

## Criminal Litigation

著者	Sharifah Suhanah Syed Ahmad, Roy Rajasingham
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# Chapter 7

## CRIMINAL LITIGATION

### 1. PENAL CODE

In Malaysia criminal offences are codified under the Penal Code under various chapters for various offences relating to:-

- (i) offences affecting the human body (murder, etc.);
- (ii) offences relating to properties;
- (iii) offences relating to documents and currency or banknotes;
- (iv) offences relating to criminal breach of contracts of services;
- (v) offences relating to marriage;
- (vi) offences relating to criminal conspiracy of abetment;
- (vii) offences relating to public servants, etc.

Other offences quasi criminal in nature are tried under specific law, e.g. the Corruption Act, Dangerous Drugs Act, etc

All offences under the Penal Code are inquired into and tried according to the provisions of the Criminal Procedure Code.

### 2. CRIMINAL PROCEDURE CODE

Criminal trials are held *in* the Magistrates Courts, Sessions Courts, High Courts and appeals from the High Courts are then made to the Court of Appeal and the apex court, namely, the Federal Court.

### **3. A MAGISTRATES COURT CAN HEAR CRIMINAL MATTERS:-**

A Magistrate Court can hear criminal matters:

- (i) Where the offence is punishable by a fine only which should cover most traffic offences; and
- (ii) Where the offence provides for a term of imprisonment not exceeding 10 years. A Magistrate may not, however, impose a term of imprisonment exceeding 5 years.

### **4. SESSIONS COURT CRIMINAL JURISDICTION**

A Sessions Court has jurisdiction to hear all criminal offences except those punishable by death.

### **5. HIGH COURT CRIMINAL JURISDICTION**

High Court may hear all matters including offences which carry the death penalty. A High Court can also hear appeals from the Magistrates Court and Sessions Court.

### **6. APPELLATE COURT CRIMINAL JURISDICTION**

The Court of Appeal is an Appellate Court and hears appeals from the High Court relating both civil and criminal matters.

### **7. FEDERAL COURT CRIMINAL JURISDICTION**

The Federal Court is an apex court in Malaysia and hears appeals from the Court of Appeal on matters involving the Federal Constitution, points of law and public interest.

## **8. POLICE ACTION**

Upon a report being lodged with the police, the police investigate on the alleged offence(s) and take all necessary action to apprehend where possible the offender if not the culprit of the offence.

The police may arrest a suspect for an alleged offence(s) and shall grant bail before the offender is brought to court to be formally charged (arraigned) in court for boailable offences. For crimes which capital punishment, e.g. murder, rape and kidnapping, no bail is granted, as they are non-boailable offences.

## **9. SUMMARY TRIALS BY MAGISTRATES**

When an accused appears or is brought before the court, a charge(s) containing particulars of the offence of which he is accused is framed, read and explained to him and he shall be asked whether he is guilty of the charge preferred against him or whether he chooses to be tried. If the accused pleads guilty and there is sufficient evidence to support the charge preferred against him, he may be convicted thereon provided the accused understands the nature and consequence of his plea (unequivocal). If the accused chooses to be tried, the court would then be required to call witnesses to give evidence as may be produced by the prosecution.

After the witnesses have given evidence (evidence in chief) the accused through his counsellor if undefended by himself cross-examine his witnesses. The prosecution can also re-examine his witnesses after cross-examination. Witnesses are called by the prosecution by means of subpoenas that are applied for and obtained by the court.

The Magistrate in a boailable offence can offer bail to the accused which discretion is reasonable pending hearing of pending trial.

## **10. TRANSFER OF CASES**

A Magistrate can transfer a case to a court of higher jurisdiction in consequence stay of proceedings before him.

## **11. PROCEDURE AT A TRIAL**

At a trial, if the prosecution makes a prima facie case and proves its case beyond reasonable doubt then the accused is called upon to make his defence. He may then call his own witnesses to prove that he is innocent. At the end of the defence case, the Magistrate can either convict him or acquit him. Same procedure is adopted in the Sessions Court.

## **12. PROSECUTION**

The public prosecutor who initiates criminal prosecution is the Attorney General. The Solicitor-General has all the powers of a Deputy Public Prosecutor and shall act as a Public Prosecutor in the absence or inability to act of the Attorney-General. The Public Prosecutor may appoint fit and proper persons to be Deputy Public Prosecutors.

## **13. CONDUCT OF PROSECUTION IN COURT**

Criminal prosecutions are conducted by the Public Prosecutors and Deputy Public Prosecutors or by a police officer not below the rank of a police inspector acting on behalf of Public Prosecutors.

An arrest may be made by a police officer if he has reasonable suspicion that an offence is being committed by that person. Resisting or obstructing the lawful arrest of a person is an offence.

## **14. SEARCH POWER OF THE POLICE**

The police have power to search any person against whom he has reasonable suspicion of having committed an offence.

## **15. EVIDENCE ACT**

Evidence in court is given pursuant to the Law of Evidence by accused persons and witnesses. The admissibility and relevancy is made pursuant to the provisions of the Evidence Act. The admissibility of admission and confessions are also subject to the rule of evidence. Hearsay evidence are generally not admissible in evidence save for certain exceptions.

For a statement that is recorded by the prosecution from an accused person to be made admissible in court in a trial it must be shown by a prosecution that the admission or confession was made by the accused voluntarily, that is, without inducement, threat or promise.

## **16. SENTENCING**

Sentencing of accused persons, that is, the imposition of fines and imprisonment and/or both are meted out by the presiding judge in the Magistrates Court, Sessions Court and High Court according to the provisions in respect of the offences committed pursuant to the provisions in the statute.

The death penalty is only imposed for capital offences including murder, rape and trafficking of drugs of a quantity as prescribed by law.