prove that the accused person or witness was summonsed to attend court in compliance with section 25 of the *Local Courts Act* (Ch. 19).

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a fine of twenty dollars and in default of payment to imprisonment for three months.’

Criminal Charges

PREMISES TO BE KEPT FREE FRO LONG GRASS AND RECPETACLES LIKELY TO FACILITATE BREEDING OF MOSQUITOES	35
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Section 35 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

(1) No person shall permit any premises or lands owed or occupied by him or over which he has control and which are situated within twenty yards of any dwelling, public building, school, store, workshop or workplace to become overgrown with long grass of such a nature as to be likely to harbour mosquitoes.

(2) The owner or occupier of any premises shall keep any part of such premises which is within fifty yards of any dwelling free from all bottles, whole or broke, tins, boxes, coconut husks, earthenware vessels, shells or any other articles which are kept so that they are likely to collect and retain water and facilitate the breeding of mosquitoes.'

The wording of the charge for section 35(1) is:

'did permit [premises or land] [owned or occupied] by [him or her] over which [he or she] has control and which are situated within twenty yards of a [dwelling, public building, school, store, workshop or workplace] belong to [specify the name of the owner] to become overgrown with long grass of such a nature as to be likely to harbour mosquitoes.'

The elements of that charge are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Permit
 - [a] Premises
 - [b] Land
- [5]
 - [a] Owned
 - [b] Occupied
- [6] Accused Person
- [7] Control
- [8] Situated Within Twenty Yards
 - [a] Dwelling
 - [b] Public Building
 - [c] School
 - [d] Store
 - [e] Workshop
 - [f] Workplace
- [9] Overgrown with long grass of such a nature as to be likely to harbour mosquitoes

The wording of section 35(2) is not clear and therefore no person should be prosecuted under that section.

The following terms are defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- 'premises'

'includes messuages and buildings and lands, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority'.

Criminal Charges

- *'occupier'*

'includes any person in actual occupation of land or premises without regard to the title under which he occupies and, in the case of premises sub-divided and sub-let, the person receiving the rent payable by the sub-leasees, whether he receives such rent on his own account or as an agent for any person entitled thereto or interested therein.'

- *'owner'*

'applies to every person in possession of or in receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of that land or tenement other than as a tenant from year to year or for any less term or as a tenant at will.'

- *'dwelling'*

'means any house room, shed, hut, cave, tent, vehicle, vessel or boat, or any other structure or place whatsoever, any portion whereof is used by any human being for sleeping or in which any human being dwells.'

- *'workplace'*

'means any premises or building (other than a workshop) or any part of such premises or building in which work is performed or carried on for reward or profit.'

- *'workshop'*

'means any premises or building, or any part of such premises or building, in which any manual labour is exercised by way of trade or for purposes of gain.'

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of forty dollars.'

Criminal Charges

WATER TANKS, ETC., TO BE COVERED AND SCREENED

36

Section 36(1) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘It shall not be lawful for any person to keep, or for the owner or occupier of any premises to allow to be kept thereon, any collection of water in any barrel, tub, bucket, tank or other vessel intended for the storage of water unless such barrel, tub, bucket, tank or other vessel is fitted with a sufficient cover and is properly protected or screened to the satisfaction of a health inspector or health officer so as to prevent the ingress of mosquitoes into the same.’

The wording of those charge are:

‘[did keep **or** being the (owner **or** occupier) of premises did allow to be kept thereon] a collection of water in a [barrel, tub, bucket, tank **or** vessel to wit (specify the vessel)] intended for the storage of water and the said [barrel, tub, bucket, tank **or** vessel] was not fitted with a sufficient cover and was not properly protected or screened to the satisfaction of a [health inspector **or** health officer] namely [specify the particulars of the health inspector **or** officer] so as to prevent the ingress of mosquitoes into it.’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Keep
 - [b] [i] Owner
 - [ii] OccupierPremises did allow to be kept thereon
- [5] A collection of water
 - [a] Barrel
 - [b] Tub
 - [c] Bucket
 - [d] Tank
 - [e] Vessel
- [6] Not fitted with a sufficient cover and was not properly protected or screened to the satisfaction of
 - [a] Health Inspector
 - [b] Health Officer
- [7] So as to prevent the ingress of mosquitoes into it

The following terms are defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- ‘premises’

‘includes messuages and buildings and lands, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority’.

Criminal Charges

- *'occupier'*

'includes any person in actual occupation of land or premises without regard to the title under which he occupies and, in the case of premises sub-divided and sub-let, the person receiving the rent payable by the sub-leasees, whether he receives such rent on his own account or as an agent for any person entitled thereto or interested therein.'

- *'owner'*

'applies to every person in possession of or in receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of that land or tenement other than as a tenant from year to year or for any less term or as a tenant at will.'

- *'dwelling'*

'means any house room, shed, hut, cave, tent, vehicle, vessel or boat, or any other structure or place whatsoever, any portion whereof is used by any human being for sleeping or in which any human being dwells.'

- *'workplace'*

'means any premises or building (other than a workshop) or any part of such premises or building in which work is performed or carried on for reward or profit.'

- *'workshop'*

'means any premises or building, or any part of such premises or building, in which any manual labour is exercised by way of trade or for purposes of gain.'

- *'health inspector'*

'means an officer in the public service appointed (whenever appointed) to be a Health Assistant, Assistant Health Inspector, Senior Health Inspector or Principal Health Inspector.'

- *'health officer'*

'means any person appointed by a local authority, with the prior approval of the Director, to be a health officer'.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of forty dollars.'

Criminal Charges

SEPTIC TANKS, SOAKAWAYS, ETC., TO BE SCREENED

37

Section 37 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

'The owner or occupier of any premises upon or attached to which is any cesspit, cesspool, septic tank or soakaway shall cause such cesspit, cesspool, septic tank or soakaway to be properly protected or screened to the satisfaction of a health inspector or health officer so as to prevent the ingress of mosquitoes into the same.'

The wording of those charge are:

'being the [owner or occupier] of premises [upon or attached to] which is a [cesspit, cesspool, septic tank or soakaway] did fail to cause the said [cesspit, cesspool, septic tank or soakaway] to be properly protected or screened to the satisfaction of a [health inspector or health officer] namely [specify the particulars of the health inspector or officer] so as to prevent the ingress of mosquitoes into it.'

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Owner
[b] Occupier
- [5] Premises
- [6] [a] Upon
[b] Attached to
- [7] [a] Cesspit
[b] Cesspool
[c] Septic tank
[d] Soakaway
- [8] Fail to cause it to be properly protected or screened to the satisfaction of
- [9] [a] Health Inspector
[b] Health Officer
- [10] So as to prevent the ingress of mosquitoes into it

The following terms are defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- 'occupier'

'includes any person in actual occupation of land or premises without regard to the title under which he occupies and, in the case of premises sub-divided and sub-let, the person receiving the rent payable by the sub-leasees, whether he receives such rent on his own account or as an agent for any person entitled thereto or interested therein.'

- 'owner'

'applies to every person in possession of or in receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of that land or tenement other than as a tenant from year to year or for any less term or as a tenant at will.'

Criminal Charges

- *'premises'*

'includes messuages and buildings and lands, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority'.

- *'health inspector'*

'means an officer in the public service appointed (whenever appointed) to be a Health Assistant, Assistant Health Inspector, Senior Health Inspector or Principal Health Inspector.'

- *'health officer'*

'means any person appointed by a local authority, with the prior approval of the Director, to be a health officer'.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of forty dollars.'

Criminal Charges

MERE PRESENCE OF MOSQUITO LARVAE	39
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Section 39 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Notwithstanding any provisions of these Regulations, the owner or occupier of any house or premises, or the owner or person having the charge of any vessel, or other article or receptacle in or about which there is any collection of water found by a health inspector, health officer or sanitary officer to contain any of the immature stages of the mosquito shall be guilty of an offence.’

The wording of those charge are:

‘being

- the [owner **or** occupier] of [a house **or** premises]; **or**
- the [owner **or** person having the charge] of [a vessel, an article **or** a receptacle]

[in **or** about] which there was a collection of water found by a [health inspector, health officer **or** sanitary officer] namely [specify the particulars of the health inspector, health officer **or** sanitary officer] to contain the immature stages of the mosquito.’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4][A]
 - [a] Owner
 - [b] Occupier
 - [1] House
 - [2] Premises
- [B]
 - [a] Owner
 - [b] Person having the charge
 - [1] Vessel
 - [2] Article
 - [3] Receptacle
- [5]
 - [a] In
 - [b] About
- [6] Which there was a collection of water found
- [7]
 - [a] Health Inspector
 - [b] Health Officer
 - [c] Sanitary Officer
- [8] Contain the immature stages of the mosquito

Criminal Charges

The following terms are defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- *'occupier'*

'includes any person in actual occupation of land or premises without regard to the title under which he occupies and, in the case of premises sub-divided and sub-let, the person receiving the rent payable by the sub-leasees, whether he receives such rent on his own account or as an agent for any person entitled thereto or interested therein.'

- *'owner'*

'applies to every person in possession of or in receipt either of the whole or of any part of the rents or profits of any land or tenement or in the occupation of that land or tenement other than as a tenant from year to year or for any less term or as a tenant at will.'

- *'premises'*

'includes messuages and buildings and lands, easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority'.

- *'health inspector'*

'means an officer in the public service appointed (whenever appointed) to be a Health Assistant, Assistant Health Inspector, Senior Health Inspector or Principal Health Inspector.'

- *'health officer'*

'means any person appointed by a local authority, with the prior approval of the Director, to be a health officer'.

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of ten dollars.'

Criminal Charges

POLLUTION OF WATER SUPPLY

49

Section 40(1) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Every person who knowingly and wilfully in any way defiles or pollutes any water – course, stream, lake, pond, or reservoir shall be guilty of an offence.’

The wording of those charge are:

‘did knowingly and wilfully [defile or pollute] a [water – course, stream, lake, pond, or reservoir].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] Knowingly and Wilfully
- [5] [a] Defile
- [5] [b] Pollute
- [6] [a] Water – course
- [6] [b] Stream
- [6] [c] Lake
- [6] [d] Pond
- [6] [e] Reservoir

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a fine of forty dollars.’

Section 40(2) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Any person who wilfully injures or unlawfully interferes with any pump, cock, valve, water pipe, cistern, reservoir or storage tank maintained in whole or in part by the Government or a local authority, whether or not such pump, cock, valve, water pipe, cistern, reservoir or storage tank or any part thereof respectively is situated on land or premises the property of such person, shall be guilty of an offence.’

The wording of those charge are:

‘did [wilfully injure or unlawfully interfere] with a [pump, cock, valve, water pipe, cistern, reservoir or storage tank] maintained in [whole or part] by [the Government or a local authority].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Wilfully Injure
- [4] [b] Unlawfully Interfere

Criminal Charges

[5]	[a]	Pump
	[b]	Cock
	[c]	Value
	[d]	Water pipe
	[e]	Cistern
	[f]	Reservoir
	[g]	Storage tank
[6]	[a]	maintained in whole
	[b]	maintained in part
[7]	[a]	Government
	[b]	Local Authority

The following term is defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- '*local authority*'

'in relation to any sanitary district mean such person as the Minister may by notice appoint as the local authority for such district, and such appointment shall be subject to such terms and conditions as the Minister may specify in such notice.'

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

'a fine of forty dollars.'

Criminal Charges

PROTECTION OF PUBLIC SEWERS AND DRAIN

80

Section 80(1)(a) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Any person who places or throws any solid matter, mud or refuse (except such as is contained in ordinary house sewage) in or into any public sewer or public drain or any sewer, drain, inlet or other drainage work communicating with any public sewer or public drain, or over any grate communicating with any public sewer or public drain.’

The wording of those charge are:

‘did [place **or** throw] [solid matter, mud **or** refuse] not being ordinary house sewage

- [in **or** into] a [public sewer, public drain **or** (sewer, drain, inlet **or** drainage work) communicating with a (public sewer **or** public drain)]; **or**
- over a grate communicating with a [public sewer **or** public drain].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4] [a] Place
[b] Throw
- [5] [a] Solid Matter
[b] Mud
[c] Refuse
- Not being ordinary house sewage
- [6] [a] In
[b] Into
- [7][A] [a] Public Sewer
[b] Public Drain
[c] [1] Sewer
[2] Drain
[3] Inlet
[4] Drainage Work
Communicating with
[1] Public Sewer
[2] Public Drain

OR

- [7][B] Over a grate communicating with
[a] Public Sewer
[b] Public Drain

Criminal Charges

The following terms are defined in section 2 of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) as follows:

- 'sewer'

'does not include a drain as defined in this regulation but otherwise includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings, and the expression "public sewer" means a sewer which is vested in and maintained by the Government or a local authority and includes, for the purposes of these Regulations, any part of a sewer from the outlet of any disconnecting trap to its junction with a public sewer or drain.'

- 'drain'

'means a drain used for the drainage of one building or any buildings or yards appurtenant to building within the same cartilage, and the expression "public drain" means a drain which is vested in and maintained by the Government or a local authority and, for the purposes of these Regulations includes any part of a drain from the outlet of any disconnecting trap to it junction with a public drain or sewer.'

- 'drainage works'

'means the construction, installation, laying, connecting, fixing, repair or removal of any pipe, drain, gully, cesspool, soakaway, septic tank, sewage filter installation or other works for the discharge, reception or disposal of sewage in connection with any premises, or of any waste – pipe, soil – pipe trap, urinal, water – closet, slop – hopper, sink, bath, lavatory basin, ventilation pipe or anti – syphonage pipe, or any drain fitting or water – flushing cistern, or any works connected with the discharge of liquid or soiled matter into any drain, sewer, cesspool, soakaway, septic tank, sewage filter installation, or other like receptacle for drainage, or otherwise connected with the drainage of any persons.'

Section 80(1)(b) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

'Any person who causes or knowingly permits any such matter, mud or refuse to be placed or thrown, or to fall, or to be carried, in or into any public sewer or public drain or over any such grate.'

The wording of those charge are:

'did [cause or knowingly permit] [matter, mud or refuse]

- to be [placed or thrown]; or
- to fall; or
- to be carried [in or into] a [public sewer or public drain]; or
- to be carried over a [public sewer or public drain].'

The elements of those charges are:

- | | |
|-----|------------------------------|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | [a] Cause |
| | [b] Knowingly Permit |
| [5] | [a] Matter |
| | [b] Mud |
| | [c] Refuse |

Criminal Charges

- | | | | |
|-----|-----|-----|---|
| [6] | [a] | [1] | Placed |
| | | [2] | Thrown |
| | [b] | | Fall |
| | [c] | [1] | Carried In Public Sewer or Drain |
| | | [2] | Carried Into Public Sewer or Drain |
| | [d] | | Carried Over |
| | | [1] | Public Sewer |
| | | [2] | Public Drain |

Section 80(1)(c) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Any person who causes or knowingly permits any such matter, mud or refuse to be placed in such a position as to be liable to fall or to be carried as aforesaid.’

The wording of those charge are:

- ‘did [cause **or** knowingly permit] [matter, mud **or** refuse] to be placed in such a position as to be liable
- to fall; **or**
 - to be carried [in **or** into] a [public sewer **or** public drain]; **or**
 - to be carried over a [public sewer **or** public drain].’

The elements of those charges are:

- | | |
|-----|---|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | [a] Cause |
| | [b] Knowingly Permit |
| [5] | [a] Matter |
| | [b] Mud |
| | [c] Refuse |
| [6] | To be placed in such a position as to be liable |
| [7] | [a] Fall |
| | [b] [1] Carried In Public Sewer or Drain |
| | [2] Carried Into Public Sewer or Drain |
| | [c] Carried Over |
| | [1] Public Sewer |
| | [2] Public Drain |

Section 80(1)(d) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Any person who discharges into any public sewer or public drain or into any sewer or drain which, not being a public sewer or public drain, communicates therewith, any chemicals, oil, petroleum or any manufacturing, trade or other refuse (not included as aforesaid) or any waste stream, or any heated liquid, which, either alone or in combination with other matter in any sewer or drain, causes or may cause nuisance or danger to persons entering or being in, or near to, any public sewer or public drain or danger to any public sewer or public drain itself.’

Criminal Charges

The wording of those charge are:

'did discharges into a [public sewer, public drain **or** (sewer **or** drain) not being a public sewer or public drain but which communicates with a (public sewer or drain)] [a chemical, oil, petroleum, (manufacturing refuse, trade refuse **or** refuse to wit [specify the refuse]), waste stream **or** heated liquid] which in the said [sewer **or** drain] [did cause **or** may cause]

- a [nuisance **or** danger] to persons [entering, being in **or** near to] the said [sewer **or** drain]; **or**
- danger to the said [sewer **or** drain] itself.'

The elements of those charges are:

- | | |
|--------|--|
| [1] | Accused person |
| [2] | Place of the alleged offence |
| [3] | Date of the alleged offence |
| [4] | Discharge into |
| | [a] Public Sewer |
| | [b] Public Drain |
| | [c] Sewer not being a public sewer or public drain but which communicates with such a sewer or drain |
| | [d] Drain not being a public sewer or public drain but which communicates with such a sewer or drain |
| [5] | [a] Chemical |
| | [b] Oil |
| | [c] Petroleum |
| | [d] Manufacturing refuse |
| | [e] Trade refuse |
| | [f] other refuse |
| | [g] Waste Stream |
| | [h] Heated liquid |
| | which in the said sewer or drain |
| [6] | [a] Did cause |
| | [b] May cause |
| [7][A] | [a] Nuisance |
| | [b] Danger |
| | To persons |
| | [a] Entering |
| | [b] Being in |
| | [c] Near to |
| | the said sewer or drain |
| [B] | Danger |
| | [a] Sewer itself |
| | [b] Drain itself |

The term '*petroleum*' is defined in section 2 of the *Petroleum Act* (Ch. 81) as follows:

'means any oil, liquid or spirit derived wholly or in part from any petroleum, shale, coal, peat, bitumen or similar substance, but does not include any oil ordinarily used for lubricating purposes or having a flash – point above two hundred degrees Fahrenheit.'

Criminal Charges

Section 80(1)(e) of the *Environmental Health (Public Health Act) Regulations* (Ch. 99) states:

‘Any person who wilfully, except with the permission in writing of the local authority, or negligently damages, alters, disconnects or otherwise interferes with any public sewer or public drain or any communication therewith.’

The wording of those charge are:

‘did [wilfully and not with the permission in writing of the local authority **or** negligently] [damage, alter, disconnect **or** interfere] with a [public sewer, public drain **or** communication with a public (sewer **or** drain)].’

The elements of those charges are:

- [1] Accused person
- [2] Place of the alleged offence
- [3] Date of the alleged offence
- [4]
 - [a] Wilfully and not with the permission in writing of the local authority
 - [b] Negligently
- [5]
 - [a] Damage
 - [b] Alter
 - [c] Disconnect
 - [d] Interfere
- [6]
 - [a] Public Sewer
 - [b] Public Drain
 - [c] Communication with a public sewer
 - [d] Communication with a public drain

Maximum Penalty

The maximum penalty that a Local Court can impose for this offence is:

‘a fine of fifty dollars.’