

LAWS OF THE NEW SUDAN

*The Penal Code,
2003*

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(PROVISIONAL ORDER)

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THE PENAL CODE, 2003.

CHAPTER 1 PRELIMINARY

Section 1- Title and Commencement:

This Act may be cited as “The Penal Code, 2003” and shall come into effect on the date of signature.

Section 2- Repeal and Saving:

The Penal Code, 1994, is hereby repealed; provided that all proceedings, orders and regulations taken or made there-under shall remain in force until repealed or amended in accordance with the provisions of this Act.

Section 3- Punishment of Offences Committed within the New Sudan:

- (1) Every person shall be liable to punishment under this Code for every act or omission done within the New Sudan contrary to its provisions.
- (2) In the application of this Code, courts may consider the existing customary laws and practice prevailing in each area.
- (3) For the purpose of this Code, definition of the New Sudan includes its land, airspace, territorial waters, and all the New Sudan ships and aircrafts wherever they are.

Section 4- Punishment of Offences Committed Outside the New Sudan:

- (1) Every person shall be liable to punishment in the New Sudan.
 - (a) Who by any act done outside the New Sudan is a party whether as principal or abettor to any offence committed either wholly or in part in the New Sudan; or
 - (b) Who by any act done in the New Sudan which is an offence in the New Sudan and is also an offence under any law in force in the place where the thing is done or intended to be done; or
 - (c) Who is guilty of the commission or abetment outside the New Sudan of any of the following offences:-

- (i) an offence falling under Chapters: 1, 10, 11; or
 - (ii) an offence falling under section 194 when such offence relates to any coin or note legally current in the New Sudan; or
 - (iii) an offence falling under section 204 when such offence relates to any revenue stamp of the New Sudan.
- (2) Every citizen of the New Sudan who is guilty of the commission of abetment outside the New Sudan of an offence within the meaning of this Code shall be liable to punishment in the New Sudan.
- (3) No person shall be punished in the New Sudan for an offence committed outside the New Sudan, if it is proved that such person was tried outside the New Sudan before a Court of competent jurisdiction and has served his punishment, also such person shall not be punished if he was declared innocent by such Court.

NOTE: For obtaining the necessary permission before trial under this section, see section 131 of the Criminal Procedure Act, 2003.

CHAPTER 2.

GENERAL EXPLANATIONS AND DEFINITIONS.

- Section 5-** **Sense of Expression once Explained:** Every expression, which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation, unless the context otherwise requires.
- Section 6-** **Gender:** The pronoun ‘he’ and its derivatives are used on any person whether male or female.
- Section 7-** **Number:** Unless the contrary appears from the context, words importing the singular number include the plural number and words importing the plural number include the singular number.
- Section 8-** **Man/Woman:** The word “man” denotes a male human being of any age: the word “woman” denotes a female human being of any age.
- Section 9-** **Person:** The word “person” includes any company or association or body of persons, whether incorporated or not.
- Section 10-** **The Public:** The words “the public” include any class or section of the public.

- Section 11- Magistrate:** The word “Magistrate” denotes a magistrate under the Criminal Procedure Act, 2003.
- Section 12- Court:** “Court” includes every civil, criminal or other Court established by law in the New Sudan and every person or body of persons exercising judicial functions in the New Sudan by virtue of any law and shall also include every Court Martial held in and outside the New Sudan under the Sudan People’s Liberation Army (SPLA) Act, 2003.
- Section 13- Judicial Proceedings:** “Judicial Proceedings” include any proceeding in the course of which it is lawful to take evidence on oath.
- Section 14- Public Servant:** The words “Public Servant” denote a person falling under any of the following descriptions: -

- (a) Every person appointed by the New Sudan Civil Authority or Regional authority or by any Local Authority for the performance of public duties whether with or without remuneration or for the performance of a specific public duty while performing that duty;
- (b) Every person not falling within the description set forth in paragraph (a) who is in the service of another County’s authority in a judicial, quasi judicial, executive, administrative or clerical capacity;
- (c) Every commissioned officer of the Sudan People’s Liberation Army;
- (d) Every assessor or other person assisting a Court or a public servant exercising judicial or quasi-judicial functions while acting in that capacity;
- (e) Every person not being a member of the Legislature, who is appointed or deputed by the Legislature to do anything pertaining to the functions of the Legislature or any of its organs;
- (f) Every person who works in a public corporation whether such corporation is established by law or by an order of the Chairman.

Explanation 1. - In this section, public duties include duties to be performed for the protection, preservation or promotion of the public health, order, security or convenience and duties to be performed for the protection of the pecuniary interests of or for carrying on the work of the New Sudan Civil Authority or of any county or Local Authority.

Explanation 2. - The expression “public servant” applies to every person who is in actual occupation of the post of a public servant whatever legal defect there may be in his right to hold such post.

Section 15- Sudan People's Liberation Army (SPLA) and other Organised Forces:-

- 1) SPLA: The abbreviation "SPLA" means the Sudan People's Liberation Army which includes land, naval and air forces.
- 2) Other organized Forces: Terms other organized forces include Police, Prisons, Wildlife, Fire Brigade, Militia and any other forces that may be established by law.

Section 15(A)-Chairman : The word "Chairman" denotes the leader of the Movement SPLM.

Section 15(B)-SPLM: The abbreviation "SPLM" means the Sudan People's Liberation Movement hereby referred to as the Movement.

Section 16 - Movable Property The words "Movable Property" include corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

Section 17 - "Wrong Gain" and "Wrongful Loss": "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful Loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains property wrongfully as well as when such person acquires property wrongfully.

A person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property.

Section 18 - "Dishonestly". A person is said to do a thing "dishonestly" who does that thing with the intention of causing wrongful gain to himself or another or of causing wrongful loss to any other person.

Section 19 - "Fraudulently". A person is said to do a thing "fraudulently" or "with intent to defraud" who does that thing with intent to deceive and by means of such deceit to obtain some advantage for himself or another or to cause loss to any other person.

Section 20 - "Reason to Believe". A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

Section 20(A) "Likely". An act is said to be "likely" to have a certain consequence or to cause a certain effect if the occurrence of that consequence or effect would cause surprise to a reasonable man.

Section 20 (B) “Probable” an Act is said to be “probable” to have a certain consequence or to cause a certain effect if the occurrence of that consequence or effect would not cause surprise to a reasonable man.

Section 21 - Property in Possession of Husband, Wife, Clerk or Servant. When property is in the possession of a person’s husband wife, clerk or servant on account of that person, it is in that person’s possession within the meaning of this Code.

Explanation. - A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

Section 22 - “Counterfeit”: A person is said to “counterfeit”, who causes one thing to resemble another thing intending by means of that resemblance to practice deception or knowing it to be likely that deception will thereby be practiced.

Explanation 1. - It is not essential to counterfeiting that the resemblance should be exact.

Explanation 2. - When a person causes one thing to resemble another thing and the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved, that the person so causing one thing to resemble the other thing intended by means of that resemblance to practice deception or knew it to be likely that deception would thereby be practiced.

Section 23 - “Writing” “Document”: The word “writing” denotes any marks made upon paper or other substance to express words or ideas, and includes marks made by printing, lithography, photography, inscription, engraving or any other process; and the word “document” signifies any writing intended to be used or which may be used as evidence of the matter expressed thereby.

Section 24 - “Document of Title”: The words “document of title” denote a document which is or purports to be a document whereby a legal right is created, extended, transferred, restricted, extinguished or released, or whereby the existence or the extinction of a legal right is acknowledged or established.

Section 25 - “Words Referring to Acts Include Illegal Omissions”: In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Section 26 – “Act”, “Omission”: The word “act” denotes a series of acts as well as a single act; and the word “omission” denotes a series of omissions as well as a single omission.

Section 27 - “Effect Caused Partly by Act and Partly by Omission”: wherever the causing of a certain effect or an attempt to cause that effect by an act and partly by an omission constitutes the same offence.

Section 28 - “Voluntarily”: A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration. – (“A”) sets fire by night to an inhabited house for the purpose of facilitating a robbery and thus causes the death of a person in the house. Here, (“A”) may not have intended to cause death, and may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, he knew that he was likely to cause death, he has caused death voluntarily.

Section 29 - “Offence”: Except where otherwise appears from the context, the word “offence” includes an offence under any law for the time being in force.

Section 30 - “Illegal”: (1) Everything which is prohibited by law or which is an offence is said to be “illegal”.

(2) A person is said to be “legally bound to do” not only whatever he is bound by law to do but also everything the omission to do which by him is an offence or is prohibited by law.

Section 31 - “Injury”: The word “injury” means any harm whatsoever illegally Caused to any person, in body, mind, reputation, or property.

Section 32 - “Life” – “Death”: The words “life and “death” mean the life or death of a human being unless it otherwise appears from the context.

Section 33 - “Animal”: The word “animal” does not include a human being.

Section 34 - “Vessel”: The word “vessel” means anything made for the conveyance by water, of human beings or of property.

Section 35 - “Year”, “Month”: Wherever the word “year” or the word “month” is used, it is to be understood that the year or the month is to be reckoned according to the Gregorian Calendar.

Section 36 - “Oath”: The word “oath” includes any declaration required or authorized by law; to be used for the purpose of proof, whether in a Court or otherwise.

Section 37 - “Good Faith”: An Act is said to be done or believed to be done in good faith, if done honestly with due care and attention and without malice.

Section 38 - “Provocation”: such grave and sudden provocation as under any section of this Code modifies the nature of an offence or mitigates the penalty, which may be inflicted, it shall not be deemed to include: -

- (a) Provocation sought or voluntarily provoked by the offender as an excuse for committing an offence;
- (b) Provocation given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.
- (c) Provocation given by anything done in the lawful exercise of the right of private defense.

Illustrations

- (a) (“A”) is lawfully arrested by (“Z”), a police officer. (“A”) excited to sudden and violent passion by the arrest kills (“Z”), (“A”) is not protected by section 249 (1).
- (b) (“A”) appears as a witness before (“Z”), a Magistrate, (“Z”) says that he does not believe a word of (“A’s”) deposition, (“A”) provoked thereby causes hurt to (“Z”). (“A”) is punishable under section 277 but not under section 275.
- (c) (“A”) attempts to pull (“Z”)’s nose, (“Z”) in self-defense lays hold of (“A”) (“A”) provoked thereby attacks (“Z”) and causes him grievous hurt. (“A”) is punishable under section (278) but not under section 276.

Section 39 - Consent Known to be Given Under Fear or Misconception: A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows or has reason to believe that the consent was given in consequence of such fear or misconception; or

If the consent is given by a person who from unsoundness of mind or intoxication is unable to understand the nature and consequence of that to which he gives his consent; or

If the consent is given by a person who is under sixteen years of age.

Section 40 - “Harbour”: A person is said to “harbour” another person who has committed or intends to commit an offence or who is seeking to evade arrest when he supplies that other with shelter or food or assists that other in any way to evade arrest.

CHAPTER 3.

CRIMINAL RESPONSIBILITY

Section 41 - “Common Knowledge”: a person is presumed, unless the contrary is proved, to have knowledge of any material fact if such fact is a matter of common knowledge.

Section 42 - “Presumption of Knowledge of an Intoxicated Person”: A person who does an act in a state of intoxication is presumed to have the same knowledge as he would have had if he had not been intoxicated.

Section 43 - “Acts of a Person Incapable of Judgment by Reason of Intoxication Caused Against his Will”: No act is an offence which is done by a person who, at the time of doing it, did not possess the power of appreciating the nature of his acts or of controlling them by reason of intoxication caused by any substance administered to him against his will or without his knowledge.

Section 44- Act done by Person Bound or Justified by Law: No act is an offence which is done by a person who is legally bound to do it or justified by law in doing it, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound by law to do it or justified by law in doing it.

Illustration –

(a) (“A”) an officer of a Court being ordered by that Court to arrest (“Y”) and after due enquiry believing (“Z”) to be (“Y”) arrests (“Z”). (“A”) has committed no offence.

(b) (“A”) sees (“Z”) commit what appears to (“A”) to be a murder. (“A”) in the exercise to the best of his judgment exerted in good faith of the power which the law gives to all persons of arresting murderers in the act seizes (“Z”) in order to bring (“Z”) before the proper authorities. (“A”) has committed no offence, though it may turn out that (“Z”) was acting in self-defense.

Section 45 - Act of Court: Nothing is an offence which is done by a person when acting judicially as a Court or as a member of a Court in the exercise of any power which is or which in good faith he believes to be given to him by law.

Section 46 - “Act done Pursuant to the Judgment or Order of Court”: No act which is done in pursuance of or which is warranted by the judgment or order of a Court or for the executor of such judgment or order, if done whilst such judgment or order remains in force, is an offence, notwithstanding that the Court may have had no jurisdiction to pass such judgment or order; provided the person doing the act in good faith believes that the Court has such jurisdiction.

Section 47 - “Accident in Doing a Lawful Act”: No act is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with due care and attention.

Section 48 - “Act Likely to Cause Injury but Done Without Criminal Intent and to Prevent other Injury or to Benefit Person Injured”: Nothing is an offence by reason of any injury which it may cause or be intended by the doer to cause or be known by the doer to be likely to cause if it be done without any criminal intention to cause injury and in good faith for the purpose of preventing or avoiding other injury to person or property or of benefiting the person to whom injury is or may be caused; provided:-

- (a) that, having regard to all the circumstances of the case, the doing of the thing was reasonable;
- (b) that, where the circumstances so require, the thing is done with reasonable care and skill;
- (c) that this exception does not extend to the intentional causing of death or to the attempting to cause death in order to prevent or avoid injury to property only;
- (d) that the death of a person shall under no circumstances be deemed to be for the benefit of that person;
- (e) that mere pecuniary benefit is not benefit within the meaning of this section.

Illustrations:-

- (a) A passenger train traveling at a high speed is approaching a stationary passenger train upon the same line of rails. A railway employee, as the only means of preventing a collision that would probably involve the lives of many passengers, switches the moving train in to a siding. The employee is not guilty of an offence if in all the circumstances his act was reasonable although fatal though less serious accident will likely result and a fatal accident in fact occurs;
- (b) (“A”) in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it is found that in the circumstances that act was reasonable, (“A”) is not guilty of an offence.

- (c) (“A”) a surgeon knowing that a particular operation is likely to cause the death of (“Z”) who suffers from a severe pain, but not intending to cause (“Z’s”) death and intending in good faith (“Z’s”) benefit, performs that operation. (“Z”) dies in consequence of the operation. If the operation is one which in all the circumstances it was reasonable for (“A”) to perform and it is performed with reasonable care and skill, (“A”) has committed no offence. If through drunkenness the operation is performed unskillfully, (“A”) is not protected by this section. Whether (“Z”) (or some competent person on his behalf) has consented to the operation or not, is material circumstance in judging whether it was reasonable to perform the operation.
- (d) (“Z”) is seized by a crocodile, (“A”) fires at the crocodile knowing it to be likely that the shot may kill (“Z”) but not intending to kill (“Z”) and in good faith intending (“Z’s”) benefit. In fact (“A”) kills (“Z”). (“A”) has committed no offence.

Section 49 - “Act of a Child” No act is an offence which is done: -

- (a) by a child of ten years; or below.
- (b) by a child above ten years of age but under fourteen who has not attained sufficient maturity of understanding to judge the nature and consequences of such act;
- (c) the provision of this section shall not affect any civil claim by the aggrieved party against the guardian of the child.

Section 50 - “Act of a Person Incapable of Judgment by Reason of Unsoundness of Mind”: No act is an offence which is done by a person who at the time of doing it did not possess the power of appreciating the nature of his acts or of controlling them by reason of permanent or temporary insanity or mental infirmity.

Provided that this provision shall not affect any civil claim instituted by the aggrieved party against the guardian unless the person of unsound mind is in custody.

Section 51 - “Act not Intended to Cause Death or Grievous Hurt Done by Consent”:

No act is an offence by reason of the injury it has caused to the person or property of any person who, being above the age of eighteen years, has voluntarily and with understanding given his consent express or implied to that act, provided that this section shall not be applicable to acts which are likely to cause death or grievous hurt, nor to acts which constitute offences independently of any injury which they are capable of causing to the person who has given his consent or to his property.

Illustration: (“A”) and (“Z”) agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul play; and if (“A”) while playing fairly hurts (“Z”), (“A”) commits no offence.

Section 52 - “Communication made in Good Faith”: No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration:- (“A”) a surgeon in good faith communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. (“A”) has committed no offence.

Section 53 - “Act to Which a Person is Compelled by Threats”: Except murder and offences against the State punishable with death, no act is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided that the person doing the act did not, of his own accord or from a reasonable apprehension of harm to himself in the situation by which he became subject to such constraint.

Section 54 - “Act Causing Slight Harm”: No act is an offence by reason that it causes or that it is intended to cause or that it is known to be likely to cause any injury if that injury is so slight that no person of ordinary sense and temper would complain of such injury.

Section 55 - “The Right of Private Defense”: No act is an offence which is done in the lawful exercise of the right of private defense.

Section 56 - “Right of Private Defense of the Body and of Property”: Every person has a right, subject to the restrictions hereinafter contained, to defend:-
(a) his own body and the body of any other person against any offence affecting the human body;
(b) the property whether movable or immovable of himself or of any other person against any act, which is an offence falling under the definition of theft, robbery, mischief or criminal trespass or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Section 57 - “Right of Private Defense Against Act of Person of Unsound Mind, etc.”: When an act, which would otherwise be an offence is not an offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind or the intoxication of the person doing that act or by reason of any misconception on the part of that person, every person has

the same right of private defense against that act which he would have if the act were that offence.

Illustrations:-

- (a) (“Z”) under the influence of madness attempts to kill (“A”). (“Z”) is guilty of no offence. But (“A”) has the same right of private defense which he would have if (“Z”) were sane;
- (b) (“A”) enters by night a house which he is legally entitled to enter. (“Z”) in good faith taking (“A”) for a house breaker, attacks (“A”). Here (“Z”), by attacking (“A”) under this misconception, commits no offence. But (“A”) has the same right of private defense against (“Z”), which he would have if (“Z”) were not acting under that misconception.

Section 58 - “General Limit of Right of Private Defense”: The right of private defense in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defense.

Section 59 - “No Right of Private Defense when Protection of Public Authorities Available”: There is no right of private defense in cases in which there is time to have recourse to the protection of the public authorities.

Section 60 - “Limitation of Right of Private Defense Against Act of Public Servant”:

There is no right of private defense against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defense against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

Explanation 1 – A person is not deprived of the right of private defense against an act done or attempted to be done by a public servant as such, unless he knows or has reason to believe that the person doing the act, or attempting to do it, is such public servant.

Explanation 2 – A person is not deprived of the right of private defense against an act done or attempted to be done by the direction of a public servant, unless he knows or has reason to believe that the person doing the act is acting by such direction or, if he has authority in writing, unless he produces such authority if demanded.

Section 61 - “When Right of Private Defense of the Body Extends to Causing Death”:

The right of private defense of the body extends, under the restrictions mentioned in sections 58 and 59, to the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely:-

- (a) an attack which causes reasonable apprehension of death or grievous hurt; or
- (b) rape or an assault with the intention of gratifying unnatural lust; or
- (c) abduction or kidnapping.

Section 62 - “When Right of Private Defense of Property Extends to Causing Death”:

The right of private defense of property extends, under the restrictions mentioned in sections 58 and 59, of the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely:-

- (a) robbery; or
- (b) house-breaking by night; or
- (c) mischief by fire committed on any building, tent or vessel, which building, tent or vessel, is used as human dwelling or as place for the custody of property; or
- (d) theft, mischief or house-trespass in such circumstances as may reasonably cause apprehension that, if such right of private defense is not exercised, death or grievous hurt will be the consequence.

Section 63 - “Right of Private Defense against Deadly Assault when there is Risk of Harm to Innocent Person”:

If, in the exercise of the right of private defense against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defense extends to the running of that risk.

Illustration: - (“A”) is attacked by a mob which attempts to murder him. He cannot effectually exercise his right of private defense without firing on the mob and he cannot fire without risk of harming young children who are mingled with the mob. (“A”) commits no offence if by so firing he harms any of the children.

CHAPTER 4

PUNISHMENT AND COMPENSATION.

Section 64 - “Punishments”: The punishments to which offenders are liable under the provisions of this Code are:-

- (a) death;
- (b) forfeiture of property;
- (c) imprisonment;
- (d) detention in a reformatory;
- (e) fine;
- (f) whipping.

Section 65 - Juveniles, Aged Persons, Pregnant or Suckling Women”: The Court shall not pass:-

- (a) a sentence of imprisonment on any person who in the opinion of the Court is under sixteen years of age;
- (b) the death penalty on any person who in the opinion of the Court is under eighteen years of age;
- (c) the death penalty on any person who in the opinion of the Court is over seventy years of age;
- (d) the death penalty on any pregnant or suckling woman.

Section 66 - Fractions of Terms of Punishment”: In calculating fractions of terms of punishment, imprisonment, for life shall be reckoned as equivalent to imprisonment for twenty years.

Section 67 - “Special Sentence for Juvenile Offenders”: When an accused person who has completed his tenth but not completed his eighteenth year of age is convicted by a High Court of any offence or by the Court of a Magistrate of the first or second of class of any offence not tried summarily; the Court may in passing the sentence prescribed by law, sentence such accused person to be detained in a reformatory school or other establishment appointed for the purpose by the Chief Justice for a term which shall not be less than two or more than five years.

Note – See also section 24 of the Criminal Procedure Act, 2003.

Section 68 - “Amount of Fine”: Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited but shall not be excessive.

Section 69 - “Sentence of Imprisonment for Non-payment of Fine”: Whenever an offender is sentenced to a fine whether with or without imprisonment and whether under this Code or under any other law, the Court which sentences the offender may direct by the sentence that, in default of payment of the fine, the offender shall be committed to prison for a certain term, which term shall be in excess of any other term of imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Note – See section 269 of the Criminal Procedure Act, 2003.

Section 70 - “Limit to Imprisonment for Non-payment of Fine, when Imprisonment and Fine Awardable”: The term, for which the Court directs the offender to be imprisoned in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine; provided that, in case of offences in which the offender has obtained material benefit, he shall be bound to return such benefit; and in case of default he shall be sentenced to an additional term of imprisonment without regard to the limitation provided for in this section.

Section 71 - “Imprisonment for Non-payment of Fine, when Offence Punishable with Fine Only”: If the offence be punishable with fine only, the term for which the Court directs the offender to be imprisoned in default of payment of fine, shall not exceed the following scale; that is to say, for any term not exceeding two months when the amount of the fine shall not exceed LS20 and for any term not exceeding four months when the amount shall not exceed LS50 and for any term not exceeding six months in any other case.

Section 72 - “Imprisonment to Terminate on Payment of Fine or Proportional Part of Fine”: (1) If, before the offender is committed to prison under section 69 in default of payment of a fine, a proportion of the fine is paid or levied

By process of law, the term of imprisonment in default of payment shall abate proportionately:

(2) If the offender has been committed to prison under section 69, the imprisonment shall terminate whenever the fine or a proportion of the fine, equal to or exceeding the proportion which the un-expired term of imprisonment bears to the whole term, is either paid or levied by process of law.

Note – See section 269 of the Criminal Procedure Act, 2003.

Illustration – (“A”) is sentenced to a fine of LS50 to four months’ imprisonment in default of payment. If LS20 of the fine be paid or levied before the expiration of two months of imprisonment, (“A”) will be discharged as soon as the two months are completed. If LS20 be paid or levied at the time of the expiration of those two months or at any late time while (“A”) continues in imprisonment, (“A”) will be immediately discharged.

Section 73 – “Fine Discharged by Death or Service of Sentence in Default of Payment”: Where a fine or any part thereof remains unpaid the offender or his estate, if he is dead, is discharged from liability to pay the fine or the unpaid part thereof notwithstanding that he has served a term of imprisonment in default of payment of the fine.

Section 74 - “Limit of Punishment when Act Falls within Definition of more than one Offence, or when Offence made up of Several Offences”: When the same act falls within the definition of more than one offence or when an offence consists of a series of acts any one or more of which constitutes the same or some other offence, the offender shall not, unless it be otherwise expressly provided, be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations -

(a) (“A”) gives (“Z”) fifty strokes with a stick. Here (“A”) can be punished for one beating only although each blow may by itself constitute an offence;

(b) But if, while (“A”) is beating (“Z”) (“Y”) interferes and (“A”) intentionally strikes (“Y”), here, as the blow given to (“Y”) is no part of the act whereby (“A”) voluntarily causes hurt to (“Z”), (“A”) is liable to one punishment for voluntarily causing hurt to (“Z”) and to another for the blow given to (“Y”).

Section 75 - “Punishment of Person Guilty of one of Several Offences, the Judgment Stating that it is Doubtful of which”: In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment but that it is doubtful of which of these offences he is guilty, the offender shall be punishable for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

Section 76 - “Whipping”: A sentence of whipping not exceeding ten strokes may be passed by the Court of a Magistrate of the first or second class when trying a case summarily on any male offender, in lieu of imprisonment or any other punishment to which he might be sentenced under this Code.

Section 77 - “Persistent Offenders”: (1) Whenever any person is convicted of any offence under the provisions of this Code and sentenced to imprisonment for more than six months and has on at least three previous occasions been sentenced to imprisonment, the Court or Magistrate may, if in its or his opinion the circumstances justify so doing, give such person a warning by reading out and explaining to him the relevant parts of this section and such warning shall be recorded with the sentence.

- (2) If any person who has been warned be convicted of any offence punishable with imprisonment committed more than one year after his release from serving the sentence in respect of which he was warned the Court or Magistrate when sentencing him shall give him a second warning.
- (3) If any person who has been warned be convicted of an offence punishable with imprisonment committed within one year of his release as aforesaid, or if any person who has been twice warned, be convicted of any such offence at any time after the second warning, such person shall be punished with imprisonment that may extend to ten years.
- (4) No person who has been warned shall be tried for any offence punishable with imprisonment except under this Code by a Magistrate of the first class non-summarily, or by some higher Court, and in awarding punishment under sub-section (3) such Magistrate or Court shall not be subject to the limits to his or its powers under sections 17 and 18 of the Criminal Procedure Act 2003.
- (5) Punishment awarded under sub-section (3) shall not be subject to any maximum prescribed for the offence of which the warned person is convicted.

Section 77(A) “Compensation”: (1) A Court which convicts any accused person whether or not it passes any sentence of punishment may order the offender to make compensation to any person injured by his offence if such compensation is in the opinion of the Court recoverably by civil suit.

- (2) An order under this section may be sent to a Civil Court for execution in accordance with the rules governing executions of its judgments.

Note – Not only money but other property as well may be ordered as Compensation under this section. See section 311 of Criminal Procedure Acts, 2003. Under that section, the Court first decides whether a fine is the proper punishment and if it so decides, it may order the whole or part

of the fine to be paid as compensation. The fact that it has made such an order does not prevent the Court from ordering further compensation under this section.

CHAPTER 5-

JOINT ACTS.

- Section 78 - “Acts Done by Several Persons in Furtherance of Common Intention”:** When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- Section 79 - “When such an Act is Criminal by Reason of its Being Done With a Criminal Knowledge or Intention”:** Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.
- Section 80 - “Cooperation by Doing One of Several Acts Constituting an Offence”:** When an offence is committed by means of several acts, whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations –

- (a) (“A”) and (“B”) agree to murder (“Z”) by severally and at different times giving him small doses of poison. (“A”) and (“B”) administer the poison according to the agreement with intent to murder (“Z”). (“Z”) dies from the effect of the several doses of poison so administered to him. Here (“A”) and (“B”) intentionally cooperate in the commission of murder and, as each of them does one or more of the several acts by which death is caused, they are both guilty of the offence, though their acts are separate and though the acts of one without the acts of the other would not have caused death.
- (b) (“A”) and (“B”) are joint jailors and as such have the charge of (“Z”) a prisoner alternately for six hours at a time. (“A”) and (“B”), intending to cause (“Z”)’s death knowingly cooperate in causing that effect by illegally omitting, each during the time of his attendance, to furnish (“Z”) with food supplied to them for that purpose. (“Z”) dies of hunger. Both (“A”) and (“B”) are guilty of the murder of (“Z”).

- (c) (“A”) a jailor has the charge of (“Z”) a prisoner. (“A”) intending to cause (“Z’s”) death illegally omits to supply (“Z”) with food, in consequence of which (“Z”) is much reduced in strength but the starving is not sufficient to cause his death. (“A”) is dismissed from his office and (“B”) succeeds him. (“B”) without collusion or cooperation with (“A”) illegally omits to supply (“Z”) with food, knowing that he will probably thereby cause (“Z’s”) death. (“Z”) dies of hunger. (“B”) is guilty of murder; but as (“A”) did not cooperate with (“B”) (“A”) is guilty only of an attempt to commit murder.

Section 81 - “Persons Concerned in Criminal Act May be Guilty of Different Offences”: Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration - (“A”) attacks (“Z”) in such circumstances of grave provocation that his killing of (“Z”) would be only culpable homicide not amounting to murder. (“B”), having ill will towards (“Z”) intending to kill him and not having been subject to the provocation, assists (“A”) in killing (“Z”). (Here), though (“A”) and (“B”) are both engaged in causing (“Z’s”) death, (“B”) is guilty of murder and (“A”) is guilty only of culpable homicide not amounting to murder.

PART 6 ABETMENT

Section 82 - “Abetment Defined”: A person abets the doing of a thing, who:-

- (a) instigates any person to do that thing; or
- (b) engages with one or more other person or persons in conspiracy for the doing of that thing; or
- (c) intentionally aids or facilitates by any act or illegal omission the doing of that thing.

Explanation: A person who by willful misrepresentation or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure a thing to be done instigates the doing of that thing within the meaning of this Chapter.

Illustrations:-

- (a) (“A”) is authorized by a warrant from a Court to arrest (“Z”). (“B”), knowing that fact and also that (“C”) is not (“Z”) willfully represents to (“A”) that (“C”) is (“Z”) and thereby intentionally causes (“A”) to arrest (“C”). Here (“B”) abets by instigation the arrest of (“C”).

(b) (“A”), a policeman, bound as such to give information of all designs to commit robbery and knowing that (“Z”) intends to commit a robbery, illegally omits to give information of (“Z’s”) intention, knowing that the commission of the robbery is likely to be thereby facilitated. Here (“A”) has abetted the robbery.

Section 83 - “Abetment of Offence Defined”: A person abets an offence who abets either the commission of an offence or the commission of an act which would be an offence, if committed with the same intention or knowledge as that of the abettor by a person capable by law of committing an offence.

Explanation 1:- The abatement of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2:- To constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused.

Illustrations:-

(a) (“A”) instigates (“B”) to murder (“C”) (“B”) refuses to do so, (“A”) is guilty of abetting (“B”) to commit murder.

(b) (“A”) instigates (“B”) to murder (“D”). (“B”) in pursuance of the instigation stabs (“D”). (“D”) recovers from the wound. (“A”) is guilty of instigating (“B”) to commit murder.

Explanation 3:- It is not necessary that the person abetting should be capable by law of committing an offence or that he should have the same guilty intention or knowledge as that of the abettor or any guilty intention or knowledge.

Illustrations:-

(a) (“A”), with a guilty intention, abets a child or a lunatic in committing an act which would be an offence, if committed by a person capable by law of committing an offence and having the same intention as (“A”). Here (“A”), whether the act be committed or not, is guilty of abetting an offence.

(b) (“A”), intending to cause a theft to be committed, instigates (“B”) to take property belonging to (“Z”) out of (“Z’s”) possession. (“A”) induces (“B”) to believe that the property belongs to (“A”). (“B”) takes the property out of (“Z’s”) possession in good faith believing it to be (“A’s”) property. (“B”), acting under this misconception does not take dishonestly and therefore does not commit theft. But (“A”) is guilty of abetting theft and is liable to the same punishment as if (“B”) had committed theft.

Explanation 4:- abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration:- (“A”) instigates (“B”) to instigate (“C”) to murder (“Z”). (“B”) accordingly instigates (“C”) to murder (“Z”) and (“C”) commits that offence in consequence of (“B’s”) instigation. (“B”) is liable to be punished for his offence with the punishment for murder; and, as (“A”) instigated (“B”) to commit the offence, (“A”) is also liable to the same punishment.

Explanation 5:- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration:-

(“A”) conspires with (“B”) a plan for poisoning (“Z”). It is agreed that (“A”) shall administer the poison. (“B”) then explains the plan to (“C”) mentioning that a third person is to administer the poison but without mentioning (“A’s”) name. (“C”) agrees to procure the poison and procures and delivers it to (“B”) for the purpose of its being used in the manner explained. (“A”) administers the poison; (“Z”) dies in consequence. Here, though (“A”) and (“C”) have not conspired together, yet (“C”) has been engaged in the conspiracy in pursuance of which (“Z”) has been murdered. (“C”) has therefore committed the offence defined in this section and is liable to the punishment for murder.

Section 84 - “Abetment if the Act Abetted is Committed in Consequence and where no Express Provision is made for its Punishment”: Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code or by any other law for the time being in force for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation:-

An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation or in pursuance of the conspiracy or with the aid which constitutes the abetment.

Illustrations:-

(a) (“A”) instigates (“B”) to give false evidence. (“B”) in consequence of the instigation commits that offence. (“A”) is guilty of abetting that offence and is liable to the same punishment as (“B”).

- (b) (“A”) and (“B”) conspire to poison (“Z”). (“A”) in pursuance of the conspiracy procures the poison and delivers it to (“B”) in order that he may administer it to (“Z”). (“B”) in pursuance of the conspiracy administers the poison to (“Z”) in (“A’s”) absence and thereby causes (“Z’s”) death. Here (“B”) is guilty of murder. (“A”) is guilty of abetting that offence by conspiracy and is liable to the punishment for murder.

Section 85 - “Abetment if Person Abetted does the Act with Different Intention from that of Abettor”: Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Section 86 - “Liability of Abettor when one act Abetted and Different act done”: When an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it; provided that the act done was a probable consequence of the abetment and was committed under the influence of the instigation or in pursuance of the conspiracy or with the aid which constituted the abetment.

Illustrations:-

- (a) (“A”) instigates a child to put poison into the food of (“Z”) and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of (“Y”), which is by the side of that of (“Z”). Here, if the child was acting under the influence of (“A’s”) instigation and the act done was in the circumstances a probable consequence of the abetment, (“A”) is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of (“Y”).
- (b) (“A”) instigates (“B”) and (“C”) to break into an inhabited house at midnight for the purpose of robbery and provided them with arms for that purpose, (“B”) and (“C”) break into the house and being resisted by (“Z”) one of the inmates, murder (“Z”). Here, if that murder was the probable consequence of the abetment, (“A”) is liable to the punishment provided for murder.

Section 87 - “Abettor when Liable to Cumulative Punishment for Act Abetted and for act Done”: If the act for which the abettor is liable under section 86 is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Section 88 - “Liability of Abettor for an effect caused by the act Abetted different from that Intended by the Abettor”: When an act is abetted with the intention on the part of the abettor of causing a particular effect and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

Exception:-

The abettor shall not be liable under this section to the punishment for murder unless he knew that death would be the probable consequence of the act abetted.

NOTE – See Section 248.

Illustration:-

(“A”) instigates (“B”) to cause grievous hurt to (“Z”). (“B”) in consequence of the instigation causes grievous hurt to (“Z”). (“Z”) dies in consequence. Here, if (“A”) knew that the grievous hurt abetted was likely to cause death, (“A”) is liable to be punished with the punishment provided for culpable homicide not amount to murder or for murder as the case may be.

Section 89- “Abettor Present when Offence Committed Liable as Principal”: whenever any person who if absent would be liable to be punished as an abettor is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Section 90 - “Abetment of Offence Punishable with death or Imprisonment for life if offence not Committed”: Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence is not committed in consequence of the abetment and no express provision is made by this Code or by any other law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term not exceeding seven years and shall also be liable to fine. And, if the abettor is a public servant whose duty is to prevent the commission of such offence, he shall be liable to imprisonment for a term not exceeding ten years and may also be liable to fine.

Illustration:-

(“A”) instigates (“B”) to murder (“Z”). The offence is not committed. If (“B”) had murdered (“Z”) (“B”) would have been liable to the punishment of death. Therefore (“A”) is liable to imprisonment for a term not exceeding seven years or, if he is a public servant whose duty it is to prevent the murder, for a term not exceeding ten years and also in any event to a fine.

Section 91 - “Abetment of Offence Punishable with Imprisonment if Offence is not Committed”: Whoever abets an offence punishable with imprisonment shall, if that offence is not committed in consequence of the abetment and no express provision is made by this Code or by any other law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term not exceeding one-fourth part of the longest term provided for that offence or with both; and if the abettor is public servant whose duty is to prevent the commission of such offence, he shall be punished with imprisonment for a term not exceeding one-half of the longest term provided for that offence or with such time as is provided for the offence or with fine or with both.

Illustration:-

(“A”), a policeman whose duty is to prevent robbery, abets the commission of robbery. Here though the robbery be not committed, (“A”) is liable to one-half of the longest term of imprisonment provided for that offence and also to fine.

Section 92 - “Abetting Commission of Offence by the Public, or by more than ten Persons”: Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment for a term not exceeding three years or with fine or with both.

CHAPTER 7.

ATTEMPTS TO COMMIT OFFENCES

Section 93 - “Attempting to Commit Offences Punishable with Imprisonment”: Whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or any other law for the time being in force for the punishment of such attempt, be punished with imprisonment for a term not exceeding one-half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

Illustrations:-

- (a) (“A”) makes an attempt to steal some jewels by breaking open a box and finds on opening the box that there are no jewels in it. (“A”) has done an act towards the commission of theft and therefore is guilty under this section.
- (b) (“A”) makes an attempt to pick the pocket of (“Z”) by thrusting his hand into (“Z’s”) pocket. (“A”) fails in the attempt in consequence of (“Z’s”) having nothing in his pocket. (“A”) is guilty under this section.

CHAPTER 8

CRIMINAL CONSPIRACY

Section 94 - “Criminal Conspiracy Defined”: An agreement is designated criminal conspiracy when two or more persons agree to commit or to cause the commission of an offence punishable with death or imprisonment.

Section 95 - “Punishment in Criminal Conspiracy”: Whoever is a party to a criminal conspiracy shall where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

CHAPTER 9.

OFFENCES AGAINST THE NEW SUDAN

NOTE:- As to section necessary before prosecution for offences under this Chapter. See Section 131 of the Criminal Procedure Act, 2003.

Section 96 - “Waging or Attempting to Wage War or Abetting Waging of war against the New Sudan”: Whoever wages war against the New Sudan or attempts to wage such war or abets the waging of such war, shall be punished with death or imprisonment for life and shall forfeit all his properties.

Section 97 - “Conspiracy to Commit Offences Punishable by Section 96”: Whoever conspires to commit any of the offences punishable by section 96 or conspires to overthrow the New Sudan Authority by means of criminal force or the show of criminal force be punished with imprisonment for a term not exceeding fourteen years.

Explanation:-

To constitute conspiracy it is not necessary that any act or illegal omission shall take place in pursuance thereof.

Section 98 - “Collecting Arms etc, with Intention of Waging War against the New Sudan”: Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the New Sudan shall on conviction be punished with imprisonment for a term not exceeding fourteen years and shall forfeit all his properties.

Section 98(A) Whoever in the New Sudan directly or indirectly collaborates with autocratic regime in Khartoum in order to sustain and consolidate its rule, shall be punished with imprisonment for a term not exceeding ten years and shall forfeit all his properties.

Section 98(B) Whoever circulates any subversive literature verbally or in written form against the of Movement and its authority with the intend to discredit or turn public opinion against it, shall be punished with imprisonment for a term not exceeding seven (7) years and may also forfeit his properties.

Section 98(C) Whoever acts as an agent of or a spy for the autocratic regime in Khartoum, shall on conviction be punished with death or life imprisonment and shall forfeit all his properties.

Section 99 - “Public Servant Voluntarily Allowing Prisoners, or Prisoner of War to Escape”: Whoever, being a public servant and having the custody of any prisoner or prisoner of war voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall on conviction be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 100- “Public Servant Negligently Suffering such Prisoners to Escape”: Whoever, being a public servant and having the custody of any prisoner or prisoner of war negligently suffers such prisoner to escape from any place in which such prisoner is confined, shall on conviction be punished with imprisonment for a term not exceeding three years and may also be liable to fine.

Section 101- “Aiding Escape of, Rescuing or Harboursing such Prisoner”: Whoever knowingly aids or assists any prisoner or prisoner of war in escaping from lawful custody or harbours or conceals any such prisoner who has escaped from lawful custody or offers or attempts to offer any resistance to the recapture of such prisoner, shall on conviction be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Explanation:-

A prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in the New Sudan, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

Section 102 “Breach of Official Trust Defined”: Any person who, by reason or by means of his employment as a public servant or of his holding any contract with the New Sudan Authority or by reason or by means of his employment by any person holding any such contract, acquires any information in respect of which he is under an obligation of secrecy, express or implied, and at any time communicates or attempts to communicate such information to any person to whom the same ought not to be communicated is said to commit a breach of official trust.

Section 103 “Breach of Official Trust”: Whoever commits a breach of official trust shall:-

- (a) if the communication is made or attempted to be made to the agent of a foreign Government or a Non Governmental Organization, shall on conviction be punished with imprisonment for a term not exceeding fourteen years and may also be liable to a fine;
- (b) in any other case be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 103(A) “Obtaining Information in Breach of Official Trust”: Whoever intentionally obtains any information knowing or having reason to believe that the disclosure of such information would be in contravention of section 102 shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 103(B) “Disclosure and Receipt of Official Information or Documents”:

- (1) (a) Whoever, having in any manner acquired any secret or confidential information as to the affairs of the New Sudan without lawful authority or excuse discloses or attempts to disclose such information to any person; and;
- (b) Whoever, having in any manner acquired any public or official writing or document, whether or not the same is secret or confidential, which is the property of or was in the possession of the New Sudan, without lawful authority or excuse transfers or attempts to transfer such writing or document, or any copy or production thereof or an extract there from, to any person, shall:-

- (i) if the disclosure or transfer is made or attempted to be made to the agent of a foreign State, be punished on conviction with imprisonment for a term not exceeding ten years or with fine or with both.
 - (ii) in any other case be punished on conviction with imprisonment for a term not exceeding two years or with fine or with both.
- (2) Whoever intentionally obtains any information, or intentionally receives any writing or document knowing or having reason to believe that the disclosure of such information, or the transfer of such writing or document contravenes subsection (1) shall on conviction be punished with imprisonment, for a term not exceeding two years or with fine or with both.

Section 104 “Disclosure of Military Information”: Whoever, being in possession of information as to the military affairs of the New Sudan in whatever manner such information has been obtained, at any time willfully communicates the same to any person to whom he knows that it ought not in the interest of the New Sudan to be communicated at that time shall:-

- (a) if the communication is made to the agent of a foreign State, be punished on conviction with imprisonment for a term not exceeding fourteen years and may also be liable to fine; and
- (b) in any other case, be punished on conviction with imprisonment for a term not exceeding two years or with fine or with both.

Section 104(A) “Prohibition on Entering Special Military Area”: Whoever without lawful authority or excuse enters an area declared by an order to be a Special Military Area shall on conviction be punished with imprisonment for a term not exceeding six (6) months or with fine not exceeding LS60 or with both.

Section 104(B) “Prohibition on Obtaining, Communicating Naval, Military and air Information”: (1) No person shall without lawful authority collect, publish, record, communicate or attempt to deduce any information with respect to the Movement, numbers, description or condition of the disciplinary forces of New Sudan or its ships or aircrafts or any information with respect to the plans or conduct of such forces or with respect to the supply, description, condition, transport, prohibition or storage of war material, or with respect to any works or measures undertaken for or connected with or intended for the fortification or defense of any place, or any information of such nature as is likely to be or might be directly or indirectly useful to the enemy or to any person in insurrection or rebellion against the New Sudan.

- (2) Whoever contravenes the provisions of this section commits an offence and shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 104C “Prohibition of Photographing, Sketching, etc. of Certain Places and Things”: (1) No person shall without the permission of the authority of New Sudan take any photograph, or make a sketch, plan, model or other representation of:-

- (a) any military work or any dock or harbour work wherever situated;
- (b) any public building or other place or thing which might be directly or indirectly, useful to the enemy or other person hostile to the New Sudan, and no person in the vicinity of any such work, place or thing shall without lawful authority or excuse have in his possession any photographic or other apparatus or other material or thing suitable for use in making such representation.

(2) Whoever contravenes the provisions of this section commits an offence and shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

CHAPTER 10.

SEDITION

NOTE:- As to sanctions necessary before prosecution for offences under this Chapter, see Section 131 of the Criminal Procedure Act, 2003.

Section 105 - “Arousing Illegal Opposition or Hatred Against the New Sudan”: Whoever does or attempts to do any act which arouses or is likely to arouse illegal opposition against the New Sudan or feeling of hatred or contempt against it or any of its constitutional institutions or its administrative or political organs shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

Explanation 1 - It is not an offence under this section to express criticism or disapproval of the New Sudan Authority or of any act or policy, if it be done in good faith and in temperate language.

Explanation 2 - It is an offence under this section to abet or attempt to abet any person to oppose by force or any other illegal means the New Sudan Authority, or any act or policy of the same, or any constitutional or administrative institution or political organ in whom legislative, executive Judicial or political powers vest; or abuse or insult the New Sudan

Authority or its institutions or publish or keep any writing dealing with such acts.

Section 106 - “Exciting Hatred Between Classes, Clans and Nationalities”: Whoever seeks to excite hatred or contempt against any class of persons, clan or Nationalities in the New Sudan in such a way as to endanger public peace, shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 107 - “Publication and Circulation of False news with intent to Commit an Offence against the New Sudan or Public Tranquility”: Whoever publishes, circulates or reproduces or repeats any statement, rumor or report which he knows or has reason to believe to be false with intent to cause or which is likely to cause fear or alarm to public whereby any person may be induced to commit an offence against the New Sudan or public tranquility, shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

CHAPTER 11.

OFFENCES RELATING TO THE SPLA AND OTHER ORGANIZED FORCES.

Section 108 - “Abetting Mutiny or Attempting to Seduce from Duty”: Whoever abets the committing of mutiny by any member of the SPLA or other organized forces or attempts to reduce any such member from his allegiance or his duty shall on conviction be punished with imprisonment for a term not exceeding fourteen years and shall also be liable to fine.

Section 109 - “Abetment of Mutiny, if Mutiny is Committed in Consequence thereof”: Whoever abets the committing of mutiny by any member of the SPLA, or other organized forces shall, if mutiny be committed in consequence of that abetment, be punished on conviction with death or imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 110 - “Abetment of Assault by Member of the SPLA or other Organized Forces on Superior Officer, while in Execution of Duty”: Whoever abets an assault by any member of the SPLA or other organized Forces on any superior officer while in the execution of his duty, shall:-

- (a) If such assault be committed in consequence of that abetment, shall on conviction shall on conviction be punished with imprisonment for a term not exceeding three years and may also be liable to fine; and

(b) If such assault be not committed in consequence of that abetment, shall on conviction be punished with imprisonment for a term not exceeding one year and may also be liable to fine.

Section 111 - “Abetment of Desertion of Member of SPLA or other Organized Forces”: Whoever abets the desertion of any member of the SPLA or other organized Forces, shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 112 - “Harbouring Deserter”: Whoever, save as hereinafter excepted, knowing or having reason to believe that a member of the SPLA or other organized Forces has deserted, harbours such member shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.
Saving: this section shall not apply in case of husband and wife.

Section 113 - “Abetment of Act of Insubordination by member of the SPLA and other Organized Forces”: Whoever abets what he knows to be an act of insubordination by any member of the SPLA or other organized Forces shall, if such act of insubordination be committed to consequence of that abetment, be punished on conviction with imprisonment for a term not exceeding six months or with fine or with both.

Section 114 “Prohibition of wearing dress or using token Resembling what is used by the SPLA and other Organized Forces or manufacture or trade there with”: (1) Whoever not being a member of those forces wears any uniform used by such forces or wears any dress or uses any token resembling any uniform or token used by such forces with the intention that it may be believed that he is such a member, shall on conviction be punished with imprisonment for a term not exceeding six months or with fine or with both.

(2)Whoever manufactures or trades in any dress or token referred to in sub-section (1) without license from the appropriate authorities shall on conviction be punished with imprisonment for a term not exceeding three months or with fine or with both. The court may forfeit the dress or token subject of the offence.

(3)Whoever wears any dress or uses any token above mentioned to be allocated to his employees without license from appropriate authority shall on conviction be punished with the same punishment provided for in sub-section (1) and the Court may forfeit the dress or token subject of the offence

Section 114(A)- “Unlawful Drill”: (1) Except with the permission of the appropriate authority no person other than a member of the SPLA and

other organized Forces shall instigate, practice, take part in or be concerned in any exercise, movement, or drill of military nature.

(2) Any person who contravenes any of the provisions of this Section shall on conviction be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 114(B) - “Attempts to Cause Disaffection Amongst Members of SPLA and other Organized Forces”: Whoever causes or attempts to cause or does any act calculated to cause disaffection amongst the members of the SPLA and other Organized Forces shall on conviction be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

Section 114(C) -“Attempt to Induce Member of SPLA or other Organized Forces to withhold Services or to Commit any Breach of Discipline”: Whoever attempts to induce or does any act calculated to induce any member of the SPLA or other Organized Forces to withhold his services or to commit any breach of discipline shall on conviction be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 114(D) -“Inducing Member of SPLA or other Organized Forces to withhold Services or to Commit any Breach of Discipline”: Whoever induces any member of the SPLA or other Organized Forces to withhold his services or to commit any breach of discipline shall on conviction be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

CHAPTER 12.

OFFENCES AGAINST THE PUBLIC TRANQUILITY

Section 115 - “Unlawful Assembly Defined”: An assembly of five or more persons is designated as an unlawful assembly, if the common object of the persons composing that assembly is one of the following:-

- (a) To overthrow by criminal force or show of criminal force the New Sudan Authority or any public servant in the exercise of his lawful powers;
- (b) To resist the execution of any law or of any legal process;
- (c) To commit any mischief or criminal trespass or other offence;
- (d) By means of criminal force or show of criminal force to enforce and right or supposed right ;

- (e) By means of criminal force or show of criminal force to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

Explanation:- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Section 116 - “Member of Unlawful Assembly Defined”: Whoever being aware of facts which render any assembly unlawful, intentionally joins that assembly or continues in it, is said to be a member of an unlawful assembly.

Section 117 - “Being Member of Unlawful Assembly” Whoever is a member of an unlawful assembly shall on conviction be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 118 - “Being Member of Unlawful Assembly Armed with Deadly Weapon”: Whoever being a member of an unlawful assembly, armed with any deadly weapon or with any thing which if used as a weapon of offence is likely to cause death, shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 119 - “Joining or Continuing in Unlawful Assembly, knowing it has been Commanded to Disperse”: Whoever joins or continues in an unlawful assembly knowing that such unlawful assembly has been lawfully commanded to disperse, shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

NOTE – See Chapter 8 of the Criminal Procedure Act, 2003.

Section 120 - “Rioting Defined”: Whenever force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly, every member of such assembly commits the offence of rioting.

Section 121 - “Rioting”: Whoever commits offence of rioting, shall on conviction be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 122 - “Rioting Armed with Deadly Weapon”: Whoever commits offence of rioting being armed with a deadly weapon or with any thing which if used as a weapon of offence is likely to cause death, shall on conviction be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 123 - “Every member of Unlawful Assembly who commits an Offence in Prosecution of Common Object”: If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, every person, who at the time of the committing of that offence is a member of the assembly, commits that offence.

Section 124 - “Promoter of an Unlawful Assembly Liable as a Member”: Whoever promotes or does any act with intent to assist the promotion of an unlawful assembly shall be punishable as a member of such unlawful assembly and for any offence which may be committed by any member thereof in the same manner as if he has himself been a member of such unlawful assembly.

Section 125 - “Joining or Continuing in Assembly of five or more Persons knowing that it has been Commanded to Disperse”: Whoever joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace knowing that such assembly has been lawfully commanded to disperse, shall on conviction be punished with imprisonment for a term not exceeding six months or with fine or with both.

Explanation:- If the assembly is an unlawful assembly within the meaning of section 115, the offender will be punishable under section 119 of this Code.

NOTE – See Chapter 8 of the Criminal Procedure Act, 2003.

Section 125(A)- “Wearing and using of Badges, Flags, etc.”: Whoever wears, carries or displays in public any badge, flag, article of clothing or other token or device in such manner or on occasion or in such circumstances as:-

- (a) to constitute an offence under any other provisions of this Code, or of any other Law in force; or
- (b) to cause or is likely to cause annoyance to the public or any section thereof, or a breach of the peace, or disturbance of public tranquility; or the commission of an offence; shall on conviction be punished with imprisonment for a term not exceeding six months or with fine or with both, and in addition the badge, flag, article of clothing or other token or device in respect of which an offence under this section was committed shall be liable to forfeiture, and may be seized by the Police on suspicion that such offence has been committed.

Section 126 - “Assaulting or Obstruction Public Servant when Suppressing Riot etc”:

Whoever assaults or threatens to assault or obstructs or attempts to obstruct any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly or to suppress a riot or affray, or uses or threatens or attempts to use criminal force to such public servant, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 127 - “Disturbance of Public Peace”: Whoever in a public place disturbs the public peace commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or fine of Ls10,000 or with both.

Section 127(A) - “Inciting Disturbance”: Whoever does any act with intent to cause or which is likely to cause a breach of the peace or disturb the public tranquility commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

**CHAPTER 13.
OFFENCES BY OR RELATING TO
PUBLIC SERVANTS**

Section 128 - “Public Servants taking Gratification in Respect of Official Act”: Whoever being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, whether pecuniary or otherwise, other than legal remuneration, as a motive or reward:-

- (a) For doing or forbearing to do any official act; or
- (b) For showing or forbearing to show in the exercise of his official functions favour or disfavour to any person; or
- (c) For rendering or attempting to render any service or disservice to any person with any department of New Sudan Authority or with any public servant as such, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Explanation:- If a person not expecting to be in office obtains gratification by deceiving others into a belief that he is about to be in office and that he will serve them, commits an offence, but may be guilty of cheating, not of an offence under this section.

Explanation 2:- A public servant, who receives a gratification as a motive for doing what he does not intend to do or as a reward for doing what he has not done, commits an offence under this section.

- Illustrations** – (a) (“A”), a Magistrate obtains from (“Z”), a merchant, a situation in (“Z’s”) office for (“A’s”) brother as a reward to (“A”) for deciding a suit in favour of (“Z”). (“A”) has committed an offence under this section.
- (b) (“A”) a commissioner of land accepts a sum of money from a large landowner. It does not appear that (“A”) accepted this sum as a motive or reward for doing or forbearing to do any particular official act or for rendering or attempting to render any particular service to the landowner. But it does appear that (“A”) accepted the sum as a motive or reward for showing general favour in the exercise of his official functions to the landowner. (“A”) has committed an offence under this section.
- (c) (“A”) a public servant induces (“Z”) erroneously to believe that (“A’s”) influence with the New Sudan Authority has obtained for (“Z”) a certain post and thus induces (“Z”) to give (“A”) money as a reward for this service. (“A”) has committed an offence under this section.

Section 129 -“Taking Bribes or Gratification in Order to Influence Public Servant”:

Whoever accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any bribery or gratification whatever as a motive or reward for inducing by corrupt or illegal means any public servant:-

- (a) to do or forbear to do any official act;
- (b) in exercise of the official functions of such public servant to show favour or disfavour to any person;
- (c) to render or attempt to render any service or disservice to any person with any department of the New Sudan Authority or with any public servant as such commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine or with both.

Section 130 - “Abetment by Public Servant of Offence Mentioned in Section 129”:

Whoever being a public servant, in respect of whom an offence under section 129 is committed, abets the offence, commits an offence and shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 131 - “Offering or Giving Bribery or Gratification to Public Servant”: Whoever offers or gives or agrees to give any bribery or gratification whatever whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in section 128 or 129, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine or with both.

Section 131(A) – “Receiving or Giving Bribery or Gratification by Agent or Employee to show Favour or Disfavour”: Whoever being an employee or agent of another accepts or agrees to accept from any person for himself or for any other person any bribery or gratification whatever as a motive or reward for doing or forbearing to do any act in connection with the affairs of his employee or principal or who shows favour or disfavour to any person having any concern in the affairs or business of his employer or principal, and whoever gives or agrees to give to the employee or the agent any reward or remuneration as a motive for doing, or forbearing to do any of the aforesaid commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 132 - “Public Servant Obtaining Valuable thing without Consideration from Person Concerned in Proceeding or Business Transacted by such Public Servant”: Whoever being a public servant accepts or obtains or agrees or attempts to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate:-

- (a) from any person, whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or
- (b) from any person, whom he knows to be interested in or related to the person so concerned, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Illustrations:- (a) (“A”) a Land Registrar hires a house of (“Z”), who has a boundary case pending before him. It is agreed that (“A”) shall pay LS20 a month the house being such that, if the bargain were made in good faith, (“A”) would be required to pay LS50 a month. (“A”) has obtained a valuable thing from (“Z”) without adequate consideration.

- (b) (“Z’s”) brother is arrested and taken before (“A”) a Magistrate on a charge of perjury. (“A”) sells to (“Z”) shares in a company at a premium, when they are selling in the market at discount. (“Z”) pays (“A”) for the shares accordingly. The money so obtained by (“A”) is a valuable thing obtained by him without adequate consideration.

Section 133 – “Offering or Giving Valuable Thing without Consideration”: Whoever in any of the circumstances mentioned in section 132 offers or gives or agrees to give to any public servant or to any person, in whom a public servant is interested or to whom he is related, any valuable thing without consideration or for a consideration which he knows to be inadequate, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 134 - “Third Person Profiting by Bribery or Gratification”: Whoever knowingly profits by bribery any gratification or benefit obtained in any of the circumstances mentioned in sections 128, 129 or 132 but does not take any active part in obtaining such gratification or benefit, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 135 – “Public Servant Dishonestly Receiving Money or Property not Due”: Whoever being a public servant in his capacity as such dishonestly receives from any person any money or other property which he is not authorized to receive or which is in excess of the amount which he is authorized to receive, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 136 - “Public Servant Disobeying Direction of Law with Intent to cause Injury or to save Person from Punishment or Property from Forfeiture”: Whoever, being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant intending thereby or knowing himself to be likely thereby:-

- (a) to cause injury to any person or to the public; or
- (b) to save any person from legal punishment or to subject him to a less punishment than that to which he is liable or to delay the imposition on any person of any legal punishment; or
- (c) to save any property from forfeiture or from any seizure or charge to which it is liable by law or to delay the forfeiture or seizure of any property or the imposition or enforcement of any charge upon any property commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 137 – “Public Servant Framing Incorrect Record or Writing or Mistranslating Document with Intent to cause Injury or to save person from Punishment or Property from Forfeiture”: Whoever, being a public servant and being as such public servant charged with the preparation of any record or other writing or with the translation of any document, frames that record or writing or translates that document in a manner which he knows or believes to be incorrect intending thereby or knowing himself to be likely thereby to cause any of the results mentioned in section 136, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 138 - “Public Servant in Judicial Proceeding making a Report etc. which he knows to be Contrary to Law”: Whoever being a public servant intentionally makes or pronounces in any stage of judicial proceeding any report, order, judgment or decision which he knows to be contrary to law, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 139 - “Commitment for Trial or Confinement by person having Authority who knows that he is Acting Contrary to Law”: Whoever, being a public servant authorized by law to commit persons for trial or to confinement or to keep persons in confinement intentionally commits any person for trial or to confinement or keeps any person in confinement knowing that in so doing he is acting contrary to law, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 140 - “Public Servant Intentionally Omitting to Arrest, or Permitting or Aiding Escape from Confinement or Custody”: Whoever being a public servant whose duty is as such public servant to arrest any person or to keep any person in confinement or custody, intentionally refuses to arrest such person or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement or custody, commits an offence and shall on conviction, be punished as follows:

- (a) with imprisonment for a term not exceeding fourteen years with or without fine, if such person is under sentence of death;
- (b) with imprisonment for a term not exceeding seven years with or without fine if such person is under sentence of imprisonment for a term of ten years or more or is charged with or liable to be arrested for an offence punishable with death;

- (c) with imprisonment for a term not exceeding three years or with fine or with both, if such person is under sentence of imprisonment for a term not exceeding ten years or is charged with or liable to be arrested for an offence punishable with imprisonment for a term which may extend to ten years;
- (d) with imprisonment for a term not exceeding two years or with fine or with both, in any case not above specified.

Section 141 - “Public Servant Negligently Omitting to Arrest or Permitting Escape from Confinement or Custody”: Whoever, being a public servant whose duty as such public servant is to arrest any person or to keep him in confinement or custody, negligently omits to arrest that person or negligently suffers that person to escape from confinement or custody, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 142- “Public Servant Willfully Omitting to Perform Duty, if such Omission Causes Danger etc.” Whoever, being a public servant willfully omits to perform any duty pertaining to his office he is legally bound to perform, if such omission causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 143- “Wrongful Abandonment of Duty by Public Servant”: Whoever, being a public servant wrongfully abandons his duties in pre-arranged agreement with two or more other public servants, if the intention or effect of such abandonment is to interfere with the performance of a public service to an extent which will cause injury or damage or grave inconvenience to the community, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 144 - “Public Servant Engaging in Trade”: Whoever, being a public servant engages in any trade or business contrary to the provisions of any law, order or regulation, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 145 - “Public Servant Engaging in Trade”: Whoever, being a public servant and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property either in his own name or in the name of another or jointly or in shares with others, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

NOTE- See section 321 of the Criminal Procedure Act, 2003.

Section 146 - “Personating a Public Servant”: Whoever pretends to hold any particular office as a public servant knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 147 - “Wearing Dress or using Token used by Public Servant”: Whoever not belonging to a certain class of public servants wears any dress or carries any token resembling any dress or token used by that class of public servants with the intention that it may be believed that he belongs to that class of public servants, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

CHAPTER 14

CONTEMPT OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

NOTE – As to sanction necessary before taking cognizance of certain offences under this Chapter, see section 130 of the Criminal Procedure Act, 2003.

Section 148 - “Absconding to Avoid Service of Summons, Notice, etc”: Whoever absconds in order to avoid being served with a summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS20 or with both, and, if the summons or notice or order is to attend in person or by agent or to produce a document in a Court, with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 149 - “Preventing Service or Publication of Summons etc”: Whoever in any manner intentionally prevents the serving on himself or on any other person of any summons, notice or order proceeding from any public servant legally competent as such public servant to issue such summons, , notice or order, or

intentionally prevents the lawful affixing to any place of any such summons, notice or order, or

intentionally prevents the lawful making of any proclamation under the authority of any public servant legally competent as such public servant to direct such proclamation to be made,

Commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS10 or with both; or

If the summons, notice, order or proclamation is to attend in person or by agent or to produce a document in Court, with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 150 - “Non-attendance in Obedience to any Order from a Public Servant”: Whoever, having been required by a summons, notice, order or proclamation proceeding from any public servant legally competent as such public servant to issue the same to attend in person or by agent at a certain time and place, intentionally and without reasonable cause refuses or omits to attend at the place and time or departs from that place before the time at which it is lawful for him to depart, shall be punished with imprisonment for a term not exceeding one month or with fine not exceeding Ls10 or with both; or

If the summons, notice, order or proclamation is to attend in person or by agent in a Court, with imprisonment for a term not exceeding six months or with fine not exceeding Ls60 or with both.

Section 151 - “Omission to Produce Document to Public Servant”: Whoever, having been required by a summons, notice, order or proclamation proceeding from a public servant legally competent as such public servant to issue the same to produce or deliver up any document or other thing, intentionally omits so to produce or deliver up the same, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS 10 or with both; or

If the document is to be produced or delivered up to a Court, with imprisonment for a term not exceeding six months or with fine not exceeding LS60 of with both.

Section 152 – “Omission to give Notice or Information to Public Servant by Person Legally Bound to give it”: Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS10 or with both; or

If the notice or information required to be given respects the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to the arrest of an offender, with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Note - For instances in which a person is legally bound to give information, see sections 109, 110 and 110A of the Criminal Procedure Act, 2003.

Section 153 – “Furnishing False Information”: Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes as true information on the subject which he knows or has reason to believe to be false, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both; or

If the information which he is legally bound to give respects the commission of an offence or is required for the purpose of preventing the commission of an offence or the arrest of an offender, with imprisonment for a term not exceeding two years or with fine or with both.

Section 154 – “False Information with Intent to Mislead Public Servant”: Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause such public servant:-

- (a) to do or to omit anything which such public servant ought to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury or annoyance of any person,

Commits an offence and shall on conviction be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Illustrations:- (a) (“A”) informs a Magistrate that (“Z”) a policeman subordinate to such Magistrate has been guilty of neglect of duty or misconduct knowing such information to be false and knowing it to be likely that the information will cause the Magistrate to dismiss (“Z”). (“A”) has committed an offence under this section;

(b) (“A”) falsely informs a public servant that (“Z”) has contraband goods in a secret place knowing such information to be false and knowing it is likely that the consequence of the information will be a search of (“Z’s”) premises attended with annoyance to (“Z”). (“A”) has committed an offence under this section;

(c) (“A”) falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants but knows it to be likely that in consequence of his information the police will make inquiries and institute searches in the village to the annoyance of the villagers or some of them. (“A”) has committed an offence under this section.

Section 155 - “Refusing Oath or Affirmation when duly required by Public Servant”: Whoever refuses to bind himself by an oath or affirmation to state the truth when required so to bind himself by public servant legally competent to require that he shall so bind himself, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 156 – “Refusing to Answer Public Servant Authorized to Question”: Whoever, being legally bound to answer questions put to him on any subject by any public servant in the exercise of the lawful powers of such public servant, refuses to answer any such question, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 157 - “Refusing to Sign Statement”: Whoever refuses to sign any statement made by him when required to sign that statement by a public servant legally competent to require that he shall sign that statement, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three months or with fine not exceeding LS30 or with both.

Section 158 - “Resistance to Taking of Property by Lawful Authority of Public Servant”: Whoever offers any resistance to the taking of any property by the lawful authority of any public servant knowing or having reasons to believe that he is such public servant, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 159 - “Obstructing Sale of Property Offered for Sale by Lawful Authority of Public Servant”: Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS10 or with both.

Section 160 - “Illegal Purchase or Bid for Property Offered for Sale by Authority of Public Servant”: Whoever at any sale of property held by the lawful authority of a public servant as such purchases or bids for any property on account of any person whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, commits an offence and shall on conviction be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS 10 or with both.

Section 161 - “Obstructing Public Servant in Discharge of Public Functions”: Whoever voluntarily obstructs any public servant in discharge of his public functions, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three months or with fine not exceeding LS30 or with both.

Section 162 - “Omission to Assist Public Servant when Bound by Law to give Assistance”: Whoever, being legally bound to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three months or with fine not exceeding Ls.30 or with both.

Note :- See section 32, 94 and 108 of the Criminal Procedure Act, 2003.

Section 162(A)- “Contravention of Residence Order”: Whoever being legally prohibited from residing in any Payam, or being legally ordered to reside in any Payam intentionally disobeys any such prohibition or order, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding Ls60 or with both.

Note:- See section 92 (d) of the Criminal Procedure Act, 2003.

Section –163 “Disobedience to Order Duly Promulgated by Public Servant”:

Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall if such disobedience causes or tends to cause obstruction, annoyance or injury to any person lawfully employed, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine not exceeding LS20 or with both; and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Section 164 - “Threat of Injury to Public Servant”: Whoever holds out any threat of injury to any public servant or to any person, in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of the public functions of such public servant, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 165 - “Threat of Injury to Induce Person to Refrain from Applying for Protection to Public Servant”: Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from applying for protection against any injury to any public servant legally empowered as such to give such protection or to cause such protection to be given, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 166 - “Intentional Insult or Interruption to Public Servant Sitting in Judicial Proceeding”: Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding, six months or with fine not exceeding Ls60 or with both.

CHAPTER 15.

FALSE EVIDENCE AND OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE.

Note:- As to sanction necessary before taking cognizance of certain offences under this Chapter, see section 130 of the Criminal Procedure Act, 2003.

Section 167 - “Offences Relating to Evidence. Giving False Evidence Defined”:

Whoever, being legally bound by an oath or by any express provision of law to state the truth or being bound by law to make a declaration upon any subject, makes any statement which is false and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1:- A statement is within the meaning of this section whether it is made verbally or otherwise.

Explanation 2:- A false statement as to the belief of the person attesting is within the meaning of this section and a person may be guilty of giving false evidence by attesting that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations:- (a) (“A”), in support of a just claim which (“B”) has against (“Z”) for LS10 falsely swears on a trial that he heard (“Z”) admit the justice of (“B’s”) claim. (“A”) has given false evidence.

(b) (“A”), being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of (“Z”) when he does not believe it to be the handwriting of (“Z”). Here (“A”) states that which he knows to be false and therefore gives false evidence.

(c) (“A”), knowing the general character of (“Z’s”) handwriting, states that he believes a certain signature to be the handwriting of (“Z”); (“A”) in good faith believing it to be so.

Section 168 - “Fabricating False Evidence Defined”:

Whoever causes any circumstances to exist or makes any false entry in any book or record or makes any document containing a false statement intending that such circumstance, false entry or false statement, may be relied upon evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator and intending that such circumstance, false entry or false statement so appearing in evidence may cause any person, who in such proceeding to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence.

Illustrations:-

(a) (“A”) puts jewels into a box belonging to (“Z”) with the intention that they may be found in that box and that this circumstance may cause (“Z”) to be convicted of theft. (“A”) has fabricated false evidence.

- (b) (“A”) makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court. (“A”) has fabricated false evidence.
- (c) (“A”), with the intention of causing (“Z”) to be convicted of a criminal conspiracy, writes a letter in imitation of (“Z’s”) handwriting purporting to be addressed to an accomplice in such criminal conspiracy and puts the letter in a place which he knows that the police are likely to search. (“A”) has fabricated false evidence.

Section 169 - “Giving or Fabricating False Evidence”: Whoever intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceedings commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine;

And whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment for a term not exceeding three years and may also be liable to fine.

Illustration:- (“A”), in an inquiry before a Magistrate for the purpose of ascertaining whether (“Z”) ought to be committed for trial makes, on oath, a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, (“A”) has given false evidence.

Section 170 - “Giving or Fabricating False Evidence with Intent to Procure Conviction of Offence Punishable with Death”: Whoever gives or fabricates false evidence intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is punishable with death commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine;

And, if an innocent person is convicted and executed consequence of such false evidence, the person who gave or fabricated such false evidence shall be punished with death or imprisonment for life or for any less term and may also be liable to fine.

Section 171 - “Giving or Fabricating False Evidence with Intent to Procure Conviction of Offence Punishable with Imprisonment”: Whoever gives or fabricates false evidence, intending thereby to cause or knowing it to be likely that he will thereby cause any person to be convicted of an offence which is not punishable with death but is punishable with imprisonment for a term of seven years or more, commits an offence and shall on conviction, be punished as a person convicted of that offence would be liable to be punished.

Section 172 - “Using Evidence Known to be False”: Whoever uses or attempts to use as true or genuine any evidence which he knows to be false or fabricated, commits an offence and shall on conviction, be punished in the same manner as if he gave or fabricated false evidence.

Section 173 - “Issuing or Signing False Certificate”: Whoever issues or signs any certificate required by law to be issued or signed or relating to any fact of which such certificate is legally admissible in evidence, believing or knowing that such certificate is false in any material point, commits an offence and shall on conviction, be punished in the same manner as if he gave false evidence.

Section 174 - “Using as True a Certificate known to be False”: Whoever uses or attempts to use any such certificate as a true certificate knowing the same to be false in any material point, commits an offence and shall on conviction, be punished in the same manner as if he gave false evidence.

Section 175 - “False Statement made in Declaration which is by Law Receivable as Evidence”: Whoever in any declaration made or subscribed by him, which declaration any Court or any public servant or other person is bound or authorized by law to receive as evidence of any fact, makes any statement, which is false and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, commits an offence and shall on conviction, be punished in the same manner as if he gave false evidence.

Section 176 - “Using as True such Declaration Knowing it to be False”: Whoever uses or attempts to use as true any of the declarations referred to in section 175, knowing the same to be false in any material point, commits an offence and shall on conviction, be punished in the same manner as if he gave false evidence.

Explanation:- A declaration, which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 175 and 176.

Section 177 - “False Translation:” Whoever knowingly makes a false translation of the evidence of a witness or of the statement of an accused person or of a party to a civil suit or makes a false translation or copy of any document which may be used as evidence with the intention that such translation or copy shall be used in any manner in any judicial proceeding or knowing that it is likely to be so used, and whoever knowingly uses such translation or copy in any manner in any judicial proceeding commits an offence and shall on conviction, be punished in the same manner as if he gave false evidence.

Section 178 - “Destruction of Document to Prevent its Production as Evidence” Whoever secretes or destroys and document, which he may be lawfully compelled to produce as evidence in Court or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid or after he shall have been lawfully summoned or required to produce the same for that purpose, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 179 - “Screening or Harbours Offender”: Whoever knowingly or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or gives any information respecting the offence which he knows or believes to be false, or harbours or conceals a person whom he knows or has reason to believe to be the offender with the intention of screening such person from legal punishment or prevents his arrest, commits an offence and shall on conviction:-

(a) if the offence which he knows or believes to have been committed is punishable with death or with imprisonment for more than ten years, be punished with imprisonment for a term not exceeding five years and may also be liable to fine;

(b) if the offence is punishable with imprisonment for a term which extends to ten years, be punished with imprisonment for a term not exceeding three years and may also be liable to fine;

(c) if the offence is punishable with imprisonment for any term not extending to ten years, be punished with imprisonment for a term not exceeding one-fourth of the longest term of the imprisonment provided for the offence or with fine or with both;

(d) in any other case, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Exception:- The provisions of this section shall not extend to the case of the harbouring or concealment of an offender by the husband or wife of the offender.

Explanation:- In this section, the word “offence” includes any act done outside the New Sudan which if done in the New Sudan would be an offence and the punishment for the offence shall be deemed to be the same as the punishment would be if the act were done in the New Sudan.

Illustration:- (“A”), knowing that (“B”) has murdered (“Z”), assists (“B”) to hide the body with the intention of screening (“B”) from punishment, (“A”) is liable to imprisonment for five years and also to fine.

Section 180 - “Taking Gift etc. to Screen an Offender from Punishment”: Whoever accepts or attempts to obtain or agrees to any gratification for himself or any other person or any restitution of property to himself or any other person in consideration of his concealing an offence or screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment, or gives or causes or offers or agrees to give or cause any gratification to any other person or to restore or cause the restoration of any property to any other person, in consideration of that other person’s concealing an offence or of his screening any person from legal punishment for any offence or of his not proceeding against any person for the purpose of bringing him to legal punishment, commits an offence and shall on conviction:-

(a) if the punishment prescribed for the offence is death or imprisonment for more than ten years, be punished with imprisonment for a term not exceeding five years and may also be liable to fine;

(b) if the punishment prescribed for the offence is imprisonment for a term not exceeding ten years, be punished with imprisonment for a term not exceeding three years and may also be liable to fine;

(c) if the punishment prescribed for the offence does not extend to ten years, be punished with imprisonment for a term not exceeding one-fourth of the longest term of imprisonment prescribed for the offence, or with fine or with both;

(d) in all other cases, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

Exception:- The provisions of this section do not extend to any case in which the offence may lawfully be compounded.

Explanation:- In this section, the word “offence” includes any act done outside the New Sudan which if done in the New Sudan would be an offence and the punishment for the offence shall be deemed to be the same as the punishment would be if the act were done in New Sudan.

Section 181 - “Harbouring Robbers or Brigands”: Whoever, knowingly or having reason to believe that any persons are about to commit or have recently committed robbery or brigandage, harbours them or any of them with the intention of facilitating the commission of such robbery or brigandage or screening them or any of them from punishment, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Exception:- This provision does not extend to the case of the harbouring of an offender by the husband or wife of the offender.

Explanation:- For the purpose of this section it is immaterial whether the robbery or brigandage is intended to be committed or has been committed within the New Sudan or elsewhere.

Section 182 - “Resistance to Arrest and Escape”: Whoever intentionally offers any resistance or illegal obstruction to the lawful arrest of any other person or rescues or attempts to rescue any other person from any confinement or custody in which that person is lawfully detained, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both,

If such other person is charged with or liable to be arrested for an offence punishable with imprisonment for a term not exceeding ten years, shall be punished with imprisonment for a term not exceeding three years and may also be liable to fine; or

If such other person is charged with or liable to arrested for an offence punishable with death or is under sentence of imprisonment for a term of ten years or more, shall be punished with imprisonment for a term not exceeding seven years and may also be liable to fine; or

If such other person is under sentence of death, shall be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 183 - “Resistance or Obstruction by a Person to his Lawful Arrest or Escape”: Whoever intentionally offers any resistance or illegal obstruction to the lawful arrest of himself for any offence with which he is charged or of which he has been convicted or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 184 - “Resistance or Obstruction to Lawful Arrest or Escape, in Cases not provided for by Section 183”: Whoever in any case not provided for in section 183 intentionally offers any resistance or illegal obstruction to the lawful arrest of himself or escapes or attempts to escape from any custody in which he is lawfully detained, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60 or with both.

FRAUDULENT DEALING WITH PROPERTY

Section 185 - “Fraudulent or Dishonest Dealing with Property to Prevent its Seizure or its Application According to Law”: Whoever, with intent to prevent any property of himself or any other person or any interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence, which has been pronounced or which he knows to be likely to be pronounced by a Court or other competent authority, or from being taken in execution of a decree or order, which has been made or which he knows to be likely to be made, by a Court, or from being distributed according to law amongst the creditors of himself or such other person, or from being available according to law for payment of the debts of himself or such other person, dishonestly or fraudulently removes or conceals or assists in removing or concealing such property or dishonestly or fraudulently transfers, delivers or releases such property or any interest therein to any person or practices any deception touching the same, or dishonestly or fraudulently accepts, receives or claims such property or any interest therein, knowing that he has no right or rightful claim thereto, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Explanation:- In this section, “property” includes rights of action and property of every other description whether movable or immovable and whether corporeal or incorporeal.

Section 186 - “Fraudulently Suffering Decree for Sum not Due”: Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit by any person for a sum not due or for a larger sum than is due to such person or for any property or interest in property to which such person is not entitled or fraudulently causes or suffers a decree or order or any part of such decree or order, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Illustration:- (“A”) institutes a suit against (“Z”). (“Z”) knowing that (“A”) is likely to obtain a decree against him fraudulently suffers a judgment to pass against him for a large amount at the suit of (“B”), who has no just claim against him, in order that (“B”), who has no just claim against him, in order that (“B”), either on his own account or for the benefit of (“Z”), may share in the proceeds of any sale of (“Z’s”) property which may be made under (“A’s”) decree. (“Z”) has committed an offence under this section.

Section 187 - “Fraudulently Obtaining Decree for Sum not Due”: Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due or for any property or interest in property to which he is entitled or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied or fraudulently suffers or permits any such act to be done in his name, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 188 - “Dishonest or Fraudulent Execution of Deed of Transfer Containing False Statement of Consideration”: Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property or any interest therein and which contains any false statement relating to the consideration for such transfer or person or persons for whose use or benefit it is really intended to operate, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

MISCELLANEOUS

Section 189 - “Giving False Information Respecting an Offence Committed”: Whoever, knowingly or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 190 - “False Personation for Purpose of Act or Proceeding in Suit or Prosecution”: Whoever falsely personates another and in such assumed character makes any admission or statement or causes any process to be issued or becomes bail or security or does any other act in any suit or criminal prosecution, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Explanation:- This section applies whether the personation is of an actual or factious person but does not render punishable the mere assumption of a false name.

Section 191 - “False Charge of Offence made with Intent to Inure”: Whoever with intent to cause injury to any person institutes or causes to be instituted any criminal proceedings against that person or falsely charges any person with having committed an offence knowing that there is no just or lawful ground for such proceeding or charge against that person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both; and

If such criminal proceeding be instituted on a false charge of an offence punishable with death or imprisonment for seven years or more, shall be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 192 - “Taking Gift to Help to Recover Movable Property”: Whoever takes or agrees or consents to take any gratification under pretence or on account of helping any person to recover any movable property of which he shall have been deprived by any offence, unless he uses all means in his power to cause the offender to be brought to justice, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Explanation:- In this section, the word “offence” includes any act done outside the New Sudan which if done in the New Sudan would be an offence.

Section 192(A) – “Influencing Course of Justice”: Whoever with intent to influence the course of justice in any civil or criminal proceedings does any act whereby the fair hearing, trial or decision of any matter in that proceeding may be prejudiced, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 192(B) – “Influence on Accused or Witness”: Without prejudice to the generality of the provisions contained in section 192A any member of the police force or any other person in authority, who influences any accused person or witness or takes part or assists in influencing any such accused person or witness in contravention of sections 118 and 235 of the Criminal Procedure Act, 2003, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

CHAPTER 16

OFFENCES RELATING TO COIN AND NOTES

Section 193 - “Coin and Note Defined”: Coin is metal used for the time being as money and stamped and issued by or under the New Sudan authority or any government in order to be so used.

For the purpose of this Chapter the word “note” includes every currency note issued by or under the authority of any government and intended to be used as equivalent to or as a substitute for money and any banknote which is legally current in any country.

Section 194 - “Counterfeiting Coin and Notes” Whoever counterfeits or knowingly performs any part of the process of counterfeiting any coin or note, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Explanation:- A person commits this offence who, intending to practice deception or knowing it to be likely that deception will thereby be practiced, causes a genuine coin or note to appear like a different coin or note.

Section 195 - “Making Buying or Selling Instrument for Counterfeiting Coin or Notes”:

Whoever makes or mends or performs any part of the process of making or mending or buys, sells or disposes of any die or instrument for the purpose of being used or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting coin or notes, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 196 - “Possession of Instrument or Material for the Purpose of using the same for Counterfeiting Coin or Notes”: Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin or notes or knowing or having reason to believe that the same is intended to be used for that purpose, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 197 - “Import or Export of Counterfeit Coin or Notes”: Whoever imports into the New Sudan or exports there from any counterfeit coin or notes knowing or having reason to believe that the same is counterfeit, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 198 - “Fraudulently or Dishonestly Diminishing Weight or Altering Composition of Coin”: Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

Explanation:- A person who scoops out part of a coin and puts anything else into the cavity alters the composition of that coin.

Section 199 - “Delivery of Coin or Note Possessed with Knowledge that it is Counterfeit”: Whoever, having in his possession any counterfeit coin or note or any coin with respect to which an offence under section 198 has been committed and having known at the time when he became in possession of such coin or note that such coin or note was counterfeit or that such offence had been committed with respect to such coin, fraudulently or with intent that fraud may be committed delivers such coin or note to any other person or attempts to induce any other person to receive the same, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 200 - “Possession of Coin or Note by Person who knew it to be Counterfeit when he became Possessed thereof”: Whoever fraudulently or with intent that fraud may be committed is in possession of any counterfeit coin or note or of any coin with respect to which an offence under section 198, has been committed having known at the time of being in possession thereof that such coin or note was counterfeit or that such offence had been committed with respect to such coin or note, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

Section 201 - “Delivery of Coin or Note as Genuine which when first Possessed the Deliverer did not know to be Counterfeit”: Whoever delivers to any other person as genuine or attempts to induce any other person to receive as genuine any counterfeit coin or note which he knows to be counterfeit but which he did not know to be counterfeit at the time when he took it into his possession, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine not exceeding ten times the value of the coin or note counterfeited, or with both.

Section 202 - “Delivery of Coin as Genuine which when first Possessed the Deliverer did not know to be Altered”: Whoever delivers to any other person as genuine or attempts to induce any person to receive as genuine any coin in respect of which he knows that any such operation as is mentioned in section 198 has been performed but in respect of which he did not at the time when he took it into his possession know that such operation had been performed, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine not exceeding ten times the value of the coin for which the altered coin is passed or attempted to be passed, or with both.

CHAPTER 17.

OFFENCES RELATING TO REVENUE STAMPS

Section 203 - “Revenue Stamp Defined” For the purposes of this chapter the words “revenue stamp” mean a stamp issued by or under the authority of the New Sudan or the government of any other country for postal or other revenue purposes.

Section 204 - “Counterfeiting Revenue Stamp”: Whoever counterfeits or knowingly performs any part of the process of counterfeiting any revenue stamp, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Explanation:- A person commits this offence who counterfeits by causing a genuine revenue stamp of one denomination to appear like a genuine revenue stamp of a different denomination.

- Section 205 - “Having in Possession Instrument or Material for Counterfeiting Revenue Stamp”:** Whoever has in his possession any instrument or material for the purpose of being used or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting any revenue stamp, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 206 - “Making Buying or Selling Instrument for Counterfeiting Revenue Stamp”:** Whoever makes or performs any part of the process of making or buys or sells or disposes of any instrument for the purpose of being used or knowing or having reason to believe that it is intended to be used for the purpose of counterfeiting any revenue stamp, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 207 - “Import, Export, use or Sale of Counterfeit Revenue Stamp”:** Whoever imports into the New Sudan or exports there from or uses as genuine or sells or offers for sale any stamp which he knows or has reason to believe to be a counterfeit of any revenue stamp, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 208 - “Having Possession of Counterfeit Revenue Stamp”:** Whoever has in his possession any stamp which he knows to be a counterfeit of any revenue stamp intending to use or dispose of the same as a genuine revenue stamp, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 209 - “Effacing Writing from Substance Bearing Revenue Stamps, or Removing from Document a Stamp used for it, with Intent to cause Loss”:** Whoever fraudulently or with intent to cause loss to New Sudan Authority or any government removes or effaces from any substance bearing any revenue stamp any writing or document for which such revenue stamp has been used or removes from any writing or document a revenue stamp which has been used for such writing or document in order that such revenue stamp may be used for different writing or document, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 210 - “Using Revenue Stamp Known to have been used Before”: Whoever fraudulently or with intent to cause loss to New Sudan Authority or any government, uses for any purpose any revenue stamp which he knows to have been used before, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 211 - “Erasure of Mark Denoting that Revenue Stamp has been used”: Whoever fraudulently or with intent to cause loss to New Sudan or any government erases or removes from any revenue stamp any mark put or impressed upon such revenue stamp for the purpose of denoting that the same has been used or knowingly has in his possession or sells or disposes of any such revenue stamp from which such mark has been erased or removed or sells or disposes of any such revenue stamp which he knows to have been used, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

CHAPTER 18

OFFENCES RELATING TO WEIGHTS AND MEASURES

Section 212 - “Fraudulent use of False Instrument for Weighing”: Whoever fraudulently uses any instrument for weighing which he knows to be false, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 213 - “Fraudulent use of False Weight or Measure”: Whoever fraudulently uses any false weight or false measure of length or capacity or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 214 - “Being in Possession of False Weight or Measure”: Whoever is in possession of any instrument for weighing or any measure of length or capacity which he knows to be false and intending that the same may be fraudulently used, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 215 - “Making Buying or Selling False Weight or Measure”: Whoever makes, buys sells, or disposes of any instrument for weighing or any weight or any measure of length or capacity which he knows to be false in order that the same may be used as true or knowing that the same is likely to be used as true, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

CHAPTER 19.

OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

Section 216 - “Public Nuisance Defined”: (1) A person commits an offence of public nuisance who does an act or commits an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right,

(2) Where premises on which a public nuisance has occurred are occupied by two or more persons in common each of such persons shall be liable to conviction on account of the nuisance in the absence of sufficient evidence that he has not committed such an offence.

Explanation 1:- A public nuisance does not cease to be an offence because it causes some convenience or advantage.

Explanation 2:- Whether an act or omission, a public nuisance is a matter of fact, which depends on the character of the neighbourhood.

Illustration:- A powerful steam whistle sounded at intervals during the day, which might be a public nuisance in a residential quarter, may not be a public nuisance in a manufacturing quarter.

Section 217 - “Adulteration of Food or Drink Intended for Sale”: Whoever adulterates any article of food or drink or abstracts from any article of food or drink any part thereof so as to affect injuriously the quality, substance or nature, intending to sell such article as food or drink without notice to the purchaser or knowing that it is likely that the same will be sold as food or drink without notice to the purchaser, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

And if the effect of such adulteration or abstraction is to make the article noxious as food or drink, then with imprisonment for a term not exceeding three years or with fine or with both.

Note:- See section 305 of the Criminal Procedure Act, 2003.

Section 218 - “Sale of Food or Drink not Corresponding to Description”: Whoever sells any article of food or drink which is not of the nature, substance and quality demanded by the purchaser or of the article which the seller represents it to be, commits an offence and shall on conviction, be punished with fine not exceeding LS50.

Note – See section 305 of the Criminal Procedure Act, 2003.

Section 219 - “Sale of Adulterated Food or Drink”: Whoever sells or offers or exposes for sale any article of food or drink, with which any admixture has been fraudulently made to increase the bulk, weight or measure of such article or to conceal the inferior quality thereof, or any article of food or drink from which any part has been intentionally abstracted so as to affect injuriously its quality, substance or nature, without notice to the purchaser, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 220 - “Sale of Noxious Food or Drink”: Whoever sells or offers or exposes for sale any article of food or drink which has been rendered or has become noxious or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as or unfit for food or drink, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Note – see section 305 of the Criminal Procedure Act, 2003.

Section 221 - “Adulteration of Drugs”: Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation or to make it noxious, intending that it shall be sold or used for or knowing it to be likely that it will be sold or used for any medical purpose as if it has not undergone such adulteration, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note – See section 305 of the Criminal Procedure Act, 2003.

Section 222 - “Sale of Adulterated Drugs”: Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or render it noxious, sells the same or offers or exposes it for sale or issues it from any dispensary for medical purposes as unadulterated or causes it to be used for medical purposes by any person not knowing of the adultration, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note - See section 305 of the Criminal Procedure Act, 2003.

Section 223 - “Sale of Drug as a Different Drug or Preparation”: Whoever knowingly sells or offers or exposes for sale or issues from a dispensary for medical purposes any drug or medical preparation as a different drug or medical preparation, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note – See section 305 of the Criminal Procedure Act, 2003.

Section 224 - “Fouling Water of Public Well or Reservoir”: Whoever intentionally corrupts or fouls the water of any public well or reservoir or other public water supply so as to render it less fit for the purpose for which it is ordinarily used, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note – See section 305 of the Criminal Procedure Act, 2003.

Section 225 - “Making Atmosphere Noxious to Health”: Whoever intentionally vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, commits an offence and shall on conviction, be punished with fine not exceeding LS10.

Section 226 - “Exhibition of False Light, Mark or Buoy”: Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 227 - “Obstruction in Public Way or Line of Navigation”: Whoever by doing any act or by omitting to take order with respect to any property in his possession or under his charge causes obstruction to any person in any public way or public line of navigation, commits an offence and shall on conviction, be punished with fine not exceeding LS20.

Section 228 - “Employees Engaged on Work of Public Utility Ceasing Work without Notice”: Whoever being an employee engaged in any work connected with the public health or safety or with any service of public utility ceases from such work in pre-arranged agreement with two or more other such employees without giving to his employer fifteen days notice of his intention so to do, if the intention or effect of such cessation is to interfere with the performance of any general service connected with public health, safety or utility to an extent which will cause injury or damage or grave inconvenience to the community, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 229 - “Negligent Conduct Causing Danger to Person or Property”: Whoever does any act in a manner so rashly or negligent as to endanger human life or to be likely to cause hurt or injury to any person or property.

Knowingly or negligently omits to take such order with respect to any property or substance in his possession or under his control or with any operations under his control as is sufficient to guard against probable danger to human life from such property, substance or operations, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 230 - “Negligent Conduct with Respect to Animal”: Whoever knowingly or negligently omits to take such order with respect to any animal in his possession as is sufficient to guard against any probable danger to human life or any probable danger of grievous hurt from such animal, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 231 - “Omission to Assist Person Injured or Unconscious or in Peril of his Life”: Whoever having it in his power to assist a person injured or unconscious or in peril of his life willfully omits to render such assistance as is possible without exposing himself or others to danger, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 231(A) – “Breach of Contract to Attend on and Supply Wants of Helpless Person”: Whoever, being bound by a lawful contract to attend on or to supply the wants of any person, who by reason of youth or of unsoundness of mind or of disease or bodily weakness is helpless or incapable of providing for his own safety or of supplying his own wants, voluntarily omits so to do, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 232 - “Punishment for Public Nuisance in Cases not Otherwise Provided”: Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine not exceeding LS10.

Section 233 - “Continuance of Nuisance after Injunction to Discontinue”: Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Note – See section 106 of the Criminal Procedure Act, 2003.

Section 234 - “Obscene or Indecent acts”: Whoever to the annoyance of others does any obscene or indecent act in a public place, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 235 - “Sale etc. of Obscene Books etc”: Whoever sells or distributes, imports or prints, or makes for sale or hire or willfully exhibits to public view any obscene writing, book, newspaper, film, gramophone record or similar article, drawing, painting, representation or figure or attempts or offers so to do or has in his possession any such obscene book or other thing for the purpose of sale, distribution or public exhibition, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Note – See section 305 of the Criminal Procedure Act, 2003.

Section 236 - “Obscene Songs etc”: Whoever, to the annoyance of others, sings, recites, utters or reproduces by any mechanical means any obscene song or words in or near any public place, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 237 - “Keeping Gaming House or Lottery Office”: Whoever keeps any house or place whereto the public are admitted for the purpose of playing any game of chance or keeps any office or place for the purpose of drawing any lottery or assists in the conduct of any such house or place or office without license, or permission from the appropriate authority, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

CHAPTER 20

CRUELTY TO ANIMALS

- Section 238 - “Ill-treatment of Domestic Animal”:** Whoever cruelly beats, tortures or otherwise willfully ill-treats any tame, domestic or wild animal, which has previously been deprived of its liberty, or arranges, promotes or organizes fights between cocks, rams, bulls or other domestic animals or encourages such act, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two months or with fine.
- Section 239 - “Overriding etc. and Neglect of Animal”:** Whoever wantonly overrides, overdrives or overloads any animal or wantonly employs any animal, which by reason of age, sickness, wounds or infirmity is not in a condition to work, or neglects any animal in such a manner as to cause it unnecessary suffering, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine or with both.
- Section 240 - “Power to Order Temporary Custody or Destruction of Animal”:** On conviction of an offence under section 238 or section 239 the court may in addition to or in substitution for any other penalty make an order for the temporary custody by the police of the animal in respect of which such offence has been committed and may order the person convicted to pay such sum meanwhile as the court thinks fit for the maintenance and treatment of such animal and such sum shall be recoverable in the same manner as a fine inflicted under this Code; or, if such animal is suffering from incurable disease or injury, may order it to be destroyed.
- Section 241 - “Time Limit for Prosecution”:** No proceedings in respect of an offence under this Chapter shall be taken after the expiration of one month from the commission of the offence.

CHAPTER 21

OFFENCES RELATING TO RELIGION

- Section 242 - “Insulting or Exciting Contempt of Religious Creed”:** Whoever by any means publicly insults or seeks to excite contempt of any religion in such a manner as to be likely to lead to a breach of the peace, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 242(A) – “Abuse of Religious and Noble Belief”: Whoever abuses religious or noble spiritual beliefs for political exploitation or with the intention to excite or promote feeling of hatred, enmity or discord among religious communities or commits an act intended or is likely to cause the same, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Explanation:- Religious creed and noble beliefs include African traditional beliefs.

Section 243 - “Injury or Defiling Place of Worship with Intent to Insult the Religion of any Class”: Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 244 - “Disturbing Religious Assembly”: Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 245 - “Committing Trespass on Burial Places etc.”: Whoever, with the intention of injuring the feelings of any person or of insulting the religion of any person or with the knowledge that the feelings of any person are likely to be injured thereby, commits any trespass in any place of worship or on any place of burial or offers any indignity to any human corpse or commits any act of disrespect towards such corpse or causes disturbance to any persons assembled for the performance of funeral ceremonies, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

CHAPTER 22.

OFFENCES AFFECTING HUMAN BODY

OFFENCES AFFECTING LIFE

Section 246 - “Culpable Homicide Define”: Whoever causes death by doing an act:-
(a) with the intention of causing death or such bodily injury as is likely to cause death; or
(b) with the knowledge that he is likely by such act to cause death; commits the offence of culpable homicide.

Note - See section 20A for the meaning of the word “likely”.

Illustrations:- (a) (“A”) lays sticks and turf over a pit with the intention of thereby causing death or with the knowledge that death is to be thereby caused. (“Z”) believing the ground to be firm treads on it, falls in and is killed. (“A”) has committed the offence of culpable homicide.

Note:- And see illustration (a) to section 248.

(b) (“A”) knows (“Z”) to be behind a bush. (“B”) does not know it. (“A”) intending to cause or knowing it to be likely to cause (“Z’s”) death induces (“B”) to fire at the bush. (“B”) fires and kills (“Z”). Here (“B”) may be guilty of no offence, but (“A”) has committed the offence of culpable homicide.

Note:- and see illustration (a) to section 248.

(c) (“A”) by shooting at a fowl with intent to kill it kills (“B”), who is behind a bush, (“A”) not knowing that he was there. Here, although (“A”) was doing an unlawful act, he was not guilty of culpable homicide as he did not intend to kill (“B”) or cause death by doing an act that he knew was likely to cause death.

Explanation 1:- A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2:- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3:- The causing of the death of a child in the mother’s womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Section 247 - “Culpable Homicide”: Culpable homicide is of two kinds:

- (1) culpable homicide amounting to murder hereinafter called “murder”; and
- (2) culpable homicide not amounting to murder.

Section 248 - “Murder Defined”: Except in the circumstances mentioned in section 249, culpable homicide is murder:-

- (a) if the act by which the death is caused is done with the intention of causing death; or
- (b) if the doer of the act knew that death would be the probable and not only a likely consequence of the act or of any bodily injury which the act was intended to cause.

Explanation:- Whether death was the probable or only a likely consequence of an act or any bodily injury, is a question of fact.

Note – See sections 20A and 20B for the meanings of the words “likely” and probable.

Illustrations – (a) In illustrations (a) and (b) to section 246, if (“A’s”) act is done with the intention of causing death the offence is murder. If it is done with the knowledge that death is likely to be thereby caused, the offence will be either murder or culpable homicide not amounting to murder according to whether death was the probable consequence (murder) or only a likely consequence (culpable homicide not amount to murder) of (“A’s”) act.

(c) (“A”), knowing that (“Z”) is labouring under such a disease that a blow would probably cause his death, strikes him with the intention of causing bodily injury, (“Z”) dies in consequence of the blow. (“A”) is guilty of murder, although the blow might not have been sufficient to cause the death of a person in sound state of health. But if (“A”), not knowing that (“Z”) is labouring under any disease, gives him such a blow as would not ordinarily kill a person in a sound state of health, here (“A”) is not guilty of murder unless he intended to cause death or such bodily injury as would probably cause death; and if the blow was not likely to cause death he would not be guilty of culpable homicide at all but might be punishable under section 254.

(d) (“A”) fires a loaded cannon into a crowd of persons and kills one of them. (“A”) is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Section 249(1)- “When Culpable Homicide is not Murder”: (1) Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of any other person by mistake or accident.

Explanation:- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Note – See section 38.

Illustrations –

- (a) (“A”), under the influence of passion excited by grave and sudden provocation given by (“Z”), intentionally kills (“Y”) (“Z’s”) child. This is murder, in as much as the provocation was not given by the child.
 - (b) (“Y”) gives grave and sudden provocation to (“A”). (“A”) on this provocation fires at (“Y”), neither intending nor knowing himself to be likely to kill (“Z”), who is near him but out of sight. (“A”) kills (“Z”). Here (“A”) has not committed murder but culpable homicide not amounting to murder, (see section 250).
 - (c) (“Z”) gives grave and sudden provocation to (“B”) who is thereby excited to violent rage. (“A”), a bystander meaning to make advantage of (“B’s”) rage and to cause him to kill (“Z”), puts a knife into (“B’s”) hand for that purpose. (“B”) kills (“Z”) with the knife. Here (“B”) has committed culpable homicide not amounting to murder but (“A”) is guilty of murder.
- (2) Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation and without any intention of doing more harm than is necessary for the purpose of such defense.
 - (3) Culpable homicide is not murder if the offender, being a public servant acting for the advancement of justice or being a person aiding a public servant so acting, exceeds the powers given to him by law and causes death by doing an act which he in good faith believe to be lawful and necessary for the due discharge of his duty as such public servant or for assisting such public servant in the due discharge of such duty and without ill will towards the person whose death is caused.
 - (4) Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.

Explanation:- It is immaterial in such case which party first provokes the other or commits the first assault.

(5) Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risks of death with his own consent.

(6) Culpable homicide is not murder if the offender at the time of committing the act was under the influence of mental abnormality due to a mental retardation or an injury or a disease of the mind to an extent that substantially affects his ability to direct or control his act.

Section 250 - “Culpable Homicide by Causing Death of Person other than Person whose Death was Intended”: If a person by doing anything which he intends or knows to be likely to cause death commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

Section 251 - “Murder”: Whoever commits murder shall on conviction be punished with death or imprisonment for life and may also be liable to fine. Provided that if the nearest relatives of the deceased opt for customary blood compensation “dia”, the Court may award it in lieu of death sentence with imprisonment for a term not exceeding 10 years or with fine or with both.

Note:- (1) See section 253A.

(2) See section 244 of the Criminal Procedure Act, 2003.

Section 252 - “Murder by Life-Convict”: Whoever being under sentence of imprisonment for life commits murder, shall on conviction, be punished with death.

Section 253 - “Culpable Homicide not Amounting to Murder”: Whoever commits culpable homicide not amounting to murder, shall on conviction, be punished with imprisonment for life or for any less term or with fine or with both.

Section 253(A)- “Infanticide”: Notwithstanding the provisions of sections 251, 252, 253 of this Code:-

(a) if a woman causes the death of her child immediately after birth or within 8 days there from due to a mental or psychological state caused by delivery; or

(b) if a woman causes the death of her illegitimate child, immediately after birth or within eight days there-from, in order to avoid shame;

the punishment on conviction shall be imprisonment for a term not exceeding seven years or fine or both.

Section 254 - “Death Caused When Intention is to Cause Hurt or Grievous Hurt Only”:

Whoever causes the death of any person by doing any act not amounting to culpable homicide but done with the intention of causing hurt or grievous hurt, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding fourteen years or with fine or with both.

Section 255 - “Death Caused Unintentionally in Act of Committing Offence”:

Whoever causes the death of any person by doing any act not amounting to culpable homicide which constitutes an offence punishable with imprisonment for one year or with any greater punishment or by any act done in committing such an offence shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine or with both.

Section 256 - “Causing Death by Negligence”: Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 257 - “Abetment of Suicide of Child or Insane Person”: If any person under eighteen years of age, any insane person, any delirious person, any idiot or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide commits an offence and shall on conviction, be punished with death or imprisonment for life or for any less term and may also be liable to fine.

Section 258 - “Abetment of Suicide”: Subject to the provisions of section 257, whoever abets any person who commits suicide commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 259 - “Attempt to Murder “: (1) Whoever does any act with such intention or knowledge and in such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

(2) If hurt is caused to any person by such act, the imprisonment may extend to fourteen years and or fine.

(3) When any person offending under this section is under sentence of imprisonment for life in connection with a previous murder, may, if hurt is caused, be punished with death.

Illustrations –

- (a) (“A”) shoots at (“Z”) with intention to kill him, in such circumstances that, if death ensued, (“A”) would be guilty of murder. (“A”) is liable to punishment under this section.
- (b) (“A”) with the intention of causing the death of a child of tender years exposes it in a desert place. (“A”) has committed the offence defined by this section, though the death of the child does not ensue.
- (c) (“A”), intending to murder (“Z”), buys a gun and loads it. (“A”) has not yet committed the offence. (“A”) fires the gun at (“Z”). He has committed the offence defined in this section, and if by such firing he wounds (“Z”) he is liable to the punishment provided by sub-section (2).
- (d) (“A”), intending to murder (“Z”) by poison, purchases poison and mixes it with food which remains in (“A’s”) keeping; (“A”) has not yet committed the offence in this section. (“A”) places the food on (“Z’s”) table or delivers it to (“Z’s”) servant to place it on (“Z’s”) table. (“A”) has committed the offence defined in this section.

Section 260 - “Attempt to Commit Culpable Homicide”: Whoever does any act with such intention or knowledge and in such circumstances that, if he by that act caused the death, he would be guilty of culpable homicide not amounting to murder, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both;

And, if hurt is caused to any person by such act, the imprisonment may extend to seven years or with fine or with both.

Section 261 - “Attempt to Commit Suicide”: Whoever attempts to commit suicide and does any act towards the commission of such offence, commits an offence and shall on conviction, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Section 262 - “The Causing of Miscarriage, Injuries to Unborn Children, Exposure of Infants Cruelty to Children and Concealment of Births Causing Miscarriage”: Whoever voluntarily causes a woman with child to miscarry, shall, if such causing miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term not exceeding three years or with fine or with both; and, if the woman be quick with child, shall be punished with imprisonment for a term not exceeding seven years and may also be liable to fine; provided that if the offence is committed by an unmarried pregnant woman in order to avoid shame, she shall be punished with imprisonment for a term which shall not exceed three years or with fine or with both.

Section 263 - “Causing Miscarriage Without Woman’s Consent”: Whoever commits the offence defined in section 262 without the consent of the woman, whether the woman is quick with child or not, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 264 - “Death caused by act done with Intent to Cause Miscarriage”: Whoever with intent to cause the miscarriage of a woman with child does any act which caused the death of such woman, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine. And, if the act is done without the consent of the woman, the imprisonment may be for life or for any lesser term.

Explanation:- It is not essential to this offence that the offender should know that the act is likely to cause death.

Section 265 - “Causing Miscarriage Unintentionally”: Whoever uses force to any woman and thereby unintentionally causes her to miscarry, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both; and if the offender knew that the woman was with child, he shall be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 266 - “Act done with Intent to Prevent Child being Born Alive or to cause it to die after Birth”: Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth and does by such act prevent that child from being born alive or causes it to die after its birth, and, if such act be not caused in good faith for the purpose of saving the life of the mother, he commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine or with both.

Section 267 - “Causing Death of quick unborn Child by Act Amounting to Culpable Homicide”: Whoever does any act in such circumstances that, if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Illustration:- (“A”), knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of a quick unborn child with which she is pregnant is thereby caused. (“A”) is guilty of an offence under this section.

Section 268 - “Exposure and Abandonment of Child under Twelve Years, by Parent or Person having care of it”: Whoever being the father or mother of a child under the age of twelve years or having the care of such child with the intention of wholly abandoning such child exposes to danger or leaves such child in any place, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Explanation:- This section does not prevent the trial of the offender for murder or culpable homicide not amounting to murder as the case may be, if the child dies in consequence of the exposure or abandonment.

Section 269 - “Cruelty to Children”: Whoever having the charge or care of a child of under eighteen years of age or being in a position of authority over him willfully ill treats or neglects him in such a way as to cause him unnecessary suffering, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

And, if the ill-treatment or neglect results in serious injury to the health of such child, the offender shall be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 270 - “Concealment of Birth by Secret Disposal of Child or Dead Body”: Whoever, by secretly burying or otherwise disposing of the child or dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

HURT

Section 271 “Hurt Defined”: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

Section 272 - “Grievous Hurt Defined” The following kinds of hurt only are designated as grievous:-

- (a) emasculation;
- (b) permanent deprivation of the sight of an eye, or the hearing of an ear or the power of speech;
- (c) deprivation of any part or joint;
- (d) destruction or permanent impairing of the powers of any part or joint;
- (e) permanent disfiguration of the head, face or any other part of the body;
- (f) fracture or dislocation of a bone or tooth;

(g) any hurt which endangers life or which causes the sufferer to be during the space of at least twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

Section 273 - “Voluntarily Causing Hurt Defined”: Whoever does any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and does thereby cause hurt to any person, is said voluntarily to cause hurt.

Section 274 - “Voluntarily Causing Grievous Hurt Defined”: Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt.

Explanation:- A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said to cause grievous hurt if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration:- (“A”), intending or knowing himself to be likely permanently to disfigure (“Z’s”) face, gives (“Z”) a blow which does not permanently disfigure (“Z’s”) face but which causes (“Z”) to suffer severe bodily pain for the space of at least twenty days. (“A”) has voluntarily caused grievous hurt.

Section 275 - “Voluntarily Causing Hurt on Provocation”: Whoever voluntarily causes hurt on grave and sudden provocation if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine not exceeding LS60,000 or with both.

Section 276 - “Voluntarily Causing Grievous Hurt on Provocation”: Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall on conviction, be punished with imprisonment for a term not exceeding four years or with fine or with both.

Section 277 - “Voluntarily Causing Hurt without Provocation”: Whoever, except in the case provided for by section 275, voluntarily causes hurt, shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 278 - “Voluntarily causing Grievous Hurt without Provocation”: Whoever, except in the case provided for by section 276, voluntarily causes grievous hurt, shall be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 279 - “Voluntarily Causing Hurt by Dangerous Weapon or Means”:

(1) Whoever, except in the case provided for by section 275, voluntarily causes hurt by means of any instrument for shooting, stinging or cutting or any instrument, which if used as a weapon of offence is likely to cause death, or by means of fire or any heated substance or by means of electricity or by means of any corrosive or explosive substance or by the administration of any poisonous or deleterious substance or by means of any animal, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

(2) Whoever, except in the case provided for by Section 276, voluntarily causes grievous hurt by such means, shall be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 280 - “Causing hurt by means of Poison etc. with Intent to Commit an Offence”: Whoever causes hurt by administering or causing to be taken by any person any poison or any stupefying intoxicating or unwholesome drug or thing with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 281 - “Voluntarily causing hurt to Extort Property or to Constrain to an illegal Act”: (1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any property or document of title or of constraining the sufferer or any person interested in the sufferer to do anything which is illegal or which may facilitate the commission of an offence, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

(2) Whoever for the like purpose voluntarily causes grievous hurt, shall be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 282 - “Voluntarily causing hurt to Extort Confession or to Compel Restoration of Property”: (1) Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or document of title or to satisfy any claim or demand or to give information which may lead to the restoration of any property or document of title, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

(2) Whoever for the like purpose voluntarily causes grievous hurt, shall be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 283 - “Voluntarily causing hurt to deter Public Servant from his Duty”:

(1) Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

(2) Whoever in the like circumstances with the intent or for like reason voluntarily causes grievous hurt to any person being a public servant, shall be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 284- “Causing hurt by act Endangering life or Personal Safety of others”:

(1) Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, save as hereinafter expected, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding six months or with fine or with both.

Section 284(A) “Female Circumcision”: Whoever makes or causes female circumcision to be done commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years or with fine, or with both.

WRONGFUL RESTRAINT, AND WRONGFUL CONFINEMENT

Section 285 - “Wrongful Restraint Defined”: Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to restrain that person wrongfully.

Exception:- The obstruction of a private way which a person in good faith believes himself to have a lawful right to obstruct, is not within the meaning of this section.

Section 286 - “Wrongful Confinement Defined”: Whoever restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said to confine that person wrongfully.

Illustrations –

- (a) (“A”) causes (“Z”) to go within a walled space and locks (“Z”) in, (“Z”) is thus prevented from proceeding in any direction beyond the circumscribing line of wall. (“A”) wrongfully confines (“Z”).
- (b) (“A”) places men with firearms at outlets of a building and tells (“Z”) that they will fire at (“Z”) if (“Z”) attempts to leave the building, (“A”) wrongfully confines (“Z”).

Section 287- “Wrongful Restraint”: Whoever wrongfully restrains any person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine or with both.

Section 288 - “Wrongful Confinement”: Whoever wrongfully confines any person, commits an offence and shall on conviction be punished with imprisonment for a term not exceeding one year or with fine or with both.

And if the wrongful confinement continues for three days or more, with imprisonment for a term not exceeding three years or with fine or with both.

Note – See also section 309.

Section 289 - “Wrongful Confinement after Warrant or Order Issued for Production or Liberation:” Whoever keeps any person in wrongful confinement knowing that a warrant or order for the production or liberation of that person has been duly issued, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years in addition to any term of imprisonment to which he may be liable under any other provisions of this Code or any other Law in force.

Section 290 - “Wrongful Confinement in Secret”: Whoever wrongfully confines any Person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined or to any public servant or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, commits an offence and shall on conviction be punished with imprisonment for a term not exceeding two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Section 291 - “Wrongful Confinement to Extort Property or Constrain to illegal act”: Whoever wrongfully confines any person for the purpose of extorting from the person confined or from any person interested in the person confined any property or document of title or of constraining the person confined or any person interested in such person to do any thing illegal or to give any information which may facilitate the commission of an offence, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

Section 292 - “Wrongful Confinement to Extort Confession or Compel Restoration of Property”: Whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the person confined or any person interested in the person confined to restore or to cause the restoration of any property or document of title or to satisfy any claim or demand or to give information which may lead to the restoration of any property or document of title, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

CRIMINAL FORCE AND ASSAULT

Section 293 - “Force Defined”: A person is said to use force to another if he causes motion, change of motion or cessation of motion to that other or if he causes any substance to come into contact with any part of that other’s body or with anything which that other is wearing or carrying or with anything so situated that such contact affects that other’s sense of feeling provided that the person causing any effect abovementioned, causes it:-

- (a) by his own bodily power; or
- (b) by disposing any substance in such a manner that the effect takes place without any further voluntary act on his or on the part of any other person; or
- (c) by means of any animal.

Illustrations:-

- (a) (“A”) unfastens the moorings of a boat in which (“Z”) is sitting so that the boat drifts down the river. (“A”) has caused motion to (“Z”);
- (b) (“A”) lashes the horse on which (“Z”) is riding so that the horse quickens its pace, (“A”) has caused change of motion to (“Z”);
- (c) (“A”) seizes the rein of (“Z’s”) horse and stops the horse, (“A”) has caused cessation of motion to (“Z”);
- (d) (“A”) pushes against (“Z”) in the street, (“A”) has caused his own body to come into contact with (“Z”);
- (e) (“A”) throws a stone at (“Z”) and hits him;
- (f) (“A”) rides past (“Z”) on a muddy road and splashes him;
- (g) (“A”) pulls up the veil of Mary;
- (h) (“A”) pours boiling water into the bath in which (“Z”) is bathing. (“A”) has caused the boiling water to come into contact with the water in the bath, so as to affect (“Z’s”) sense of feeling;
- (i) (“A”) incites a dog to spring upon (“Z”).

In all the above cases, (“A”) has used force to (“Z”).

Section 294 - “Criminal Force Defined”: Whoever intentionally uses force to any person without that person’s consent in order to commit any offence or intending by the use of such force to cause or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Section 295 - “Assault Defined”: Whoever makes any gesture or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that the person making it is about to use criminal force to that person, is said to commit an assault.

Explanation:- Mere words do not amount to an assault. But words which a person uses may give to his gestures or preparations such a meaning as may make those gestures and preparations amount to an assault.

Illustrations:-

- (a) (“A”) shakes his fist at (“Z”), intending or knowing it to be likely that he may thereby cause (“Z”) to believe that (“A”) is about to strike (“Z”), (“A”) has committed an assault
- (b) (“A”) begins to unclothe the muzzle of a ferocious dog intending or knowing it to be likely that he may thereby cause (“Z”) to believe that he is about to cause the dog to attack (“A”) has committed an assault upon (“Z”).

(c) (“A”) takes up a stick saying to (“Z”) “I will give you a beating”. Here, though the words used by (“A”) could in no case amount to an assault and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

Section 296 – “Assault or Criminal Force Without Provocation”: Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three months or with fine or with both.

Section 297 - “Assault or Criminal Force with Provocation”: Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine or with both.

Section 298 - “Assault or Criminal Force to Deter Public Servant from Discharge of his Duty”: Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant or with intent to prevent or deter that person from discharging his duty as such public servant or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 299 - “Assault or Criminal Force to Woman with Intent to Outrage her Modesty”: Whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 300 - “Assault or Criminal Force in Attempt to Commit Theft or Property Carried by a Person”: Whoever assaults or uses criminal force to any person in attempting to commit theft of any property which that person is then wearing or carrying commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 301 - “Assault or Criminal Force in Attempt to Wrongfully Confine a Person”: Whoever assaults or uses criminal force to any person in an attempt to wrongfully confine that person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

KIDNAPPING, ABDUCTION AND FORCED LABOUR

Section 302 - “Kidnapping Defined”: Whoever takes or entices any minor under sixteen years of age if a male or under eighteen years of age if a female, or any person of unsound mind out of the keeping of the lawful guardian of such minor or person of unsound mind without the consent of such guardian or conveys any such minor or any person of unsound mind beyond the limits of the New Sudan without the consent of the person legally authorized to consent to such removal, is said to kidnap such minor or person of unsound mind.

Explanation:- The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person and authorized to consent to the taking.

Section 303 - “Abduction Defined”: Whoever by force compels or by any deceitful means induces any person to go from any place, to another is said to abduct that person.

Section 304 - “Kidnapping”: Whoever kidnaps any person commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 305 - “Kidnapping or Abducting in Order to Murder”: Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 306 - “Kidnapping or Abducting with Intent Secretly and Wrongfully to Confine Person”: Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

- Section 307 - “Kidnapping or Abducting Woman to Compel her Marriage, etc.”:** Whoever kidnaps or abducts any woman with intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.
- Section 308 - “Kidnapping or Abducting in Order to Subject Person to Grievous Hurt etc”:** Whoever kidnaps or abducts any person in order that such person may be subjected or may be so disposed of as to be put in danger of being subjected to grievous hurt or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.
- Section 309 - “Wrongfully Concealing or Keeping in Confinement Kidnapped or Abducted Person”:** Whoever knowing that any person has been kidnapped or has been abducted wrongfully conceals or confines such person, shall on conviction, be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.
- Section 310 - “Buying or Selling or other Disposal of Persons”:** Whoever buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person with the intent that such person shall be employed or used for any unlawful or immoral purpose or knowing it to be likely that such person will be employed or used for any such purpose, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine and forfeiture of properties.
- Section 311 “Unlawful Compulsory Labour”:** Whoever unlawfully compels any person to labour against the will of that person, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

- Section 312 - “Kidnapping or Abducting in Order to Subject to Unlawful Compulsory Labour”:** Whoever kidnaps or abducts any person with intent that such person may be unlawfully compelled to labour against his will commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 313 - “Transferring Control of Person with Intent to Subject him to Unlawful Confinement or Unlawful Compulsory Labour”:** Whoever for money or money’s worth, transfers or purports to transfer the possession or control of any person to another with intent to enable such other person to confine such person unlawfully or to compel him unlawfully to labour against his will, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 314 - “Possession or Control of Person in the New Sudan after obtaining such Possession or Control Outside the New Sudan”:** Whoever is in possession or control of any person within the New Sudan having obtained such possession or control outside the New Sudan by acts which would have constituted an offence if done within the New Sudan, commits an offence and shall on conviction, be punished in the same manner as if such acts had been done within the New Sudan.
- Section 315 – “Transferring outside the New Sudan the Possession of Person obtained within the New Sudan”:** Whoever being in possession or control of any person within the New Sudan, conveys such person outside the New Sudan and thereby transfers or purports to transfer the possession or control of such person in any manner which would constitute an offence if such transfer or purported transfer took place within the New Sudan, commits an offence and shall on conviction, be punished in the same manner as if such transfer or purported transfer had taken place within the New Sudan.
- Section 315(A) – “Trafficking in Persons for Immoral Purposes to be Carried Outside the New Sudan”:** Whoever procures, entices or leads away, even with his consent, any person for immoral purposes to be carried outside the New Sudan, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

RAPE AND OTHER SEXUAL OFFENCES

Section 316 - “Rape defined”: A man is said to commit rape, who, save in the case expected in this section and in section 316A has sexual intercourse with a woman against her will or without her consent; provided that a consent given by a woman below the age of eighteen years shall not be a consent within the meaning of this section.

Exception:- Sexual intercourse by a man with his own wife is not rape, within the meaning of this Section.

Explanation:- Penetration is sufficient to constitute the sexual intercourse necessary to the offence, of rape.

Section 316(A) “Sexual Intercourse with Girls”: Whoever has sexual intercourse with a girl, not being his wife, who is 18 years of age or above with her consent, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 317 - “Rape”: Whoever commits rape, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 318 - “Unnatural Offences”: Whoever has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine; and if such intercourse is done without consent he shall be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine; provided that a consent given by a person below the age of eighteen years to such intercourse shall not be deemed to be a consent within the meaning of this section.

Explanation:- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Section 319 - “Acts of Gross Indecency”: Whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threats or compels a person to join with him in the commission of such act commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

CHAPTER 23.

OFFENCES AGAINST THEFT OF PROPERTY

Section 320 - “Theft Defined”: Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, and whoever dishonestly abstracts, diverts, consumes or uses any electricity, electric current or tap water is said to commit theft.

Explanation 1:- A thing so long as it is attached to the earth not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2:- A moving effected by the same act which effects the severance may be a theft.

Explanation 3:- A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing as well as by actually moving it.

Explanation 4:- A person, who by any means causes an animal to move, is said to move that animal and to move everything which in consequence of the motion so caused is moved by that animal.

Explanation 5:- The consent mentioned in the definition may be expressed or implied and may be given either by the person in possession or by any person having for that purpose authority either express or implied.

Illustrations –

- (a) (“A”) cuts down a tree on (“Z’s”) ground with the intention of dishonestly taking the tree out of (“Z’s”) possession without (“Z’s”) consent. Here, as soon as (“A”) has severed the tree in order to such taking. He has committed theft;
- (b) (“A”) puts a bait for dogs in his pocket and thus induces (“Z’s”) dog to follow him. Here, if (“A’s”) intention is dishonestly to take the dog out of (“Z’s”) possession without (“Z’s”) consent, (“A”) has committed theft as soon as (“Z’s”) dog has begun to follow (“A”);
- (c) (“A”) meets a camel carrying merchandise. He drives the camel in a certain direction in order that he may dishonestly take the merchandise. As soon as the camel begins to move, (“A”) has committed theft of the merchandise;
- (d) (“A”), being (“Z’s”) servant dishonestly runs away with (“Z’s”) jewellery without (“Z’s”) consent. (“A”) has committed theft .

- (e) (“Z”) going on a journey entrusts jewellery to (“A”) till (“Z”) shall return, (“A”) carries the jewelery to the market and sells it. Here the jewellery was not in (“Z’s”) possession. It could not therefore be taken out of (“Z’s”) possession and (“A”) has not committed theft, though he may have committed criminal breach of trust;
- (f) (“A”) finds a ring belonging to (“Z”) on a table in the house which (“Z”) occupies. Here the right is in (“Z’s”) possession and if (“A”) dishonestly removes it (“A”) commits theft;
- (g) (“A”) finds a ring lying on the high road not in the possession of any person. (“A”) by taking it commits no theft, though he may commit criminal misappropriation of property;
- (h) (“A”) sees a ring belong to (“Z”) lying on a table in (“Z’s”) house. Not venturing to misappropriate the ring immediately for fear of search and detection (“A”) hides the ring in a place where it is highly improbable that it will ever be found by (“Z”), with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here (“A”) at the time of first moving the ring commits theft.
- (i) (“A”) delivers a jewel to (“Z”) a jeweler to be re-set. (“Z”) carries it to his shop. (“A”), not owing to the jeweler any debit for which the jeweler might lawfully detain the jewel as a security, enters the shop openly, takes his jewel by force out of (“Z’s”) hand and carried it away. Here (“A”), though he may have committed criminal trespass and assault, has not committed theft inasmuch as what he did was not done dishonestly.
- (j) Again if (“A”) having pawned an article to (“Z”) takes it out of (“Z’s”) possession without (“Z’s”) consent not having paid what he borrowed on the article, he commits theft though the article is his own property inasmuch as he takes it dishonestly;
- (k) (“A”), being on friendly terms with (“Z”), goes into (“Z’s”) house in (“Z’s”) absence and takes away a cooking-pot without (“Z’s”) consent with the intention of returning it after use. Here, it is probable that (“A”) may have conceived that he had (“Z’s”) cooking pot. If this was (“A’s”) impression, (“A”) has not committed theft;
- (l) (“A”) asks charity from (“Z’s”) wife. She gives (“A”) money, food and clothes, which (“A”) knows to belong to (“Z”), her husband. Here it is probable that (“A”) may conceive that (“Z’s”) wife is authorized to give away alms, If this was (“A’s”) impression, (“A”) has not committed theft;
- (m) (“A”) is the paramour of (“Z’s”) wife. She gives (“A”) valuable property, which (“A”) knows to belong to her husband (“Z”) and (“A”) knows that she is not authorized by (“Z”) to give it out. If (“A”) takes the property dishonestly, he commits theft;
- (n) (“A”) in good faith, believing property belonging to (“Z”) to be (“A’s”) own property, takes that property out of (“Z’s”) possession. Here, as (“A”) does not take dishonestly, he does not commit theft.

Section 321 - “Theft”: Whoever commits theft shall on conviction be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 322 - “Theft in Dwelling House etc.”: Whoever commits theft in or from any building, tent or vessel, which building, tent or vessel is used as a human dwelling or used for the custody of property, or in or from any means of transportation used for the conveyance of passengers or goods, shall on conviction be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 323 - “Theft by Clerk or Servant of Property in Possession of Employer”: Whoever, being a clerk or servant or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 324 - “Theft after Preparation made for Causing Death, Hurt or Restrain in Order to the Committing of the Theft”: Whoever commits theft having made preparation for causing death or hurt or restraint or fear of death or of hurt or of restraint to any person in order to the committing of such theft or in order to the effecting of his escape after the committing of such theft or in order to the retaining of property taken by such theft, shall on conviction be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Illustrations:-

- (a) (“A”) commits theft on property in (“Z’s”) possession; while committing this theft he has a loaded pistol under his garment having provided this pistol for the purpose of hurting (“Z”) in case he should resist. (“A”) has committed an offence under this section;
- (b) (“A”) picks (“Z’s”) pocket, having posted several of his companions near him, in order that they may restrain (“Z”), if (“Z”) should perceive what is passing and should resist or should attempt to arrest (“A”). (“A”) has committed an offence under this section.

EXTORTION

Section 325 - “Extortion Defined”: Whoever intentionally puts any person in fear of any injury to that person or to any other and thereby dishonestly induces the person so put in fear to deliver to any person any property or document of title or anything or anything signed or sealed which may be converted into a document of title, commits extortion.

Illustrations:-

- (a) (“A”) threatens to publish a defamatory libel concerning (“Z”) unless (“Z”) gives him money. He thus induces (“Z”) to give him money. (“A”) has committed extortion;
- (b) (“A”) threatens (“Z”) that he will keep (“Z’s”) child in wrongful confinement unless (“Z”) signs and delivers to (“A”) a promissory note binding (“Z”) to pay certain moneys to (“A”). (“Z”) signs and delivers the note. (“A”) has committed extortion;
- (c) (“A”) threatens to send men to pull down (“Z’s”) crops, unless (“Z”) will sign and delivery to (“B”) a bond binding (“Z”) under a penalty to deliver certain produce to (“B”) and thereby induces (“Z”) to sign and deliver the bond. (“A”) has committed extortion;
- (d) (“A”) by putting (“Z”) in fear of grievous hurt dishonestly induces (“Z”) to sign or affix his seal to a blank paper and deliver it to (“A”). (“Z”) signs and delivers the paper to (“A”). Here, as the paper so signed may be converted into a valuable security, (“A”) has committed extortion.

Section 326 - “Extortion”: Whoever commits extortion shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 327 - “ Putting Person in Fear of Injury in Order to Commit Extortion”: Whoever, in order to the committing of extortion puts any person in fear of any injury to that person or to any other, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 328 - “Extortion by Putting a Person in Fear of Death or Grievous Hurt”: Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 329 - “Putting Person in Fear of Death or of Grievous Hurt in Order to Commit Extortion”: Whoever in order to the committing of extortion puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 330 - “Extortion by Threat of Accusation for an Offence Punishable with Death, etc.”: Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed or attempted to commit any offence punishable with death or with imprisonment for a term which exceeds ten years or of having attempted to induce any other person to commit such offence, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 331 - “Putting Person in Fear of Accusation of an Offence in Order to Commit Extortion”: Whoever in order to the committing of extortion puts or attempts to put any person in fear of an accusation against that person or any other of having committed or attempted to commit an offence punishable with imprisonment for a term not exceeding ten years, shall on conviction, be punishable with imprisonment for a term not exceeding seven years and may also be liable to fine.

ROBBERY AND BRIGANDAGE

Section 332 - “Robbery Defined”: In robbery there is either theft or extortion. “Theft” is robbery if, in order to the committing of the theft or in committing the theft or in carrying away or attempting to carry away property obtained by the theft, the offender for that end voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint or fear of instant death or of instant hurt or of instant wrongful restraint. “Extortion” is “robbery”, if the offender at the time of committing the extortion is in the presence of the person put in fear of instant death, of instant hurt or of instant wrongful restraint to that person or to some other person and by so putting in fear induces the person so put in fear then and there to deliver up the thing extorted.

Explanation:- The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt or of instant wrongful restraint.

Illustrations:-

- (a) (“A”) holds (“Z”) down and takes (“Z’s”) money and jewels from (“Z’s”) clothes without (“Z’s”) consent. Here (“A”) has committed theft and in order to the committing of that theft has voluntarily caused wrongful restraint to (“Z”). (“A”) has therefore committed robbery;

- (b) (“A”) meets (“Z”) on the high-road, shows a pistol and demands (“Z’s”) purse. Here (“A”) has extorted the purse from (Z). (Z) in consequence surrenders his purse here (“A”) has extorted the purse from (“Z”) by putting him in fear of instant hurt and being at the time of committing the extortion in his presence. (“A”) has therefore committed robbery;
- (c) (“A”) meets (“Z”) and (“Z’s”) child on the river bank. (“A”) takes the child and threatens to fling it into the river, unless (“Z”) delivers his purse. Here (“A”) has extorted the purse from (“Z”) by causing (“Z”) to be in fear of instant hurt to the child who is there present. (“A”) has therefore committed robbery on (“Z”)
- (d) (“A”) obtains property from (“Z”) by saying “Your child is in the hands of my gang and will be put to death unless you send us LS50”. This is extortion and punishable as such; but it is not robbery, unless (“Z”) is put in fear of the instant death of his child.

Section 333 - “Brigandage Defined”: When five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit brigandage.

Section 334 - “Robbery”: Whoever commits robbery, shall on conviction, be punished with imprisonment for a term which may extend to ten years and may also be liable to fine; and, if the robbery is committed between sunset and sunrise on the highway or between sunset and sunrise upon a person sleeping or having laid down to sleep in the open air, the imprisonment may be extended to fourteen years; and, if the robbery is committed with the use of fire arm, shall be punished with life imprisonment and may also be liable to fine .

Section 335 - “Attempt to Commit Robbery”: Whoever attempts to commit robbery shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 336 - “Voluntarily Causing Hurt in Committing Robbery”: If any person in committing or in attempting to commit robbery voluntarily causes hurt, such person and any other person jointly concerned in committing or attempting to commit such robbery, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 337 - “Brigandage”: Whoever commits brigandage shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 338 - “Brigandage with Murder”: If any one of five or more persons, who are conjointly committing brigandage, commits murder in so committing brigandage, every one of those persons shall on conviction, be punished with death or imprisonment for life or for any less term and may also be liable to fine.

Section 339 - “Robbery or Brigandage with Attempt to cause Death or Grievous Hurt”: If, at the time of committing or attempting to commit robbery or brigandage, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 340 - “Making preparation to Commit Brigandage”: Whoever makes any preparation for committing brigandage shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 341 - “Belonging to Gang of Brigands”: Whoever belongs to a gang of persons associated for the purpose of committing brigandage, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 342 - “Belonging to Gang of Thieves”: Whoever belongs to any wandering or other gang of persons associated for the purpose of committing theft or robbery and not being a gang of brigands, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 343 - “Assembling for Purpose of Committing Brigandage”: Whoever is one of five or more persons assembled for the purpose of committing brigandage, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

CRIMINAL MISAPPROPRIATION

Section 344 - “Criminal Misappropriation Defined”: Whoever dishonestly misappropriates or converts to his own use any movable property, commit criminal misappropriation.

Illustrations:-

(a) (“A”) takes property belonging to (“Z”) out of (“Z’s possession in good faith believing at the time when he takes it that the property belongs to himself. (“A”) is not guilty of theft; but if (“A”), after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of criminal misappropriation.

- (b) (“A”) being on friendly terms with (“Z”) goes into (“Z’s”) house in (“Z’s”) absence and takes away a cooking-pot without (“Z’s”) express consent. Here, if (“A”) was under the impression that he had (“Z’s”) implied consent to take the cooking-pot for the purpose of using it, (“A”) has not committed theft. But, if (“A”) afterwards sells the cooking pot for his own benefit he is guilty of criminal misappropriation;
- (c) (“A”) and (“B”) being joint owners of a horse, (“A”) takes the horse out of (“B’s”) possession intending to use it. Here, as (“A”) has a right to use the horse, he does not dishonestly misappropriate it. But if (“A”) sells the horse and appropriates the whole proceeds to his own use, he is guilty of criminal misappropriation.

Explanation 1 – A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration:- (“A”) having borrowed (“Z’s”) property pledges it as a security for a loan intending at a future time to restore it to (“Z”), (“A”) has committed criminal misappropriation.

Explanation 2 – A person, who finds property not in the possession of any other person and takes such property for the purpose of protecting it for or of restoring it to the owner, does not take or misappropriate it dishonestly and is not guilty of an offence; but he is guilty of criminal misappropriation, if he appropriates it to his own use, when he knows or has the means to discovering the owner or before he has used reasonable means to discover and give notice to the owner and has kept the property for a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property or that any particular person is the owner of it; it is sufficient, if, at the time of appropriating it, he does not believe it to be his own property or does not believe in good faith that the real owner cannot be found.

Illustrations:-

- (a) (“A”) finds a pound on the high-road, not knowing to whom the pound belongs. (“A”) picks up the pound. Here (“A”) has not committed criminal misappropriation;
- (b) (“A”) finds a letter on the road containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of criminal misappropriation;
- (c) (“A”) finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. (“A”) knows that this person can direct him to the person in whose favour the cheque was drawn. (“A”) appropriates

the cheque without attempting to discover the owner. He is guilty of criminal misappropriation;

(d) (“A”) sees (“Z”) drop his purse with money in it. (“A”) picks up the purse with the intention of restoring it to (“Z”) but afterwards appropriates it to his own use. (“A”) has committed criminal misappropriation;

(e) (“A”) finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to (“Z”) and appropriates it to his own use. (“A”) is guilty of criminal misappropriation;

(f) (“A”) finds a valuable ring not knowing to whom it belongs (“A”) sells it immediately without attempting to discover the owner. (“A”) is guilty of criminal misappropriation.

Section 345 - “Criminal Misappropriation”: Whoever commits criminal misappropriation, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 346 - “Criminal Misappropriation of Property Possessed by Deceased Person at the time of his Death”: Whoever commits criminal misappropriation of property knowing that the property so misappropriated was in the possession of a deceased person at the time of that person’s death and has not since been in the possession of any person legally entitled to such possession, shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine; and, if the offender at the time of such person’s death was employed by him as a clerk or servant, the imprisonment may extend to seven years.

CRIMINAL BREACH OF TRUST

Section 347 - “Criminal Breach of Trust Defined”: Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use or dishonestly uses or disposes of that property in violation of law or the terms of any trust, or willfully suffers any other person so to do, commits criminal breach of trust.

Illustrations:-

(a) (“A”), being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use. (“A”) has committed criminal breach of trust;

(b) (“A”) is a warehouse-keeper. (“Z”) going on a journey, entrusts his furniture to (“A”) under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. (“A”) dishonestly sells the goods. (“A”) has committed criminal breach of trust;

- (c) (“A”) residing in Yei is agent for (“Z”) residing at Rumbek. There is an express or implied contract between (“A”) and (“Z”) that all sums remitted by (“Z”) to (“A”) shall be invested by (“A”) according to (“Z’s”) direction. (“Z”) remits a sum of money to (“A”) with direction to (“A”) to invest the same in Government securities. (“A”) dishonestly disobeys the direction and employs the money in his own business. (“A”) has committed criminal breach of trust;
- (d) but if (“A”) in the last illustration, not dishonestly but in good faith believing that it will be more for (“Z’s”) advantage to hold bank shares, disobeys (“Z’s”) direction and buys bank shares for (“Z”) instead of buying government securities here, though (“Z”) should suffer loss and should be entitled to bring a civil action against (“A”) on account of that loss, yet (“A”) not having acted dishonestly has not committed criminal breach of trust;
- (e) (“A”) a revenue officer is entrusted with public money and is either directed by law or bound by a contract express or implied with the Government to pay into a certain treasury all the public money which he holds. (“A”) dishonestly misappropriates the money. (“A”) has committed criminal breach of trust;
- (f) (“A”) a carrier is entrusted by (“Z”) with property to be carried by land or by water. (“A”) dishonestly misappropriates the property, (“A”) has committed criminal breach of trust.

Section 348 - “Criminal Breach of Trust”: Whoever commits criminal breach of trust shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 349 - “Criminal Breach of Trust by Carrier etc”: Whoever, being entrusted with property as a carrier, wharfing or warehouse-keeper, commits criminal breach of trust in respect of such property, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 350 - “Criminal Breach of Trust by Employee”: Whoever, being an employee of another person and being in any manner entrusted in such capacity with property or with any dominion over property, commits criminal breach of trust in respect of that property, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 351-“Criminal Breach of Trust by Public Servant or by Banker, Merchant or Agent”: Whoever, being in any manner entrusted with property in his capacity as a public servant, or banker, or factor, or broker, or agent commits criminal breach of trust in respect of that property, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 351(A)- “Causing Loss or Waste of Public Property by a Person Entrusted with its Investment”: Whoever, being entrusted with public property or property partly owned by the New Sudan Authority or being entrusted with the control or supervision over investment of such property dishonestly or without exercising due care and diligence disposes of the same causing loss or waste thereby or willfully suffers any person so to do, shall on conviction, be punished with imprisonment for a term not exceeding ten years and with fine which shall not be less than the value of the property lost or wasted.

Note – See section 70.

RECEIVING STOLEN PROPERTY.

Section 352 - “Stolen Property Defined”: Property, the possession whereof has been transferred by theft or by extortion or by robbery, and property, which has been criminally misappropriated or in respect of which criminal breach of trust or cheating has been committed, is designated as stolen property, whether the transfer has been made or the misappropriation or breach of trust has been committed within the New Sudan or elsewhere. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Section 353 - “Dishonestly Receiving Stolen Property”: Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 354 - “Dishonestly Receiving Property Stolen in the Commission of Brigandage”: Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of brigandage, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of brigands, property, which he knows or has reason to believe to have been stolen, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 355 - “Habitually Dealing in Stolen Property”: Whoever habitually receives or deals in stolen property shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 356 – “Assisting in Concealment of Stolen Property”: Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

CHEATING

Section 357 - “Cheating Defined”: Whoever by deceiving any person:-

- (a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property;
- (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation:- A dishonest concealment of facts is a deception within the meaning of this section.

Illustration –

- (a) (“A”), by falsely pretending to be a public servant, intentionally deceives (“Z”) and thus dishonestly induces (“Z”) to let him have on credit goods for which he does not mean to pay (“A”) cheats.
- (b) (“A”), by putting a counterfeit mark on an article, intentionally deceives (“Z”) into a belief that this article was made by a certain celebrated manufacturer and thus dishonestly induces (“Z”) to buy and pay for the article. (“A”) cheats;
- (c) (“A”), by exhibiting to (“Z”) a false sample of an article, intentionally deceives (“Z”) into believing that the article corresponds with the sample and thereby dishonestly induces (“Z”) to buy and pay for the article. (“A”) cheats;
- (d) (“A”), by tendering in payment for an article a cheque on a bank with which (“A”) keeps no money and by which (“A”) expects that the cheque will be dishonoured, intentionally deceives and thereby dishonestly induces to deliver the article intending not to pay for it. (“A”) cheats;
- (e) (“A”), by pledging as diamonds articles which he knows are not diamonds, intentionally deceives (“Z”) and thereby dishonestly induces (“Z”) to lend money. (“A”) cheats;

- (f) (“A”) intentionally deceives (“Z”) into a belief that (“A”) means to repay any money that (“Z”) may lend to him and thereby dishonestly induces (“Z”) to lend him money, (“A”) not intending to repay it. (“A”) cheats;
- (g) (“A”) intentionally deceives (“Z”) into a belief that (“A”) means to deliver to (“Z”) a certain quantity of dura which (“A”) does not intend to deliver and thereby dishonestly induces (“Z”) to advance money upon the faith of such delivery. (“A”) cheats; but, if (“A”) at the time of obtaining the money intends to deliver the dura and afterwards breaks his contract and does not deliver it, he does not cheat but is liable only to a civil action for breach of contract;
- (h) (“A”) intentionally deceives (“Z”) into a belief that (“A”) has performed (“A’s”) part of a contract made with (“Z”), which he has not performed, and thereby dishonestly induces (“Z”) to pay money. (“A”) cheats;
- (i) (“A”) sells and conveys an estate to (“B”). (“A”) knowing that in consequence of such sale he has no right to the property then sells or mortgages the same to (“Z”), without disclosing the fact of the previous sale and conveyance to (“B”), and receives the purchase or mortgage money from (“Z”). (“A”) cheats.

Section 358 - “Cheating by Personation Defined”: A person is said to cheat by personation if he cheats by pretending to be some other person or by knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person really is.

Explanation:- The offence is committed whether the individual personated is a real or imaginary person.

Illustrations:-

- (a)(“A”) cheats by pretending to be a certain rich banker of the same name. (“A”) cheats by personation ;
- (b)(“A”) cheats by pretending to be (“B”), a person who is deceased. (“A”) cheats by personation.

Section 359 - “Cheating”: Whoever cheats shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 360 - “Cheating with Knowledge that Wrongful Loss may Ensure to Person Whose Interest Offender is Bound to Protect”: Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction, to which the cheating relates, he was bound either by law or by a legal contract to protect, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or both.

Section 361 - “Cheating by Personation”: Whoever cheats by personation shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 362 - “Cheating and Dishonestly Inducing Delivery of Property”: Whoever cheats and thereby fraudulently or dishonestly induces the person deceived to deliver any property to any person or to make or alter or destroy the whole or any part of a document of title or anything which is signed or sealed and which is capable of being converted into a document of title, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 362(A) “Cheating by False Description of Goods for Sale”: Whoever, sells or attempts to sell or exhibits or offers for sale:-

- (a) anything in respect of which a false description is made; or
- (b) anything which in fact is of less weight, length measure or number, is described as of a certain weight, length, measure or number; shall, unless the contrary is proved, be presumed to have dishonestly concealed the truth and shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.

Section 362(B) – “Giving an Uncovered Cheque”: Whoever in fulfillment of an obligation or for consideration issues to any person a cheque which is dishonoured by the drawee because:-

- (a) He has no account with the drawee at the time the cheque is presented for payment; or
- (b) He has insufficient funds with the drawee and this fact is known to him; or
- (c) He has countermanded the payment of the cheque with a reasonable cause; or
- (d) His credit, to his knowledge, is not available for payment;
- (e) He has intentionally drawn the cheque in such manner that the drawee refuses to honour it;

Shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Explanation :- The expression “the drawee” includes banks and every body whether natural or corporate carrying out banking business.

Section 362(C) – Endorsement or Delivery of a Cheque knowing that it is Uncovered Etc.: Whoever endorses or delivers a cheque knowing that the credit is not available for payment or that there is no sufficient fund or that it has been countermanded, shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 362(D) – “Misrepresentation by the Drawee that Funds are Non-Available”:

Whoever being a servant, or an agent of a drawee, intentionally misrepresents that the drawee has no credit or that the credit is insufficient to meet the cheque, or that the credit is not available for payment, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

MISCHIEF

Section 363 - “Mischief defined”: Whoever, with intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or to any person, causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously, commits mischief:

Explanation 1 :- It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property whether it belongs to that person or not.

Explanation 2 :- Mischief may be committed by an act affecting property belonging to the person who commits the act or that person and others jointly.

Illustration:-

- (a) (“A”) voluntarily burns a document of title belonging to (“Z”) intending to cause wrongful loss to (“Z”). (“A”) has committed mischief.
- (b) (“A”) voluntarily throws into a river a ring belonging to (“Z”) with the intention of thereby causing wrongful loss to (“Z”). (“A”) has committed mischief.
- (c) (“A”), knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to (“Z”), destroys those effects with the intention of thereby preventing (“Z”) from obtaining satisfaction of the debt and thus causing damage to (“Z”). (“A”) has committed mischief.
- (d) (“A”), having joint property with (“Z”) in horse, shoots the horse intending thereby to cause wrongful loss to (“Z”). (“A”) has committed mischief.
- (e) (“A”) causes cattle to enter upon a field belonging to (“Z”) intending to cause or knowing that he is likely to cause damage to (“Z’s”) crop. (“A”) has committed mischief.

Section 364 – “ Mischief”: Whoever commits mischief shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

- Section 365 - “Mischief Causing Damage to the Amount of LS20:** Whoever commits mischief and thereby causes loss or damage to an amount of Ls20 or upwards, shall on conviction, be punished with imprisonment for a term not exceeding two years or with or with both.
- Section 366 - “Mischief by Killing or Maiming Animal”:** Subject to the provisions of section 367. Whoever commits mischief by killing, poisoning, maiming or wounding or diminishing the value or utility or rendering useless any animal shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.
- Section 367- “Mischief by Killing or Maiming Cattle etc of Any Value”:** Whoever commits mischief by killing, poisoning, maiming or rendering useless any camel, horse, mule, buffalo, bull, cow or ox whatever may be the value thereof, or by diminishing the utility or value of any such animal, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.
- Section 368 - “Mischief in Relation to Water Supply”:** Whoever commits mischief by doing any act which renders or which he knows to be likely to render any installation for the supply, storage or distribution of water less efficient for its intended purpose or which causes or which he knows to be likely to cause a diminution of the supply of water for animals or for any domestic, agricultural or commercial purpose, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.
- Section 369 - “Mischief by Injury to Public Road, Railway, Bridge, River or Channel”:** Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, railway, bridge, navigable river or navigable channel natural or artificial impassable or less safe for traveling or conveying property, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.
- Section 370 - “Mischief by Causing Inundation or Obstruction to Public Drainage Attended with Damage”:** Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage system attended with injury or damage, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

- Section 371 - “Mischief in Relation to Electricity, Telegraphs and Telephones”:** Whoever commits mischief by doing any act which renders or which he knows to be likely to render any installation for generating, storing, transmitting or distributing electricity or any telegraph or telephone installation less efficient for its intended purpose or which causes or which he knows to be likely to cause a diminution of any supply of electricity, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.
- Section 372 - “Mischief by Destroying, Moving or Rendering Less Useful a Light House or River, Water-Mark”:** Whoever commits mischief by destroying or moving any lighthouse or other light used as a river water-mark, buoy or other such thing as aforesaid less useful as a guide for navigators, shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.
- Section 373 - “Mischief by Destroying or Moving etc, a Landmark Fixed by Public Authority”:** Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant or by any act which renders such land-mark less useful as such, shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.
- Section 374 - “Mischief by Fire or Explosive Substance with Intent to Damage to an amount of Ls 50 or in Case of Agricultural Produce Ls 10”:** Whoever commits mischief by fire or any substance intending to cause or knowing it to be likely that he will thereby cause damage to any property to an amount of Ls 50 or more, or where the property is agricultural produce, Ls 10 or more shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 375 - “Mischief by Fire or Explosive Substance with Intent to Destroy House etc.”:** Whoever commits mischief by fire or knowing it to be likely that he will thereby cause the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or a place for the custody of property, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.
- Section 376 - “Mischief with Intent to Destroy or make Unsafe a Decked Vessel or One of Ten Tons Burden”:** Whoever commits mischief to any decked vessel or any vessel of burden of ten tons or more intending to destroy or render unsafe or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 377 – “Mischief Described in Section 376 Committed by Fire, etc”: Whoever commits or attempts to commit by fire or any explosive substance such mischief as is described in section 376, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 378 - Intentionally Running Vessel Aground or Ashore with Intent to Commit Theft, etc.”: Whoever intentionally runs any vessel aground or ashore intending to commit theft of any property contained therein or to misappropriate any such property dishonestly or with intent that such theft or misappropriation of property may be committed, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 379 - “Mischief Committed after Preparation made for causing Death or Hurt”: Whoever commits mischief having made preparation for causing to any person death or hurt or wrongful restraint or fear of death or of hurt or of wrongful restraint, shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine.

CRIMINAL TRESPASS

Section 380 - “Criminal Trespass Defined”: Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence, is said to commit criminal trespass.

Section 381 - “House Trespass Defined”: Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship or as a place for the custody of property or any railway carriage used for the conveyance of passengers or goods, is said to commit house trespass.

Explanation:- The introduction of any part of the criminal trespasser’s body entering is sufficient to constitute house trespass.

Section 382 - “Lurking House Trespass Defined”: Whoever commits house trespass, having taken precautions to conceal such house trespass from some person who has a right to exclude or eject the trespasser from the building, vessel or railway carriage which is the subject of the trespass, is said to commit lurking house-trespass.

Section 383 - “Lurking House Trespass by Night Defined”: Whoever commits lurking house-trespass between sunset and sunrise, is said to commit lurking house trespass by night.

Section 384 - “House Breaking Defined”: A person is said to commit house breaking, who commits house trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say :-

- (a) if he enters or quits through a passage made by himself or by any abettor of the house trespass in order to the committing of the house trespass;
- (b) if he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance, or through any passage to which he has obtained access by climbing over any wall or building;
- (c) if he enters or quits through any passage which he or any abettor of the house trespass has opened in order to the committing of the house trespass by any means by which that passage was not intended by the occupier of the house to be opened.
- (d) if he enters or quits by opening any lock in order to the committing of the house trespass or in order to the quitting of the house after a house trespass;
- (e) if he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault;
- (f) if he enters or quits by any passage which he knows to have been fastened against such entrance or departure and to have been unfastened by himself or by an abettor of the house trespass.

Explanation 1 :- The word “house” in this section includes any place which may be the subject of house-trespass.

Explanation 2 :- Any out-house or building occupied with a house between which and such house there is an immediate internal communication is part of the house within the meaning of this section.

Illustration :-

- (a) (“A”) commits house-trespass by making a hole through the wall of (“Z’s”) house, or by cutting a slit in the tent in which (“Z”) is living, and putting his hand through the aperture; (“A”) commits house-breaking;
- (b) (“A”) commits house-trespass by creeping into a ship at a porthole between decks. This is house breaking;

- (c) (“A”) commits house trespass by entering (“Z’s”) house through a window. This is house breaking;
- (d) (“A”) commits house trespass by entering (“Z’s”) house through the door having opened a door which was fastened. This is house-breaking.
- (e) (“A”) commits house-trespass by entering (“Z’s”) house through the door having lifted a latch by putting a wire through a hole in the door. This is house-breaking;
- (f) (“A”) finds the key of (“Z’s”) house-door which (“Z”) had lost and commits house-trespass by entering (“Z’s”) house having opened the door with that key. This is house-breaking;
- (g) (“Z”) is standing in his doorway. (“A”) forces a passage by knocking (“Z”) down and commits house-trespass by entering the house. This is house-breaking;
- (h) (“Z”), the door-keeper of (Y’), is standing in (Y’s) doorway, (“A”) commits house-trespass by entering the house having deterred (“Z”) from opposing him by threatening to beat him. This is house-breaking.

Section 385 - “House Breaking by Night Defined”: Whoever commits house breaking between sunset and sunrise is said to commit house breaking by night.

Section 386 - “Criminal Trespass”: Whoever commits criminal trespass shall on conviction, be punished with imprisonment for a term not exceeding three months or with fine or with both.

Section 387 - “House Trespass”: Whoever commits house-trespass shall on conviction, be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 388 - “House-trespass in order to Commit Offence Punishable with Death”: Whoever commits house trespass in order to the committing of any offence punishable with death, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.

Section 389 - “House-trespass in order to Commit Offence Punishable with fourteen year’s Imprisonment”: Whoever commits house trespass in order to the committing of any offence punishable with fourteen year’s imprisonment, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.

Section 390 - “House-trespass in order to Commit Offence Punishable with Imprisonment”: Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment shall on conviction, be punished with imprisonment for a term not exceeding two years and may also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

- Section 391 - “House-trespass after preparation for Hurt, Assault or Wrongful Restraint”:** Whoever commits house trespass having made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person or for putting any person in fear of hurt or of assault or of wrongful restraint, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.
- Section 392 - “Lurking House Trespass or House Breaking”:** Whoever commits lurking house-trespass or house breaking shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine.
- Section 393 - “Lurking House-trespass or House-breaking in Order to Commit Offence Punishable with Imprisonment”:** Whoever commits lurking house-trespass or house-breaking in order to commit any offence punishable with imprisonment shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine; and, if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.
- Section 394 - “Lurking House-trespass or House-breaking after Preparation for Hurt, Assault or Wrongful Restraint”:** Whoever commits lurking house-trespass or house-breaking having made preparation for causing hurt to any person or for assaulting any person or for wrongfully restraining any person or for putting any person in fear of hurt or of assault or of wrongful restraint, shall on conviction, be punished with imprisonment for a term not exceeding ten years and may also be liable to fine.
- Section 395 - “Lurking House-trespass or House-breaking by Night”:** Whoever commits lurking house-trespass by night or house-breaking by night shall on conviction be punished with imprisonment for a term not exceeding three years and may also be liable to fine.
- Section 396 - “Lurking house-trespass or house-breaking by night, in order to commit offence punishable with imprisonment”:** Whoever commits lurking house-trespass by night or house breaking by night in order to commit any offence punishable with imprisonment, shall on conviction, be punished with imprisonment for a term not exceeding five years and may also be liable to fine; and, if the offence intended to be committed is theft, the term of imprisonment may be extended to fourteen years.

- Section 397 - “Lurking House-trespass or House-breaking by Night after preparation for Hurt, Assault or Wrongful Restraint”:** Whoever commits lurking house-trespass by night or house-breaking by night having made preparation for causing hurt to any person or for assaulting any person or for putting any person or for wrongfully restraining any person or for putting any person in fear of hurt or of assault or of wrongful restraint, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.
- Section 398 - “Grievous Hurt caused whilst Committing Lurking House-trespass or House-breaking”:** Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.
- Section 399 - “All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them”:** If at the time of the committing of lurking house trespass by night or house breaking by night any person guilty of such offence voluntarily causes or attempts to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall on conviction, be punished with imprisonment for a term not exceeding fourteen years and may also be liable to fine.
- Section 400 - “Dishonestly Breaking open Receptacle Containing Property”:** Whoever dishonestly or with intent to commit mischief breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.
- Section 401 - “Same Offence when Committed by Person Entrusted with Custody”:** Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same dishonestly or with intent to commit mischief breaks open or unfastens that receptacle, shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.
- Section 402 - “Lurking with House-breaking Instruments”:** Whoever is discovered between sunset and sunrise carrying false keys or other instruments suitable for house breaking and seeks to conceal himself or is otherwise shown to have a criminal intention, shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine.

Section 403 - “Fabrication of False Key or Instrument”: Whoever imitates or alters any key or fabricates any instrument intending that such false key or instrument shall be used for a criminal purpose, shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine.

CHAPTER 24

OFFENCES RELATING TO DOCUMENTS AND TO PROPERTY OR OTHER MARKS.

Section 404 - “Making a False Document Defined”: A person is said to make a false document:-

- (a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed; or
- (b) who without lawful authority dishonestly or fraudulently by cancellation or otherwise alters a document in any material part thereof after it has been made or executed either by himself or by any other person whether such person be living or dead at the time of such alteration; or
- (c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot or that by reason of deception practiced upon him he does not know the contents of the document or the nature of the alteration.

Note – See illustrations to section 405.

Section 405 - “Forgery and Forged Document Defined”: Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.

Illustrations:-

- (a) (“A”) leaves with (“B”) his agent a cheque on a bank signed by (“A”) without inserting the sum payable and authorizes (“B”) to fill up the cheque by inserting a sum not exceeding Ls2,000 for the purpose of making certain payments (“B”) fraudulently fill up the cheque by inserting a sum of Ls3,000 (“B”) commits forgery;
- (b) (“A”) draws a bill of exchange on himself in the name of (“B”) without (“B’s”) authority intending to discount it as a genuine bill with a banker and intending to take up the bill on its maturity with intent to deceive the banker by leading him to suppose that he had the security of (“B”) and thereby to discount the bill. (“A”) is guilty of forgery;
- (c) (“Z’s”) will contains these words – “I direct that all my remaining property be equally divided between (“A”), (“B”) and (“C”). (“A”) dishonestly scratches out (“B’s”) name intending that it may be believed that the whole was left to himself and (“C”). (“A”) has committed forgery;
- (d) (“A”) sells and conveys an estate to (“Z”), (“A”) afterwards, in order to defraud (“Z”) of his estate, executes a conveyance of the same estate to (“B”) dated six months earlier than the date of the conveyance to (“Z”), intending it to be believed that he had conveyed the estate to (“B”) before he conveyed it to (“Z”). (“A”) has committed forgery;
- (e) (“Z”) dictates his will to (“A”). (“A”) intentionally writes down a different legatee from the legatee named by (“Z”) and by representing to (“Z”) that he has prepared the will according to his instructions induces (“Z”) to sign the will. (“A”) has committed forgery;
- (f) (“A”) writes a letter and signs it with (“B’s”) name without (“B’s”) authority certifying that (“A”) is a man of good character and in distressed circumstances from unforeseen, misfortune, intending by means of such letter to obtain alms from (“Z”) and other person. Here, as (“A”) made a false document in order to induce (“Z”) to part with property, (“A”) has committed forgery;
- (g) (“A”) without (“B’s”) authority writes a letter and signs it in (“B’s”) name certifying to (“A’s”) character, intending thereby to obtain employment under (“Z”). (“A”) has committed forgery in as much as he intended to deceive (“Z”) by the forged certificate and thereby to induce (“Z”) to enter into an express or implied contract for service.

Explanation 1-

A man’s signature of his own name may amount to forgery.

Explanation 2-

The making of a false document in the name of a fictitious person intending to be believed that the document was made by a real person, or in the name of a deceased person intending it to be believed that the document was made by the person in his lifetime, amounts to forgery.

Illustration –

(“A”) draws a bill of exchange upon a fictitious person and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. (“A”) commits forgery.

Note –

As to sanction necessary before taking cognizance of the offence described in this section when committed by a party to any proceedings in any Court or in respect of a document used or given in evidence in such proceedings, see section 130 of the Criminal Procedure Act, 2003.

Section 406 – “Forgery”: Whoever commits forgery shall on conviction, be punished with imprisonment for a term not exceeding five years or with fine or with both.

Section 407 - “Forgery of Document to Title, Record of Court etc”: Whoever forges a document purporting to be a document of title or to be a record or proceedings of or in a Court or a register of birth, baptism, marriage or burial or a register kept by a public servant as such or a certificate or document purporting to be made by a public servant in his official capacity or an authority to institute or defend a suit or to take any proceedings therein, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 408 - “Forgery for Purpose of Cheating”: Whoever commits forgery intending that the document forged shall be used for the purpose of cheating shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 409 - “Forgery for Purpose of Harming Reputation”: Whoever commits forgery intending that the document forged shall harm the reputation of any person or knowing that it is likely to be used for that purpose, shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine.

Section 410 - “Using as Genuine a Forged Document”: Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall on conviction, be punished in the same manner as if he has forged such document.

Note - As to sanction necessary before taking cognizance of an offence under this section when committed by a party to any proceedings in any Court or in respect of a document used or given in evidence in such proceedings, see section 130 of the Criminal Procedure Act, 2003.

Section 411 - “Making or Possessing Counterfeit seal etc., with Intent to Commit Forgery”: Whoever makes or counterfeits any seal, plate or other instrument for making an impression intending that the same shall be used for the purpose of committing forgery or with such intent has in his possession any such seal, plate or other instrument knowing the same to be counterfeit, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 412 - “Having possession of document described in section 407, knowing it to be forged and intending to use it as genuine”: Whoever has in his possession any document of the description mentioned in section 407 knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 413 - “Counterfeiting device or mark used for authenticating documents or possessing counterfeit marked material”: Whoever counterfeits upon or in the substance of any material, any device or mark used for the purpose of authenticating any document intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Note - As to sanction necessary before taking cognizance of any offence under this section when committed by a party to any proceedings in any Court or in respect of a document used or given in evidence in such proceedings, see section 130 of the Criminal Procedure Act, 2003.

Section 414 - “Fraudulent Cancellation, Destruction etc. of Document of Title”: Whoever fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person cancels, destroys or defaces or attempts to cancel, destroy or deface or secretes or attempts to secrete any document which is or purports to be a document of title or commits mischief in respect to such document, shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Section 415 - “Falsification of Accounts”: Whoever, being an employee of another person, willfully and with intent to defraud and injure, destroys, alters, mutilates or falsifies any book, paper, writing, document of title or account, which belongs to or is in the possession of his employer or has been received by him for or on behalf of his employer, or willfully and with intent to defraud and injure makes or abets the making of any false entry in or omits or alters or abets the omission or alteration of any material particular from or in any such book, paper, writing, documents of title or account, shall on conviction, be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Note - See section 192 (3) of the Criminal Procedure Act, 2003.

PROPERTY AND OTHER MARKS.

Section 416 - “Property Mark Defined”: Mark used for denoting that movable property belongs to a particular person is called a property mark.

Section 417 - “Using a False Property Mark Defined”: Whoever marks any movable property or goods or any case, package or other receptacle property or goods or uses any case, package or other receptacle having any mark thereon in a manner reasonably calculated to cause it to be believed that the property or goods so marked or any property or goods contained in any such receptacle so marked belong to a person to whom they do not belong, is said to use a false property mark.

Section 418 - “Using a False Property Mark”: Whoever uses any false property mark, unless he proves that he acted without intent to defraud and injure, shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 419 - “Counterfeiting a property mark used by another”: Whoever counterfeits any property mark used by any other person, shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

- Section 420 - “Counterfeiting a Mark used by a Public Servant”:** Whoever counterfeits any property mark used by a public servant or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place or that the property is of a particular quality or has passed through a particular office or that it is entitled to any exemption or uses as genuine any such mark knowing the same to be counterfeit, shall on conviction, be punished with imprisonment for a term not exceeding three years and may also be liable to fine.
- Section 421 - “Making or Possession of any Instrument for Counterfeiting a Property Mark”:** Whoever makes or has possession of any die, plate or other instrument for the purpose of counterfeiting a property mark or has in his possession a property mark for the purpose of denoting that any goods or commodity belong to a person to whom they do not belong, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.
- Section 422 - “Making a False Mark upon any Receptacle Containing Goods”:** Whoever makes any false mark upon any case, package or other receptacle containing goods or commodities in manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods or commodities which it does not contain the goods which it has to contain or that the goods or commodities contained in such receptacle are of a nature or quality different from the real nature or quality thereof, shall unless he proved that he acted without intent to defraud and injure, be punished on conviction, with imprisonment for a term not exceeding three years or with fine or with both.
- Section 423 - “Making use of any Such False Mark”:** Whoever makes use of any such false mark in any manner prohibited by section 422, shall, unless he proves that he acted without intent to defraud and injure, be punished on conviction, as if he had committed an offence against that section.
- Section 424 - “Tampering with Property Mark with Intent to cause Injury”:** Whoever removes, destroys, defaces or adds to any property mark intending or knowing it to be likely that he may thereby cause injury to any person, shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

CHAPTER 25
OFFENCES RELATING TO
MARRIAGE AND INCEST

Note - As to action necessary before taking cognizance of certain offence under this Chapter, see sections 133 and 134 of the Criminal Procedure Act, 2003.

- Section 425 - “Cohabitation caused by a man deceitfully inducing a belief of lawful Marriage”:** Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall on conviction, be punished with imprisonment for a term not exceeding two years and may also be liable to fine.
- Section 426 - “Marriage ceremony fraudulently gone through without lawful Marriage”:** Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married knowing that he is not thereby lawfully married, shall on conviction, be punished with imprisonment for a term not exceeding two years and may also be liable to fine.
- Section 427 - “Adultery with Married Woman”:** Whoever has sexual intercourse with a woman who is and whom he has reason to believe to be the wife of another man, such sexual intercourse not amounting to the offence of rape, commits the offence of adultery and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.
- Section 428 - “Adultery by Married Woman”:** Whoever being a married woman has sexual intercourse with another man commits the offence of adultery and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.
- Section 429 - “Enticing or taking away or detaining with criminal intent a married woman”:** Whoever takes or entices away any woman, who is and whom he knows or has reason to believe to be the wife of any other man, from that man or from any person having the care of her on behalf of that man with intent that she may have illicit intercourse with him or any other person or conceals or detains with that intent any such woman, shall on conviction, be punished with imprisonment for a term not exceeding three years or with fine or with both.
- Section 430 - “Incest”:** Whoever being a man has sexual intercourse with a woman who is and whom he knows or has reason to believe to be his daughter, his grand-daughter, his mother or any other of his female ascendants or descendants, his sister or the daughter of his brother or sister or his paternal or maternal aunt or uncle and whoever being a woman voluntarily

permits a man who is and whom she knows or has reason to believe to be her son, her grandson, her father or any of her male ascendants or descendants, her brother or the son of her brother or sister of her paternal or maternal uncle, to have sexual intercourse with her, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding seven years and may also be liable to fine.

Explanation:- In this section, words expressing relation include relatives of the half blood and relatives whose relation is not traced through a lawful marriage.

CHAPTER 26

DEFAMATION

Section 431 - “Defamation Defined”: Whoever by words either spoken or reproduced by any mechanical means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, save as hereinafter excepted, to defame that person.

Explanation 1:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2:- It may amount to defamation to make an imputation concerning a company or any association or collection of persons as such.

Explanation 3:- An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4:- No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly in the estimation of others lowers the moral or intellectual character of that person or lowers the character of that person in respect of his calling or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state or in a state generally considered as disgraceful.

Illustrations:-

(a) (“A”) says (“Z”) is an honest man; he never stole (“B’s”) watch, intending to cause it to be believed that (“Z”) did steal (“B’s”) watch. This is defamation, unless it falls within one of the exceptions;

(b) (“A”) is asked who stole (“B’s”) watch. (“A”) points to (“Z”), intending to cause it to be believed that (“Z”) stole (“B’s”) watch. This is defamation unless it falls within one of the exceptions;

(c) (“A”) draws a picture of (“Z”) running away with (“B’s”) watch, intending it to be believed that (“Z”) stole (“B’s”) watch. This is defamation, unless it falls within one of the exceptions.

First exception:- It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Illustrations –

(a) (“Z”) opens a school at Yei. The fact is that (“Z”) has fled from Europe to escape punishment for gross acts of swindling. (“A”) is protected by this exception if he publishes that fact;

(b) but if the swindling had occurred twenty years ago and in the meantime (“Z”) had been carrying on a school in Kampala and had been living an upright life, (“A”) would not be protected by this exception if he raked up the facts and published them.

Second exception:- It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further.

Third exception:- It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct and no further.

Illustrations - It is not defamation in (“A”) to express in good faith any opinion whatever respecting (“Z’s”) conduct in petitioning government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting or in forming or joining any society which invites the public support.

Fourth exception:- It is not defamation to publish a substantially true report of the proceedings of a Court or of the result of any such proceedings.

Explanation - An officer holding an inquiry in open Court preliminary to a trial in a Court is a Court within the meaning of the above exception.

Fifth exception:- It is not defamation to express in good faith any opinion whatever respecting the merits of any case civil or criminal which has been decided by a Court or respecting the conduct of any person as a party, witness or agent in any such case or respecting the character of such person as far as his character appears in that conduct and no further.

Illustrations –

(a) (“A”) says – “I think (“Z’s”) evidence on that trial is so contradictory that he must be stupid or dishonest”. (“A”) is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects (“Z’s”) character as it appears in (“Z’s”) conduct as a witness and no further;

(b) But if (“A”) says - :I do not believe what (“Z”) asserted at the trial, because I know him to be a man without veracity”. (“A”) is not within this exception, inasmuch as the opinion which he expresses of (“Z’s”) character is an opinion not founded on (“Z’s”) conduct as a witness.

Sixth exception:- It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance and no further.

Explanation:- a performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations –

(a) A person who publishes a book submits that book to the judgment of the public;

(b) A person who makes a speech in public submits that speech to the judgment of the public;

(c) An actor or singer who appears on a public stage is acting or singing to the judgment of the public;

(d) (“A”) says of the book published by (“Z”) (“Z’s”) book is foolish, (“Z”) must be a weak man (“Z’s”) book is indecent, (“Z”) must be a man of impure mind”. (“A”) is within this exception, if he says this in good faith inasmuch as the opinion which he expresses of (“Z”) respects (“Z’s”) character only so far as it appears in (“Z’s”) book and no further;

(e) but if (“A”) says – “I am not surprised that (“Z’s”) book is foolish and indecent for he is a weak man and a libertine”, (“A”) is not within this exception, inasmuch as the opinion which he expresses of (“Z’s”) character is an opinion not founded on (“Z’s”) book.

Seventh exception:- It is not defamation in a person having over another any authority either conferred by law or arising out of a lawful contract made with that other to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration - A Magistrate censuring in good faith the conduct of a witness or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier are within this exception.

Eighth exception - It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

Ninth exception - It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it or for the protection of the interests of any other person or for the public good.

Illustrations -

- (a) (“A”) a shopkeeper says to (“B”), who manages his business – “sell nothing to (“Z”) unless he pays you ready money, for I have no opinion of his honesty”, (“A”) is within the exception if he has made this imputation on (“Z”) in good faith for the protection of his own interests;
- (b) (“A”) a Magistrate in making a report to the Chief Justice, casts an imputation on the character of (“Z”). Here, if the imputation is made in good faith and for the public good, (“A”) is within the exception;
- (c) (“A”) in giving evidence before a Court identifies (“Z”) as the person whom he saw committing a robbery. Although (“Z”) proves that (“A”) is mistaken, (“A”) is protected by this exception. If (“A”) is giving false evidence he can be proceeded against under section 169.

Tenth exception - It is not defamation to convey a caution in good faith to one person against another provided that such caution be intended for the good of the person to whom it is conveyed or of some person in whom that person is interested or for the public good.

Section 432 - “Defamation”: Whoever defames another shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 433 - “Injurious Falsehood”: Whoever, save as hereinafter excepted, by words either spoken or reproduced by mechanical means or intended to be read by signs or by visible representation makes or publishes any false statement, intending to harm or knowing or having reason to believe that such false statement will harm the reputation of any person or class of persons or of the New Sudan or any of its constitutional institutions or administrative or political organs, shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Explanation:- A statement is false unless it is substantially true.

Exception:- It is not an offence under this section to make or publish in good faith a false statement which the accused had reasonable grounds for believing to be substantially true.

Section 434 - “Printing or Engraving etc. Matter known to be Defamatory”: Whoever prints or engraves or inscribes any matter or prepares or causes to be prepared any record for the purpose of mechanical reproduction of any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note - For power to order destruction of defamatory matter see section 305 of the Criminal Procedure Act, 2003.

Section 435 - “Sale of Printed or Engraved or Inscribed Substance Containing Defamatory Matter”: Whoever sells or offers for sale any printed or engraved or inscribed substance containing defamatory matter or any record prepared for the purpose of the mechanical reproduction of defamatory matter, knowing that such substance or record contains such matter shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Note - For power to order destruction of defamatory matter see section 305 of the Criminal Procedure Act. 2003.

CHAPTER 27

CRIMINAL INTIMIDATION, INSULT, ANNOYANCE AND DRUNKENNESS

Section 436 - “Criminal Intimidation Defined”: Whoever threatens another with any injury to himself or to any person in whom he is interested, with intent to cause him alarm or to cause him to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation:- A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration – (“A”), for the purpose of inducing (“B”) to desist from prosecuting a civil suit, threatens to burn (“B’s”) house. (“A”) is guilty of criminal intimidation.

Section 437 - “Criminal Intimidation”: Whoever commits the offence of criminal intimidation shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both; and, if the threat be to cause death or grievous hurt or to cause the destruction of any property by fire or to cause an offence punishable with death or with imprisonment for a term not exceeding seven years or to impute unchastity to a woman, shall be punished with imprisonment for a term not exceeding seven years or with fine or with both.

Section 438 - “Criminal Intimidation by an Anonymous Communication”: Whoever commits the offence of criminal intimidation by an anonymous communication or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall on conviction, be punished with imprisonment for a term not exceeding two years in addition to the punishment provided for the offence by section 437.

Section 439 - “Intentional insult with intent to provoke breach of the peace”: Whoever intentionally insults and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause a breach of the peace or the commission of any other offence, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 440 - “Word, Gesture or Act intended to Insult the Modesty of a Woman”: Whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen by such woman or intrudes upon the privacy of such woman, commits an offence and shall on conviction, be punished with imprisonment for a term not exceeding two years or with fine or with both.

Section 441 - “Drunkenness in a Public Place”: Whoever is found drunk in a public place or in any place by entering which he committed a trespass, shall on conviction, be punished with imprisonment for a term not exceeding seven days or with fine or with both; and, if the person so found conducts himself in such place in a disorderly manner or is incapable of taking care of himself, the punishment may extend to imprisonment for a term of one month or with fine or with both.

Section 442 - “Drunkenness in Private Place”: Whoever being drunk in any private place there conducts himself in a disorderly manner to the annoyance of any person having a right to exclude him from such place if fails to leave such place when requested to do so by such person, shall be punished with imprisonment for a term not exceeding one month or with fine not exceeding Ls10 or with both.

Section 443 - “Effect of Previous Conviction under Section 441 or 442”: Whoever is convicted of an offence under section 441 or 442 shall, if he is shown to have been convicted of an offence under either of such sections within the previous six months, be punished with imprisonment or fine which may extend to twice the maximum imprisonment or maximum fine prescribed for the offence of which he is convicted or with both; and, if he is shown to have been convicted of two or more such offences within the like period, then with imprisonment or maximum fine aforesaid or with both.

CHAPTER 28

VAGABOND

Section 444 - “Definitions”: In this part:-

- (1) the term “idle person” shall include:-
 - (a) any person who being wholly or in part to maintain himself or his family willfully neglects or refuses to do so;
 - (b) any person who wanders about or places himself in any street or public place to beg or cause or encourages children to do so unless from age or infirmity he is unable to earn his living; and

- (c) any person who has no settled home and has no ostensible means of subsistence and cannot give a satisfactory account of himself.

Explanation:- In order to convict a person under paragraph (c) all the things mentioned must be proved. A nomad cannot be convicted because he has no settled home if he has either apparent means of subsistence or gives a satisfactory account of himself.

(2) The term “vagabond” shall include:-

- (a) Any person who after being convicted as an idle person, commits any of the offences which would render him liable to be convicted as such again;
- (b) Any person who is found in possession of breaking implements with intent to commit any of the offences defined in sections 381 to 383 (inclusive) of this Code;
- (c) Any suspected person or reputed thief who by night frequents or loiters about any shop, warehouse, dwelling house, dock or wharf with intent to commit any offence under chapter 22 or 23 of this Code;
- (d) Any male person who knowingly lives wholly or in part on the earnings of a prostitute or in any public place solicits or importunes for immoral purposes; and
- (e) Any male person who dresses or is attired in the fashion of a woman in a public place.

(3) An “incorrigible vagabond” shall mean any person who after being convicted as a vagabond commits any of the offences which would render him liable to be convicted as such again.

Section 445 - “Penalty on Conviction as Idle Person”: Whoever is convicted as being an idle person shall on conviction, be punished with imprisonment for a term not exceeding one month or with fine or with both.

Section 446 - “Penalty on Conviction as Vagabond”: Whoever is convicted as a vagabond shall be punished with imprisonment for a term not exceeding three months or with fine or with both.

Section 447 - “Penalty on Conviction as Incorrigible Vagabond” Whoever is convicted as an incorrigible vagabond shall be punished with imprisonment for a term not exceeding one year or with fine or with both.

Section 448 - “Evidence of Intent to Commit an Offence” For the purposes of this chapter in proving the intent to commit an offence it shall not be necessary to show that the person suspected committed any particular act tending to show this purpose or intent and he may be convicted if from the circumstances of the case and from his known character as proved to the Court before which he is brought it appears to the Court that his intent was to commit such offence.

Illustration - A man who has been convicted of theft is found by night crouching in the shadow of a locked shop and seeing a policeman at once runs away. He is arrested in possession of a large bundle of keys. It need not be shown that he was trying the keys or attempting to open the shop.

Given under my hand this - of Year 2003 A.D

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Dr. John Garang deMabior
Chairman
SPLM/CANS