

First Edition 1960
Second Edition 1963

**NOTES ON
THE PENAL CODE LAW, 1959
(Northern Region No. 18 of 1959)**

(Second Edition)

Annotated

by

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PRINTED IN NIGERIA BY GASKIYA CORPORATION ZARIA

THE PENAL CODE LAW, 1959

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PREFACE TO THE SECOND EDITION

I have been encouraged to prepare the second edition of this work somewhat earlier than I had originally anticipated, by the fact that nearly 3,000 copies of the first edition were sold to the general public within eighteen months of its appearance. This surprisingly large demand from other than official sources has resulted in the work becoming out of print much earlier than was foreseen. Rather than embark upon a reprint, I have decided to revise the work in detail, introducing the amendments which have been made to the Penal Code since 1959 and annotating the case law which has developed around the Code since the date of its commencement the 30th September, 1960. I have also taken this opportunity to include, as an appendix, the Penal Code (N.R.) Federal Provisions Ordinance of 1960 (Law of Nigeria, No. 25 of 1960), together with some notes on some of the more important sections. Since this is primarily a work on the Penal Code Law, 1959 passed by the Legislature of the Northern Region, I do not think it appropriate to go into full detail with the Federal Provisions, which are supplementary to the Northern Regional Penal Code. My own work is designed primarily to assist the staff of native courts who are precluded by the Criminal Procedure (N.R.) Ordinance, 1960 (Law of Nigeria, No. 20 of 1960) from exercising any jurisdiction over Federal offences. Another factor influencing my decision not to treat the Federal Provisions as I have the Northern Nigerian Law is that most of the sections of the Federal Ordinance are, in fact, reproductions of identical sections in the Criminal Code of Nigeria in force elsewhere in the Federation and the law on these subjects has been well handled by Mr. Justice R. Y. Hedges, in a newly published work entitled "Introduction to the Criminal Law of Nigeria". I have, therefore, contained my notes to comments upon the variations which have been introduced into the Federal Provisions due to the influence exercised upon the draftsmen by the model of the Sudan Penal Code.

There is, as yet, surprisingly little reported case law on the Northern Nigerian Penal Code but there are obviously large numbers of cases which might be important in filling in gaps which are going unreported in the various divisions of the Northern Regional High Court. I understand that the Law Faculty of Ahmadu Bello University has plans to seek the co-operation of the Northern Regional High Court in a scheme to record notes on all cases tried at first instance or heard on appeal by the various divisions of the High Court. If these plans mature, they will produce a very valuable addition to our knowledge and will be of the greatest value in assisting us in the preparation of new editions of this work and other books on the Law of Northern Nigeria.

I wish, once again, to make it clear that any opinions expressed and statements made in this work are my own and carry no official approval or responsibility of the Government of the Northern Region of Nigeria. I acknowledge the help and encouragement to produce this work which I have received from the Hon. Minister of Justice and his staff, especially Mr. J. W. Burnett, the Commissioner for Native Courts in the Northern Region. I have also continued to receive valuable support from Mr. H. H. Marshall, C.M.G., Q.C., the lately retired Attorney-General of the Northern Region, and from his successor, Mr. I. M. Lewis, Q.C. My relations with the School of Oriental and African Studies at the University of London continue to be of the greatest assistance to me in the preparation of these notes and my debt to Professor J. N. D. Anderson, O.B.E., LL.D., Professor of Oriental Laws in London, and Professor Alan Gledhill has accordingly been increased as I have worked on this new edition. In particular, I would commend to any of my readers the comparative study of the Northern Nigerian and Sudan Penal Codes, due to be published next year, which is the result of two years' intensive work by Professor Gledhill.

Finally, I am heavily indebted to Mrs. L. Talbot Price, who has so willingly undertaken the burden of typing the numerous amendments necessary to produce this new edition.

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Northern Nigeria.
1963.

PREFACE TO THE FIRST EDITION

This annotated edition of the Penal Code Law of the Northern Region of Nigeria is intended to assist the staff of native courts for the period during which they will be guided by its provisions and before the precise meaning of its many complexities are explained by judicial interpretation. It is also hoped that the Nigeria Police, native authorities, administrative officers and the staff of the Institute of Administration, Zaria, will find these notes, albeit brief and inadequate, of assistance to them in their work of administering and teaching a new system of criminal justice.

The Indian Penal Code, upon which the Sudan Penal Code and thence this Code is modelled, bristles with case law and the excellent commentaries on the subject are complicated by the conflicts which have arisen because so many High Courts in different parts of the world have been called upon to interpret either the Indian Penal Code or a variant of it. Now the High Court of the Northern Region will also begin to build up its own interpretation. Although this Court will be able to start with a clean slate, since Indian precedent will not be binding upon it, there is no doubt that the decisions of other High Courts in the British Commonwealth covering identical sections of the parent Code will have strong persuasive effect, at least until a substantial body of local precedent has been built up. For this reason, legal practitioners and those seeking more advanced and detailed knowledge of the Code will naturally refer frequently to either Ratanlal's Law of Crimes or Dr. Gour's Penal Law of India and the Indian Law Reports.

My object has been to confine my comments as far as possible to matters upon which the Indian Commentaries show that there has been no conflict of interpretation, although, in a few places, I have summarised Indian precedent where I think that it is likely that the High Court of the Northern Region will follow. No specific references to Indian case law have been included because they would have no special value, as such in the Northern Region.

The ingredients of each section have been extracted in order that native courts and the police will know exactly what must be proved if a prosecution under any particular section is to succeed. Notes have also been included covering any procedural points affecting particular sections of the Code and specimen charges have been framed for most sections.

In the Introduction, I have attempted to show the manner in which a native court should consider the evidence of the complainant before framing a charge, either formally or informally, and before calling upon an accused to enter upon his defence.

I have also stated the method which magistrates and native courts in the Sudan were taught to use when making a finding in a case, as it appears to me that some such uniformity of practice would be useful in the Northern Region.

I wish to make it clear that the opinions expressed and the statements made are my own and carry no official approval or responsibility of the Government of the Northern Region of Nigeria.

I am indebted to my colleague, Malam Buba Ardo, who has undertaken the onerous task of translating these notes into Hausa. His translation will mean that the notes can be read and understood in most of the native courts of the Region either in the Hausa or English versions.

I acknowledge the help and encouragement to produce this work which I have received from Mr. H. H. Marshall, C.M.G., Q.C., the Honourable Attorney-General of the Northern Region.

Finally I acknowledge the help which I have received from Professor J. N. D. Anderson, O.B.E., LL.D., Professor of Oriental Laws at the University of London and himself a member of the Panel of Jurists; the Director and staff of the School of Oriental and African Studies, London, who have placed their ample facilities at my disposal to enable me to complete the work during my leave; Mr. F. W. Parsons, Head of Hausa Studies at the same School, upon whose work M. Buba Ardo is to rely heavily in completing his Hausa translation of these notes; and Miss Ade, Mrs. J. Marcroft and others who have undertaken the typing of the original script.

S. S. RICHARDSON

Attorney-General's Chambers,
Kaduna, N. Nigeria
December, 1959

PREFACE

The changes in the legal and judicial systems of Northern Nigeria which were undertaken in 1959 and 1960 were the beginning of a new era in the history of the country. Not only were they the forerunners of the country's Independence but they marked a development in the Northern people's progress.

Many will regard the Penal Code Law, 1959 as the cornerstone of the changed system; the general enthusiasm to learn and the anxiety to understand this new law has shown that its significance was appreciated by both lawyers and the public.

Mr. Richardson's "Notes on the Penal Code" is a most important aid in the wide understanding of the law: and although, primarily it is a lawyers' book, I am confident, that this second edition will have wide appeal and will satisfy those who wish fully to understand this important aspect of the law of the land.

MUHAMMADU NASIR,
Minister of Justice,
Kaduna.

6, May, 1963.

INTRODUCTION

1. *The Panel of Jurists.*—In December, 1958, the Legislature of the Northern Region of Nigeria approved a statement issued by the Government of the Northern Region on the subject of the reorganisation of the legal and judicial systems of the Region. This statement included the acceptance by the Government of most of the recommendations which had been made to it by a distinguished panel of jurists which had visited the Region in September, 1958. The Chairman of the Panel was Sayyed Muhammed Abu Rannat, Chief Justice of the Sudan and the two overseas members were Mr. Justice Muhammad Sharif, a retired Judge of the Supreme Court of Pakistan and Professor J. N. D. Anderson, O.B.E., LL.D., Professor of Oriental Laws of the University of London. Membership of the Panel was completed by the inclusion of the Waziri of Bornu, Shettima Kashim, C.B.E., Mr. Peter Achimugu, O.B.E., and M. Musa Othman, the Chief Alkali of Bida. The most important of the Panel's recommendations was that it was necessary for a self-governing Northern Region to establish a system of criminal law which would gain international acceptance, which would apply uniformly to all persons living within the Region, which would not discriminate against any section of the community and which would be general acceptable throughout the Region. Since the majority of the people living within the Region are Moslems, it was also considered advisable that the new system should not be in conflict with the injunctions of the Holy Qu'ran and Sunna. After carefully considering various possible systems, the Panel recommended that the Northern Region should introduce a Penal Code and Code of Criminal Procedure based upon the equivalent Sudan Codes, which had worked satisfactorily in a country in many ways similar to the Northern Region. The Sudan Codes were introduced into that country in 1899 and were, in their turn, modelled closely upon the Indian Codes. It was recognised that local modifications to suit the particular requirements of the Northern Region would be necessary.

2. *The History of the Indian Penal Code.*—The Indian Penal Code was drafted in 1834 by the first Indian Law Commission of which Lord Macaulay was the President. It did not become the law of India until 1860. Prior to its introduction, the situation in India was very similar to that prevailing today in the Northern Region. English criminal law with some modifications was administered in some parts of India and everywhere in the courts of the East India Company. Elsewhere in those parts of India which had made up the Mogul Empire the courts were principally guided by Muhammadan criminal law, modified by regulations issued by the local governments. Throughout India there were powerful minority problems and, indeed, in many parts of the country Hindus outnumbered

Moslems. Conflicts were constantly arising between Moslem, Hindu and English laws and the necessity to establish a unified system of criminal law throughout the country became an urgent requirement as the development of India into a modern state progressed. The Indian Law Commissioners decided against the introduction of English Common Law throughout India and proceeded to produce a draft Code which, whilst based upon English principles, nevertheless took into account local systems of law and particularly Moslem Law. The Commission also referred extensively to the Louisiana Code and the Code Napoleon. Since 1860, there have been surprisingly few amendments to the Penal Code although the Procedure Code has been extensively amended to suit changing times and conditions. Macaulay was a Liberal and a Benthamite and the moderate and humane provisions of the Code, particularly the scale of punishments fixed therein, are in sharp contrast to the English Common Law of 1834, which still prescribed the death penalty for a wide range of offences and especially for stealing. The Indian Penal Code quickly established a reputation in the world and is now, with local modifications, the substantive criminal law of India, Pakistan, Ceylon, Burma, Malaya, Singapore, the Sudan Republic, Aden, and the Persian Gulf States. The British East African territories have recently replaced the Indian Codes by new codes of criminal law, which nevertheless, retain much of the older law in arrangement and substance.

3. *The Drafting of the Northern Nigerian Penal Code.*—The first draft of the Northern Nigerian Penal Code was completed in December, 1958. A number of offences formerly contained in the Nigerian Criminal Code but not contained in the Sudan Penal Code were included in the draft Bill in order that nothing which was an offence under the Criminal Code would cease to be an offence in the Northern Region after the commencement of the new Penal Code. This provision was necessary because the Criminal Code of Nigeria would continue to have effect elsewhere in the Federation of Nigeria and it is desirable that any systems of substantive criminal law prevailing in the Federation should be as uniform in content as possible. Furthermore, serious crimes such as cannibalism and offences concerning trial by ordeal, witchcraft and juju, all of which must be the subject of legislation in a West African state are not dealt with at all in the Sudan and Indian Penal Codes. Penalties were generally adjusted in the draft to conform with those imposed by the Nigerian Criminal Code.

In January, 1959, the draft Bill was submitted to the scrutiny of a committee of Moslem jurists, presided over by Malam Junaidu, the Waziri of Sokoto. This committee made numerous recommendations for the amendment of the Bill, many of which, and in particular the recommendations regarding the law of homicide, were the subject of protracted negotiations lasting until May 1959. The draft Bill was published in July and passed through both Houses of the Legislature in August and early Sept-

ember becoming law on the 26th of September 1959. Offences concerning subjects exclusively within the competence of the Federal Government by virtue of Part I of the Schedule to Section 154 of the Constitution of the Federation of Nigeria are enacted as sections 410 to 477 of the Penal Code in the Schedule to the Penal Code (Northern Region) Federal Provisions Ordinance of 1960. (Law of Nigeria No. 25 of 1960). They include offences-against the State, sedition, customs offences, offences relating to copy-right, ships and wharves, currency, revenue stamps, weights and measures, posts and telegraphs, railways and aircraft, mines and immigration and passports. The Code was brought into operation on 30th September 1960 by the Penal Code Law, 1959 (Commencement) Notice, 1960 (N.R.L.N. 96 of 1960) together with other legislation associated with the reform of the legal and judicial system of the Northern Region, thereby ensuring that the new system was in force on 1st October, 1960, the day on which the Federation of Nigeria achieved its independence.

4. *Drafting Practice.*—There has been a departure from the normal drafting practice obtaining in Nigeria by the acceptance of the Indian system of including Illustrations and Explanations in the body of the law. Both Illustrations and Explanations are part of the law. The function of an Illustration is to show how the principle set out in the section is to be applied or how the particular facts of the case described in the Illustration come under the principle. An Explanation is intended to apply to the whole content of the section and to throw light on the construction of the words used by the Legislature. An Explanation is not a proviso and it is not the purpose of an Explanation to either extend the scope of a section or to restrict its meaning.

5. *The Scope of this Work.*—In the notes which follow, each section of the Penal Code Law, 1959, has been treated in a uniform manner. Firstly, under the heading of COMMENT, the sources of the section, if any, are listed. Where reference is made to the Pakistan Penal Code, this reference also indicates that further and more detailed comment upon the section can be found in the standard commentaries on the Indian Penal Code (i.e. Ratanlal's Law of Crimes; and Dr. Gour's Penal Law of India) by looking up the section in those works under the section number given as that of the Pakistan Penal Code. Secondly under COMMENT will be found general comments on the meaning of the section as interpreted in India and elsewhere, notes upon any material differences between the text and that of the Indian Penal Code and the reasons therefore with cross-references to other sections of the Code and general explanation. Under the heading PRACTICE will be found firstly a note on the evidence which must be produced to prove a charge framed under the section. Every offence is broken down to its essential ingredients, each one of which must be proved before the offence is complete. Secondly, under the sub-heading PROCEDURE will be found a synopsis of the information contained in

Appendix A to the Criminal Procedure Code, i.e., which is the type of court with lowest jurisdiction to try the offence; whether any sanctions are required for a prosecution under the section; whether the offence is bailable or compoundable, etc. Thirdly, under the sub-heading CHARGE, will be found, in most cases, a specimen form of charge for an offence under the section. Providing that the basic framework of a charge under this system is maintained, the contents and wording of a charge under any section can be modified to suit the circumstances of the particular case. After a little experience, there is no difficulty in framing a charge under those sections of the Code which create offences except where complications arise over abetment, joinder and alternative charges. In such cases, reference should be made to the draft charges contained in Appendix B to the Criminal Procedure Code which constitute the statutory form in which such charges must be framed. See also the notes to Chapter V of the Penal Code when framing a charge of abetment.

6. *Notes on procedure on the framing of charges by native courts.*—In trials conducted under the Sudanese (and Indian) Procedure, which is now largely to be introduced into the Northern Region, the court must frame any charge preferred against an accused. The only exception to this rule is found in those cases where the Director of Public Prosecutions exercises his power to direct a court to alter the charge or prefer some other charge. A native court will ordinarily frame the charge after the witnesses for the prosecution have been heard, providing that the court is satisfied that there is ground for presuming that the accused has committed an offence which the court is competent to try and to punish adequately. Section 160 of the Criminal Procedure Code permits a court to frame a charge at an earlier stage if it is satisfied that there is a *prima facie* case against the accused. In a native court, the charge may either be formal or informal. A formal charge means a charge framed in the form specified for the purpose, somewhat in the manner of the specimen charges shown in the notes which follow. An informal charge need not be written down or put to the accused in a formal fashion. Section 387 of the Criminal Procedure Code provides that it shall be sufficient in any trial before a native court to have instead of a formal charge a statement of the offence complained of with the date and place, and when material, the value of the property in respect of which the offence has been committed. If a court convicts an accused against whom no formal charge has been made, the offence proved must be stated with a reference to the appropriate section of the Penal Code or other Ordinance or Law under which in the opinion of the court an offence has been committed. (See section 388 of the Criminal Procedure Code). Normally a court will have some guidance as to the nature of the offence alleged from either the First Information Report submitted by the Police (which will usually suggest a particular section upon which the Police intend to base their prosecution) or from the complaint made to the court by a private

complainant. But the court is not thereby absolved from its duty of considering evidence of the complaint before charging an accused. The court should consider carefully the evidence in relation to the section under which it proposes to charge the accused and should only charge the accused when it is satisfied that a *prima facie* case has been made out. If the court considers at this stage that there is no case to be answered by the accused, it should forthwith discharge him. (See section 159 of the Criminal Procedure Code).

7. *Note on the preparation of judgments in native courts:*

A. (i) In simple cases the practice should be to deliver judgment orally in open court and for the Alkali or Court President to ensure that the judgment is recorded immediately after the trial is over.

(ii) In a complicated case and in a case which attracts public interest it will usually be desirable to postpone delivery of judgment until the judgment has been reduced to writing.

B. It is always necessary for the court to determine the proved facts before making a finding. The proved facts are material facts established beyond reasonable doubt and form part of the judgment. Any argument relating to the finding of these facts and of facts which were not proved to the satisfaction of the court should be recorded under the appropriate points for determination when the court is considering its reasons for finding.

C. Having determined the proved facts, the court should next consider the finding. At this stage, the points for determination should be clearly and accurately stated and the decision of the court upon each point should be given. It is essential first to study carefully the definition of the offence and list the points (the essential ingredients of the offence) which must be proved in order to establish the charge. These ingredients have been analysed in the notes which follow for every section of the Penal Code which establishes an offence.

D. By way of illustration the following may be the points for determination in a case where it is alleged that the accused killed the deceased by hitting him on the head with a stick—upon charges of:

(i) Culpable homicide punishable with death (section 221 of the Penal Code) and, alternatively,

(ii) Culpable homicide not punishable with death (section 224 of the Penal Code)—

(a) Did the accused on or about the day of.....
at hit CD with a stick?

(b) Did he thereby cause CD's death?

- (c) If the answers to (a), and (b) are YES, did the accused either—
 (i) intend to cause CD's death?
 or (ii) know at the time that he acted that death would be the probable and not only a likely consequence of his act?
- (d) If the answer to either of the alternatives here is YES, the accused has *prima facie* committed an offence under section 221 and the court has next to consider whether there are circumstances arising from the evidence which excuse or modify the offence under section 59 or section 221 by reference to the exceptions contained in subsections (1) to (7) of section 222. Under section 59, the court should consider whether there is any evidence that the accused acted in self defence, i.e., was the accused acting in lawful exercise of his right of self defence? If the answer is YES, then the accused is not guilty of an offence under section 221. If the answer to the question framed under section 59 is NO, then the court should put each of the subsections of section 221 to itself in question form and consider each question in turn.
- (e) If the answers to the questions posed in (d) above are NO then the accused may be found guilty of an offence under section 221 of the Penal Code. If the accused is entitled to the benefit of one or more of the subsections of section 222 then he may be found guilty of culpable homicide not punishable with death. But if on the other hand the court finds that the accused did not intend to cause the deceased's death or, that at the time of the act, the accused did not know that death would be the probable consequence of his act, the accused is not guilty of an offence under section 221 and the court should next consider the questions relevant to a charge under section 224 i.e.:
- (a) Did the accused intend to cause such bodily injury as is likely to cause death?
 or (b) Did the accused know at the time when he acted that death would be a likely consequence of his act?
 or (c) Did the accused cause the death of the deceased by rash or negligent act?

If the answer to any of these last three questions is YES, then subject to consideration of the provisions under Chapter 11 relating to criminal responsibility, the accused may be found guilty of an offence under section 224 of the Penal Code.

E. The above illustration is an example of the process by which a court can reach judgment in a difficult homicide case without omitting considera-

tion of any vital point. In most cases, the questions to be considered by the court are much simpler—e.g. for an offence under section 132:

- (a) Was the accused a public servant? If the answer to (a) is NO—
 (b) Did the accused personate a public servant or did he pretend to hold the post of a public servant?
 (c) Did the accused so act falsely or did he know that he did not hold the office in question?
 (d) Did the accused, when assuming the character, do or attempt to do anything under colour of his assumed office?

If the answer to all these questions is YES, then the accused may be found guilty of an offence under section 132 of the Penal Code.

F. Note the technique whereby the court always frames the questions which it puts to itself so that the court must answer YES or NO to each question. In this way "woolly" judgments are avoided. It is, of course, also necessary for the court to support its judgment with brief reasons. The answer "YES : he did it" is unlikely to convince an appeal court or reviewing authority. As full an explanation should be given as is practicable and consonant with the importance of the case.

G. Native courts are not bound by the Criminal Procedure Code but must be guided by it.¹ This in effect means that they must do their best to try to follow the requirements of the Criminal Procedure Code but if they fail to do so in certain particulars the appeal court will not necessarily regard such a failure as a fatal flaw in the decision arrived at. They are similarly not bound to follow the process set out above in arriving at their judgment but, if they do so, they are likely to master the new technique of administering criminal justice the more quickly and they will be less likely to make mistakes fatal to their proceedings on appeal.

1. See case law on "guidance" set out in Richardson and Williams on "Criminal Procedure in Northern Nigeria" published by Messrs. Sweet and Maxwell Ltd., 1963.

THE PENAL CODE LAW, 1959

GENERAL NOTE

1. The full title of the Law is "A Law to establish a Penal Code for the Northern Region of Nigeria".
2. The Law is gazetted as the Northern Region Law Number 18 of 1959. It was assented to in Her Majesty's name by Sir Gawain Bell, K.C. M.G., C.B.E., Governor of the Northern Region of Nigeria, on the 26th of September, 1959.
3. To conform with current drafting practice in Nigeria, it was necessary to present the Penal Code as a Schedule to the Law. For this reason, the main body of the Code appears after a short Law which establishes the Penal Code as part of the criminal law of the Region.
4. The Penal Code Law was brought into operation on 30th September, 1960 by the Penal Code Law, 1959 (Commencement) Notice, 1960 (N.R.L.N. 96 of 1960) together with the remaining legislation necessary to implement the reforms recommended by the Panel of Jurists which included *inter alia*, the Criminal Procedure Code Law, 1960 (N.R. No. 11 of 1960) and the Penal Code (Northern Region) Federal Provisions Ordinance (L.N. No. 25 of 1960).

THE PENAL CODE LAW

1. This Law may be cited as the Penal Code Law, 1959, and shall
Short title and commencement. come into operation on a date to be appointed by the Governor by Notice in the Regional Gazette.

COMMENT

This section provides a short title and enabled the Governor acting on the advice of the Executive Council to commence the Law by Notice. See the Penal Code Law, 1959 (Commencement) Notice, 1960 (N.R.L.N. 96 of 1960).

2. The provisions contained in the Schedule to this Law shall be the
Establishment of Penal Code. law of the Northern Region with respect to the several matters therein dealt with and the said Schedule may be cited as, and is hereinafter called, the Penal Code.

COMMENT

This section is self explanatory and provides that the Schedule to the Law shall be known as the Penal Code.

3. (1) Every person shall be liable to punishment under the Penal
Punishment of offences committed in the Northern Region. Code for every act or omission contrary to the provisions thereof which he shall be guilty within the Northern Region.

(2) After the commencement of this Law no person shall be liable to punishment under any native law or custom.

COMMENT

1. Subsection (1) of the section provides that every person committing an offence under the Penal Code in the Northern Region is liable to be punished under the provisions of the Code, irrespective of his race or creed.

2. Subsection (2) gives effect to the requirement of the Constitution (1) that no person shall be punished for a criminal offence, otherwise than under a written law. This does not mean, however, that the influence of native law and custom on the criminal law of the Region has entirely disappeared. Indeed, to deal with matters under sections 55, 387 and 388 of the Penal Code, a court must enquire into the native law and custom to which the parties are subject. By virtue of subsection (9) of section 43 of the Native Authority Law (N.R. No. 4 of 1954) a native authority may issue orders, "prohibiting, restricting or regulating or requiring to be done any matter or thing, which the native authority, by virtue of any native law or custom for the time being in force and not repugnant to morality or justice, has power to prohibit, restrict, regulate or require to be done". The effect of this subsection of the Penal Code is, nevertheless, that a person can no longer be punished under native law and custom or under a mere declaration of native law and custom issued under section 48 of the Native Authority Law, 1954. The lawful authority for punishment must in future rest either upon the relevant section of the Penal Code or upon some section in some other Ordinance or Law or subsidiary legislation. (e.g., the authority for the punishment of a contravention of an order issued under subsection (9) of section 43 of the Native Authority Law, 1954 must be related to the Law and, in particular, to section 45 thereof which enables a native authority to prescribe a penalty for a contravention). Native law and custom includes moslem law (see section 2 of Native Court Law, 1956—N.R. No. 6 of 1956).

3. In the case of *Numan Federation N.A. v. Samari Numan* (1961 N.N.L.N. 15) the High Court on appeal upheld the decision of a Provincial Court that where an offence was committed before 30th September, 1960 but the trial did not take place until after that date, section 3 (2) of the Penal Code Law prevented any conviction under native law and custom. See the Native Courts (Jurisdiction in Criminal Offences—Transitional Provisions) Order in Council, 1960 (N.R.L.N. of 1960) which attempted to rectify this deficiency in the transitional provisions.

4. (1) Where by the provisions of any law of the Northern Region the doing of any act or the making of any omission is made an offence, those provisions shall apply to every person who is in the Region at the time of his doing the act or making the omission.

(2) Where any such offence comprises several elements and any acts, omissions or events occur which, if they all occurred in the Northern Region, would constitute an offence, and any of such acts, omissions or events occur in the Northern Region, although the other acts, omissions or events, which if they occurred in the Northern Region would be elements of the offence, occur elsewhere than in the Northern Region then—

(a) if the act or omission, which in the case of an offence committed wholly in the Northern Region would be the initial element of the offence occurs in the Northern Region, the person who does that act or makes that omission is guilty of an offence of the same

1. S. 21 of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960 (N.R.L.N. 128 of 1960).

kind and is liable to the same punishment as if all the subsequent elements of the offence occurred in the Northern Region ; and
(b) if that act or omission occurs elsewhere than in the Northern Region, and the person who does that act or makes that omission afterwards enters the Northern Region, he is by such entry guilty of an offence of the same kind and is liable to the same punishment, as if that act or omission had occurred in the Northern Region and he had been in the Northern Region when it occurred.

(3) Notwithstanding the provisions of subsection (2) it shall be a defence to the charge in any such case to prove that the person accused did not intend that the act or omission should have effect in the Northern Region.

(4) The provisions of subsection (2) do not extend to a case in which the only material event that occurs in the Northern Region is the death of a person whose death is caused by an act or omission at a place outside, and at a time when that person was outside, the Northern Region.

COMMENT

1. This section re-enacts section 12A of the Nigerian Criminal Code. (Cap. 42 of the Laws of Nigeria). The section appears to be of general application and is not limited to offences against the provisions of the Penal Code. It defines the criminal liability of a person in respect of any act or omission, which is an offence under any law of the Northern Region.

2. The effect of subsection (1) is to make liable every person, who is in the Region at the time of his doing an act which is an offence under a Regional law.

3. Subsection (2) deals with cases where an offence has been committed partly within the Northern Region and partly outside it. Paragraph (a) makes an offender liable under this Law when the offender has committed in the Northern Region the act which makes up the initial element of the offence. Paragraph (b) makes the offender similarly liable when the act constituting the initial element of the offence has been committed outside the Region but the offender has subsequently entered the Northern Region.

4. Subsection (2), and particularly paragraph (b) thereof, only operates when an offence has been partly committed in the Northern Region. A person cannot be convicted under a law of the Northern Region for an offence wholly committed outside the Region; and his subsequent entry into the Region is not relevant unless some element of the offence is shown to have been committed within the Region.

5. Subsection (3) provides a rider to subsection (2) and has no reference to offences which have been wholly committed within the Northern Region. The subsection provides that it is a defence to prove that the accused did not intend that his act should have effect in the Northern Region.

6. Subsection (4) makes a specific exception of the operation of subsection (2), when the only material event occurring in the Northern Region is the death of a person, whose death is caused by an act committed outside the Region at a time when that person was himself outside the Region (e.g., a person wounded in a fight in the Western Region is carried across the boundary into the Northern Region and dies of his wounds. The person causing the injury would in such a case be triable under the appropriate law of the Western Region).

5. (1) When by the Penal Code any act is declared to be lawful, no Civil remedies. action shall be brought in respect thereof.

(2) Except as aforesaid, the provisions of this Law shall not affect any right of action which any person would have had against another if this Law had not been passed; nor shall the omission from the Penal Code of any penal provision in respect of any act or omission which before the time of the coming into operation of the Penal Code constituted an actionable wrong affect any right of action in respect thereof.

COMMENT

1. Subsection (1) provides that nothing declared to be lawful by the Penal Code can constitute grounds for a civil action i.e., nothing declared lawful by the Penal Code can be a tort.

2. Subject to the provisions of subsection (1), subsection (2) saves all grounds for civil action, which existed before the passing of the Penal Code Law and, in particular, grounds for civil action in respect of offences not contained in the Penal Code but which formerly existed under the provisions of the Nigerian Criminal Code (Cap. 42) now repealed in so far as the Northern Region is concerned.

6. Nothing in this Law or in the Penal Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as contempt of court; but a person cannot be so punished and also punished under the provisions of the Penal Code for the same act or omission.

COMMENT

This section saves the common law power, which vests in all courts of record to punish summarily contempts of the court. A court cannot, however, proceed under section 155 of the Penal Code and also exercise its common law power to punish a contempt. For the procedure to be adopted by a court in dealing with cases of contempt see sections 314 and 315 of the Criminal Procedure Code. The High Court and Sharia Court of Appeal are courts of record. (1)

7. The Criminal Code Ordinance, in so far—
(a) as it has effect as if it were a law enacted by the Legislature of the Northern Region; and
(b) as it applies to the Northern Region, is hereby repealed.

COMMENT

1. A considerable number of offences contained in the Nigerian Criminal Code (Cap. 42) relate to those matters which are within the exclusive competence of the Federal Legislature as set out in Part I of the First Schedule to the Nigeria (Constitution) Order in Council, 1954 (e.g., treason, sedition, offences relating to the Armed Forces, posts and telegraphs, coinage and railways). The Northern Regional Legislature has no constitutional power to repeal legislation in respect of such matters and section 7 of this Law accordingly only repeals the Criminal Code Ordinance (Cap. 42) in so far as it was, or was deemed to be a law enacted by the Legislature of the Northern Region.

2. The Federal Legislature has repealed the remainder of the Criminal Code Ordinance and enacted a schedule of offences covering matters exclusively within the competence of the Federal Legislature. This Schedule is only used in the Northern Region and it, together with the Schedule to the Penal Code Law, replaces completely the repealed Criminal Code Ordinance as the criminal law of the Region. See section (5) of the Penal Code (Northern Region) Federal Provisions Ordinance, 1960. (L.N. No. 25 of 1960).

1. See S. 49 (3) of the Third Schedule of the Nigeria (Constitution) Order in Council, 1960 (N.R.L.N. 12 of 1960) and S. of the Sharia Court of Appeal Law, 1960 (N.R. No. 16 of 1960).

SCHEDULE
CHAPTER I

GENERAL EXPLANATIONS AND DEFINITIONS

1. Every expression, which is explained in any part of this Penal Code, is used in every part of this Penal Code in conformity with the explanation, unless the subject or sense of the context otherwise requires.

Sense of expression once explained.

COMMENT

Pakistan Penal Code section 7.
Sudan Penal Code section 5.

2. The pronoun "he" and its derivatives are used of any person whether male or female.

COMMENT

Pakistan Penal Code section 8.
Sudan Penal Code section 6.

3. 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.

Number.

COMMENT

Pakistan Penal Code section 9.
Sudan Penal Code section 7.

4. The word "man" denotes a male human being of any age and the word "woman" denotes a female human being of any age.

Man, woman.

COMMENT

Pakistan Penal Code section 10.
Sudan Penal Code section 7.

(1) 'of any age'. These words indicate that a male or female child will come within the definitions of "man" or "woman" respectively. Thus a female child is a woman within the meaning of s. 268, unless otherwise specifically provided to the contrary.

5. (1) The word "person" includes any company or association or body of persons, whether incorporated or not.

Person.

(2) A child becomes a person when it has been born alive whether it has breathed or not, and whether the umbilical cord is severed or not.

COMMENT

Pakistan Penal Code section 11.
Sudan Penal Code section 9.

1. The word "person" includes both a natural person (a human being) and an artificial person (e.g., a native authority or other corporation). The word is however frequently used in the Code in a sense in which it is clear from the context that corporate bodies are not included. (e.g., Chapter XVIII and sections 51, 52, 53, 65, 90, 100, 101, 108-110, 126, 127, 132, 156, 170, 192, 211, 213, 382, 387 and 388.)

2. The word 'person' has been held in India to include the Government as representative of the whole community.

3. Under the Code, where it is physically impossible for a limited company to commit offences or where evidence of a particular intention is essential or where the only punishment is imprisonment, a company cannot be proceeded against.

6. The words "the public" include any class or section of the public.

COMMENT

Pakistan Penal Code section 12.

Sudan Penal Code section 10.

1. The section does not define "public".

2. "Public" refers not only to all persons within the Northern Region, but also to the persons inhabiting or using any particular place or any one of such persons, and also to such indeterminate persons as may happen to be affected by the conduct with respect to which such expression is used.

7. The word "Magistrate" denotes a magistrate under the Code of Magistrate. (No. 7 of 1955.) Criminal Procedure.

COMMENT

(1)

See the Magistrates' Courts (Northern Region) Law, 1955 (No. 7 of 1955) and the Criminal Procedure Code Law, 1960 (N.R. No. 11 of 1960).

8. "Court of Justice" includes every civil or criminal court established by any Ordinance or Law or deemed to be so established and every person or body of persons exercising judicial functions in the Northern Region by virtue of any Ordinance or Law and shall also include every Court Martial held in the Northern Region under the military law in force in the Northern Region.

COMMENT

Pakistan Penal Code section 20.

Sudan Penal Code section 11.

"Court of Justice" does not mean here the place where justice is administered but the Judge, Magistrate, Alkali, or Court President and members of the Court in the conduct of judicial proceedings. When such persons are transacting merely administrative business, they are not a Court of Justice.

9. "Judicial proceedings" includes any proceeding in the course of which it is lawful to take evidence on oath.

COMMENT

Sudan Penal Code section 12.

This section does not define judicial proceedings. Its intention is to include within the meaning of "Judicial Proceedings" administrative or quasi-judicial enquiries where it is lawful for the persons conducting such enquiries to require that evidence is given on oath.

10. The words "public servant" denote a person falling under any of the descriptions hereinafter following, that is to say—
(a) every person appointed by the Government or the Government of the Federation or of a Region while serving in the Northern

1. Repealed by virtue of S. 8 of the Criminal Procedure Code Law, 1960 (N.R. No. 11 of 1960).

Region or by any native, provincial, municipal or other local authority and every person serving in the Northern Region appointed by a servant or agent of any such Government or 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 coming within the description set forth in paragraph (a) who is in the service of the Government or of any native, provincial, municipal or other local authority in a judicial or quasi-judicial, executive, administrative or clerical capacity;
- (c) every commissioned officer of the Nigerian military forces or of the military forces of Great Britain while serving in the Northern Region;
- (d) every assessor or other person assisting a Court of Justice or a public servant exercising judicial or quasi-judicial functions, while acting in that capacity;
- (e) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority, while acting in that capacity;
- (f) every officer or other person not being a member who is appointed to perform any duty in connection with the discharge of its functions by any body forming part of the Legislature of the Region;
- (g) every person who is in the service of any public corporation established by any Ordinance or Law.

Explanation 1.—In this section public duties include duties to be performed for the protection, preservation or promotion of the public health, order, safety or convenience and duties to be performed for the protection of the pecuniary interests of or for carrying on the work of the Government or of any native, provincial, municipal or other 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.

COMMENT

cf. Pakistan Penal Code section 21.

Sudan Penal Code section 14.

and definition of "persons employed in the public service"—Criminal Code of Nigeria (Cap. 42 Laws of Nigeria, 1958).

1. The definition covers not only employees of Government and Native Authorities but also employees of public corporations such as the Northern Regional Development Corporation or the Nigerian Broadcasting Corporation.

2. The definition includes temporary staff and also staff employed by public servants to perform specific public duties, e.g., a person temporarily employed as a messenger by a District Head to carry an official message to a Native Authority, but only whilst he is carrying out the duties of a messenger.

3. Offences which are common to public servants and other members of the community are punished under the general provisions of the Code. Offences, which can only be committed by public servants are classed separately in Chapter X. Public servants are dealt with more strictly than other persons for offences committed by them because they enjoy privileges and possess power and authority.

4. The section is wider than the corresponding section of the Pakistan Penal Code, which requires a public servant to be one who has to discharge some public duty. Paragraph (b) of section 10 declares that any person in the 'service' of the authorities listed is a public servant.

11. The term "military forces" includes naval and air forces and the Military forces, term "military affairs" includes affairs relating to naval military affairs. and air forces and defences.

COMMENT

Sudan Penal Code section 15.

12. The words "moveable property" include every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

COMMENT

Pakistan Penal Code section 22.

Sudan Penal Code section 16.

Corporeal property is property which may be perceived by the senses; the definition therefore excludes all choses in action and obligations of all kinds, which are not so capable of being perceived.

13. "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

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

15. A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully, and 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.

COMMENT

Pakistan Penal Code section 23.

Sudan Penal Code section 17.

1. "Wrongful" is not defined but should be distinguished from "illegal" which is defined in s. 29.

2. For either wrongful loss or wrongful gain, property must be lost to the owner or the owner must be wrongfully kept out of possession.

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

COMMENT

Pakistan Penal Code section 24.

Sudan Penal Code section 18.

1. "Dishonestly" is given a legal meaning. There must be an intention to cause wrongful gain or wrongful loss to a person before an act is done dishonestly.

2. Intention may frequently be presumed from the consequences of the act as a person is presumed to intend the natural consequences of his act.

17. 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.

COMMENT

Pakistan Penal Code section 25.

Sudan Penal Code section 19.

1. Whenever the words "fraud" or "intent to defraud" or "fraudulently" occur in the definition of a crime at least two elements are essential:

- (i) deceit or intention to deceive or in some cases mere secrecy or concealment; and
- (ii) actual injury or risk of possible injury by means of the deceit.

2. A good test is found in the question:

Did the author of the deceit derive any advantage from it which he could not have had if the truth had been known? If so, there was in all probability an equivalent loss to some one else and, if so, fraud.

18. A person is said to have "reason to believe" a thing if he has sufficient cause to believe that thing but not otherwise.

COMMENT

Pakistan Penal Code section 26.

Sudan Penal Code section 20.

19. (1) 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 no surprise to a reasonable man.

(2) An effect is said to be a probable consequence of an act if the occurrence of that consequence would be considered by a reasonable man to be the natural and normal effect of the act.

COMMENT

Sudan Penal Code section 20A.

The Sudan Penal Code defines the word "likely" because a distinction is introduced between the words "probable" and "likely" in the definition of murder (See section 248 of the Sudan Penal Code and note section 300 of the Pakistan Penal Code where no such distinction is drawn). Section 221 of the Northern Nigerian Penal Code retains the Sudan distinction. Its clear definition is therefore of fundamental importance in the law of homicide because where the doer of an act is merely shown to have known that death was only a likely consequence of his act, he can only be convicted under section 224 of culpable homicide not punishable with death. For this reason the Northern Nigerian Penal Code enacts the Sudan definition of "likely" and supplements the section with a definition of "probable." A "probable" consequence is one which is more certain to be the result of an act than a "likely" one. For this reason a constructive intention can more readily be inferred by the presence of the word "probable." Judicial interpretation of the Sudan Penal Code introduced this distinction into the law of homicide on the ground that the greater degree of certainty in the mind of a person as to the consequence of his act, if that consequence was the probable consequence, justified the imposition of a death penalty where death was caused. If, however, the consequence of his act could only be described as "likely", the additional element of doubt

precluded a court from construing that the intention of the doer of the act was to cause the death of a person and the punishment for culpable homicide not amounting to murder was more appropriate to the circumstances.

20. When property is in the possession of a person's wife, clerk of property in possession of wife, clerk or servant. servant on account of that person, it is in that person's possession within the meaning of this Penal 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.

COMMENT

Pakistan Penal Code section 27.

Sudan Penal Code section 21.

This section is intended to make clear that the distinction in English law between "possession" and "custody" does not apply to property kept in the custody of a wife, clerk or servant. What might be interpreted as mere "custody" in English law is "possession" under this Code. What a clerk or servant holds for his master or on his account is in the master's possession.

21. A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practise deception or knowing it to be likely that deception will thereby be practised.

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 the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.

COMMENT

Pakistan Penal Code section 28.

Sudan Penal Code section 22.

1. The word "counterfeit" occurs in the Code in Chapter XX which deals with forgery and offences relating to property and other marks. The same definition will also apply to offences relating to the coinage, included in the Federal legislation supplementary to the Northern Nigerian Penal Code. (1)

2. It is not necessary under this definition that the thing counterfeited should be an exact reproduction of the original counterfeited nor is it necessary to show that a deception actually took place. Proof of intention to practise deception by causing one thing to resemble another is sufficient.

22. The word "writing" denotes any marks made upon paper or other substance to express words or idea, and includes marks made by printing, lithography, photography, 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.

1. See Chapter XXXI of the Penal Code (Northern Region) Federal Provisions Ordinance, 1960 (L.N. No. 25 of 1960).

COMMENT

Pakistan Penal Code section 29.

Sudan Penal Code section 23.

23. 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.

COMMENT

Pakistan Penal Code section 30.

Sudan Penal Code section 24.

1. The Pakistan Penal Code prefers the words "valuable security" to denote the special class of documents which create or extinguish legal rights.

2. The words "purports to be" are included in the definition since otherwise any forged document, if the forgery was admitted, or any document not properly executed and on which no order could be passed in a civil action, could not be called a "document of title."

3. "Document of title" refers to the original document and not to a copy.

24. In every part of this Penal Code, except where a contrary intention appears from the context, words which refer to acts done Words referring to acts include illegal omissions. extend also to illegal omissions.

COMMENT

Pakistan Penal Code section 32.

Sudan Penal Code section 25.

"Omission" is here used in the sense of intentional non-doing. The intention of the section is to make punishable illegal omissions which have caused and which were intended to cause injury in the same manner as the Code punishes illegal acts.

25. 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.

COMMENT

Pakistan Penal Code section 33.

Sudan Penal Code section 26.

26. Wherever the causing of a certain effect or an attempt to cause that effect by an act or by an omission is an offence, it is to be understood that the causing of the effect or the attempt to cause that effect partly by an act and partly by an omission is the same offence.

COMMENT

Pakistan Penal Code section 36.

Sudan Penal Code section 27.

ILLUSTRATION (in Pakistan Penal Code)

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed culpable homicide punishable with death.

27. 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 even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

COMMENT

Pakistan Penal Code section 39.
Sudan Penal Code section 28.

1. The Code makes no distinction between cases in which a man causes an effect intentionally and cases in which he causes it knowingly or having reason to believe that he is likely to cause it. If the effect is a probable consequence of the means used by him he causes it "voluntarily" whether he really intended to cause it or not.

2. "Voluntarily" as here defined is akin to "wilfully" as used in English law.

28. Except where otherwise appears from the context, the word "offence" includes an offence under any law for the time being in force.

COMMENT

Pakistan Penal Code section 40.
Sudan Penal Code section 29.

29. Everything which is prohibited by law and which is an offence or which furnishes ground for a civil action is said to be "illegal."

COMMENT

Pakistan Penal Code section 43.
Sudan Penal Code section 30 (a).

The meaning of "illegal" is very wide in that it includes:

- (i) all offences;
- (ii) everything prohibited by law; and
- (iii) everything which furnishes ground for a civil action; e.g., a tort or breach of contract.

30. A person is said to be "legally bound to do" is bound by law to do but also everything the omission to do which by him is an offence or furnishes ground for a civil action.

COMMENT

Pakistan Penal Code section 43.
Sudan Penal Code section 30 (b).

31. The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

COMMENT

Pakistan Penal Code section 44.
Sudan Penal Code section 31.

"injury" is an act contrary to law and includes any tort.

32. The words "life" and "death" denote the life or death of a human being unless it otherwise appears from the context.

COMMENT

Pakistan Penal Code sections 45-46.
Sudan Penal Code section 32.

33. The word "animal" does not include a human being.

COMMENT

Sudan Penal Code section 33.

34. The word "vessel" denotes anything made for the conveyance by water of human beings or of property.

COMMENT

Pakistan Penal Code section 48.
Sudan Penal Code section 34.

35. 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.

COMMENT

Pakistan Penal Code section 49.
Sudan Penal Code section 35.

The Pakistan Penal Code expresses the intention of the section in more everyday language by using the words "British calendar" in preference to "Gregorian" calendar.

36. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court of Justice or not.

COMMENT

Pakistan Penal Code section 51.
Sudan Penal Code section 36.

An oath and a solemn affirmation are equated for the purpose of the definition of false evidence in section 156 of the Code.

37. Nothing is said to be done or believed in good faith which is done or believed without due care and attention.

COMMENT

Pakistan Penal Code section 52.
Sudan Penal Code section 37.

1. The section merely states that an act is only done in good faith if it is done with due care and attention. Absence of good faith here involves carelessness or negligence. The question of honesty does not arise in this section and the definition differs materially from the definition of good faith found in English law at section 90 of the Bills of Exchange Act, 1882.

2. The degree of care required to constitute "good faith" will vary with the circumstances. The greater the danger of injury, the greater the caution required.

38. Such grave and sudden provocation as under any section of this Penal Code modifies the nature of an offence or mitigates the penalty which may be inflicted shall not be deemed to include—

- (i) provocation sought or voluntarily provoked by the offender as an excuse for committing an offence;
- (ii) 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;
- (iii) provocation given by anything done in the lawful exercise of the right of private defence.

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 subsection (1) of section 222.

(b) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's evidence. A provoked thereby causes hurt to Z. He is punishable under section 246 and not under section 244.

(c) A attempts to pull Z's nose. Z in self defence lays hold of A. A provoked thereby attacks Z and causes him grievous hurt. A is punishable under section 247 and not under section 245.

COMMENT

Sudan Penal Code section 38.

This definition appears in section 300 of the Pakistan Penal Code. Its intention is to limit the possibility of an accused person successfully raising the defence of grave and sudden provocation if the provocation given to the accused falls within the three kinds detailed in the section. See Comment to section 222.

39. A consent is not such a consent as is intended by any section of Invalid consents. this Penal Code, if the consent is given—

- (a) 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
- (b) 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
- (c) by a person who is under fourteen years of age.

COMMENT

Pakistan Penal Code section 90.

Sudan Penal Code section 39.

1. This section does not define consent but describes what is not consent. Consent is an act of reason and involves a presumption that the person giving a consent has weighed up the pros and cons of the matter to which he has consented.

2. A consent under the Code must not be obtained by force, fraud or misrepresentation.

3. The object of paragraphs (b) and (c) is to give protection to persons who by reason of immaturity or mental incapacity are not deemed to be capable of giving a real consent. Consent in this context refers to consent given in matters involving the law of crime and must be distinguished from the age of consent in civil matters, which varies considerably from country to country, e.g., at moslem law consent in a civil matter requires that the person consenting should have attained the age of eighteen years.

4. This section is important in considering consent in cases of rape (section 282). A girl of under fourteen years of age cannot consent to sexual intercourse. Additionally the section will only protect a man from a charge of rape if he has the intelligent consent of the woman whatever her age.

PRACTICE

Evidence.—The onus of proving consent is on the accused.

40. 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, food, drink, money, clothes, arms, ammunition, or means of conveyance, or assists that other in any way to evade arrest.

COMMENT

Pakistan Penal Code section 52A.

Sudan Penal Code section 40.

This section does not create an offence, it is a definition of the word "harbour". The offence is defined in section 167 which introduces the necessary ingredient that before a person can be convicted of harbouring as a criminal offence he must be shown to have known or to have had reason to believe that an offence has been committed by the person harboured.

41. The word "Government" means the Government of the Northern Government. Region.¹

42. The words "foreign government" mean any government other than any government within the Federation of Nigeria, the government of the United Kingdom or of any British possession or part thereof.

1. Now more commonly known as the Government of Northern Nigeria.

CHAPTER II

CRIMINAL RESPONSIBILITY

43. 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.

Common know-
ledge.

COMMENT

Sudan Penal Code section 43.

44. 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.

Presumption of
knowledge of an
intoxicated person.

COMMENT

Sudan Penal Code section 42.

This section is intended to make clear that voluntary intoxication is no excuse for the commission of a crime. It is a species of madness for which the person is himself to blame. "Let him who sins in drink be punished when sober". See the comment to section 51, which deals with involuntary intoxication.

45. Nothing is an offence which is done by any person who is justified by law, 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 justified by law in doing it.

Act done by per-
son bound or justi-
fied by law.

ILLUSTRATIONS

(a) A, an officer of a Court of Justice 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 culpable homicide. 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 seizes Z in order to bring him before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self defence.

COMMENT

Pakistan Penal Code section 79.

Sudan Penal Code section 44.

1. An accused person cannot allege generally that he had a good motive: he must allege specially that he was empowered by law to act in the matter and that he had so acted in good faith.

2. The mistake must be one of fact and not of law. A mistake of law happens when a person having full knowledge of the facts makes a mistake in deciding upon their legal effect. Mistake in point of law is not a defence. Ignorance of the law does not excuse but may be a factor to be considered in mitigation of punishment.

3. To satisfy a court of good faith, an accused must show that he acted advisedly and with due care and attention, and that he had reasonable ground for believing that he ought to do what he did.

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

Act of Court of
Justice.

COMMENT

Pakistan Penal Code section 77.

Sudan Penal Code section 45.

1. The section protects a Judge, Alkali, Magistrate, President or member of a Court of Justice when acting judicially. It does not protect a Justice of the Peace. Both in English law and by Indian interpretation of the Indian Penal Code, a Judge, etc., is entitled to the protection of this section for his judicial acts whether in court or in chambers.

2. "Judicial acts" may extend beyond the administration of justice in court and may include the discharge of any duties by a judge when he is required to direct his mind to determine what is fair and just in the matter before him.

47. Nothing which is done in pursuance of or which is warranted by the judgment or order of a Court of Justice, 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 had such jurisdiction.

Act done pur-
suant to the judg-
ment or order of
Court.

COMMENT

Pakistan Penal Code section 77.

Sudan Penal Code section 46.

1. This section is designed to protect officers acting under the authority of a judgment or order of a Court of Justice.

2. An officer is protected under this section if he carries out the order of a court which has, in fact, no jurisdiction to pass the order providing always that he believed that the court had jurisdiction. (Compare section 46, where the Judge must be acting within his jurisdiction).

48. Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge in the course of doing a lawful act in a lawful manner by lawful means and with proper care and caution.

Accident in doing
a lawful act.

COMMENT

Pakistan Penal Code section 80.

Sudan Penal Code section 47.

1. Illustration in the Pakistan Penal Code reads:

"A is at work with an axe; the head flies off and kills a man who is standing by. Here, if there was no negligence on the part of A, his act is excusable and not an offence."

2. Stephen's Digest of Criminal Law gives further illustrations:

(i) A schoolmaster corrects a scholar in a manner not intended or likely to injure him. The scholar dies. Such a death is accidental.

(ii) A takes up a gun, not knowing whether it is loaded or not, points it in play at B and pulls the trigger. B is shot dead. Such a death is not accidental. If A had reason to believe that the gun was unloaded, the death would have been accidental but in this example he did not know whether the gun was loaded or not and had not shown proper care and caution.

3. An accident is something which happens outside the ordinary course of events. An effect is accidental when the act by which it is caused is not done with the intention of causing it and when its occurrence is so unexpected that a person of ordinary prudence would not be expected to take reasonable precautions against such an occurrence.

4. The act leading to the accident must be a lawful act done in a lawful manner. In the case of *Abdubaki v. Katsina Native Authority* (1961 N.N.C.N. 12) a person was killed whilst engaged in an unlawful fight. The High Court held on appeal that the defence of accident was not open to the appellant unless he could show that he acted in the lawful exercise of his right of private defence.

49. (1) 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 :

Act likely to cause injury, but done without criminal intent and to prevent other injury or to benefit person injured.

Provided—

- (i) that, having regard to all the circumstances of the case, the doing of the thing was reasonable; and
 - (ii) that, where the circumstances so required, the thing is done with reasonable care and skill.
- (2) This section shall not apply to the intentional causing of death or to the attempting to cause death in order to prevent or avoid injury to property only except as is provided for in section 66.
- (3) The death of a person shall under no circumstances be deemed to be for the benefit of that person.
- (4) Mere pecuniary benefit is not benefit within the meaning of this section.

ILLUSTRATIONS

(a) A passenger train travelling 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 which would probably involve the lives of many passengers, switches the moving train into a siding. The employee is not guilty of an offence if in all the circumstances his act was reasonable, although a fatal though less serious accident will probably 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 A's act was reasonable, A is not guilty of an offence.

(c) (i) A a surgeon knowing that a particular operation is likely to cause the death of Z, who suffers from a painful complaint, 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.

(ii) If through drunkenness the operation is performed unskillfully A is not protected by this section.

(iii) Whether Z (or some competent person on his behalf) has consented to the operation or not, is a material circumstance in judging whether it was reasonable to perform the operation.

(d) Z is seized by a crocodile. A fires at the crocodile not intending to kill Z and in good faith intending Z's benefit. In fact A kills Z. A has committed no offence.

COMMENT

Pakistan Penal Code section 81.
Sudan Penal Code section 48.

1. Section 48 of the Sudan Penal Code is much fuller than the corresponding section in the Pakistan Penal Code and is reproduced in this Code.

2. It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing an act with the knowledge that it was likely to cause death.

3. The section does not justify a person who intentionally causes harm. If, however, a person causes harm without any criminal intention and merely with the knowledge that it is likely to injure, he will not be held criminally liable for the result, provided that the act was done in good faith to prevent harm to person or property.

4. This section in no way deals with civil liability.

5. "Preventing other injury to person or property."

The original authors of the Code quoted Bentham as their authority in saying that three essential points must be established to gain the protection of this section :

(i) the certainty of the evil to be avoided;

(ii) the impossibility of avoiding the evil by any other means less dangerous; and

(iii) the certain efficacy of the means employed.

6. In English law, the defence of necessity was ruled out in such circumstances in the celebrated case of *R. v Dudley and Stephens*, (1884) 14 Q.B.D. 273 where two shipwrecked sailors sought to justify the killing and eating of the cabin boy on the grounds that had they not done so all three would have died of starvation. It was held in this case that there was not proof of such necessity as could justify the accused in killing the boy. *A fortiori*, it is provided in subsection (2) that the intentional causing of death to save property is not justified save as is provided by the right of self defence of property in section 66.

Act of child.

50. No act is an offence which is done—

(a) by a child under seven years of age; or

(b) by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.

COMMENT

Pakistan Penal Code sections 82 and 83.

Sudan Penal Code section 49.

1. If the accused is a child under seven years of age, proof of the fact of age constitutes an absolute defence. A child of under seven years of age is incapable of distinguishing right from wrong and cannot therefore form an intention to commit a crime.

2. Paragraph (b) of the section extends the protection against criminal prosecution afforded to infants by allowing a further period between the ages of seven and twelve years during which it can be shown that a child accused of a criminal act had not reached a standard of maturity sufficient to justify a court in convicting him.

3. Immaturity under paragraph (b) must be specially pleaded and proved in the same way as unsoundness of mind is pleaded. It is up to a court to make a finding on this issue if it is raised in defence.

4. When trying a case involving a child, the court should bear in mind the provisions of the Children and Young Persons Law (N.R. No. 28 of 1958).

51. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of unsound mind.

COMMENT

Pakistan Penal Code section 84.

Sudan Penal Code section 50 (a).

1. The provisions of this section are substantially the same as those laid down in English law in *M' Naghton's case* (1843) 4 St. Tr. (N.S.) 847.

2. The section provides that a person who is, by reason of unsoundness of mind, prevented from exercising control of his own conduct and deprived of the power of passing a rational judgment on the moral character of his actions cannot be held legally responsible for the criminal consequences of his actions. Protection is given by this section to an insane person who, although aware of the nature of his act, was mentally incapable of knowing whether his act was wrong or contrary to law.

3. To establish a defence of insanity it must be clearly proved that at the time of committing the act the accused was suffering from a defect of reason from disease of the mind so as not to know the nature and quality of his act or that what he was doing was wrong. The court is concerned only with the state of mind of the accused at the time of the act.

4. A plea of insanity at the time of the trial gives rise to a different issue to be dealt with in accordance with the special procedure provided in section 320 of the Criminal Procedure Code.

5. The insanity pleaded can be temporary or permanent. It can take the form of an insane delusion in the case of a person otherwise sane.

6. Drunkenness cannot be pleaded as a form of temporary insanity. See sections 44 and 52.

7. The court must determine whether or not the accused was conscious at the time of doing the act that the act complained of was one which he ought not to do or which was contrary to the law.

8. The section brings out the distinction between medical and legal insanity. A man may be considered medically insane but yet know the nature of his act and that the act is either morally wrong or contrary to law. A medical certificate to the effect that a man is insane need not therefore invoke automatically the protection of this section.

9. The meaning of the words "the nature of the act" is not restricted to the purely physical nature of the act, e.g. A owing to temporary insanity believes that a determined attack is being made on his life by armed men. A thereupon kills a defenceless man B by stabbing him in the stomach. Although A may have appreciated that he was killing a man B, he did not appreciate the nature of the act within the meaning of this section.

PRACTICE

1. For action to be taken by a court on finding a person mentally unfit to plead see section 320 of the Criminal Procedure Code. Similarly where a court finds a person insane at the time of his committing the act the subject of the complaint, the court should refer to chapter XXVI of the Criminal Procedure Code.

2. Evidence.—Where a plea of insanity is raised, a court has to consider :

(i) Has the accused established that, at the time of committing the act, he was of unsound mind? If he fails to do this, his plea fails.

(ii) If the accused has established that he was of unsound mind, has he established that the unsoundness of mind was of a degree or nature to satisfy one of the requirements of the section, i.e., was he incapable of knowing the nature of his act or of knowing that what he was doing was wrong or contrary to law?

(iii) Evidence of experts is relevant in deciding insanity. Reports of medical officers upon the mental condition of the accused should be admitted as evidence of the state of mind of the accused at the time when he was inspected by them. A medical officer may also be asked whether particular facts, assumed to be true, are, in his opinion, symptoms of insanity. He may give an opinion as to the state of mind of an accused person but not as to the accused's criminal responsibility for the act, the subject of the complaint. That is a matter for the decision of the court.

(iv) To assist the court in reaching a decision on a question of insanity, everything relating to the physical and mental history of an accused person is relevant. For this reason, not only evidence of medical officers, but evidence of relatives and persons with everyday knowledge of the accused is admissible in corroboration of the plea of insanity, as also is evidence of the conduct of the accused shortly before or at the time or shortly after the committing of the offence.

52. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication caused by something administered to him without his knowledge or against his will, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law.

Involuntary intoxication.

COMMENT

Pakistan Penal Code section 85.

Sudan Penal Code section 50 (b).

1. The Code excuses from the general rule laid down in section 44 a person who is made drunk by the trick or fraud of another or by any other means without the person's knowledge or against his will.

2. The section gives the same protection to a person involuntarily drunk as is extended to a person of unsound mind by section 51. The term "involuntary drunkenness" is limited to drunkenness induced in a person without his knowledge or against his will. Whether a person is drunk voluntarily or involuntarily is a question of fact to be determined by the court.

53. (1) 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.

(2) This section shall not apply 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.

Act not intended to cause death or grievous hurt done by consent.

COMMENT

Pakistan Penal Code section 87.

Sudan Penal Code section 51.

ILLUSTRATION (from the Pakistan Penal Code)

A and Z agree to box each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such boxing, may be caused without foul play. If A, while playing fairly, hurts Z, A commits no offence.

1. The rule in this section rests on two propositions :

(i) every person is the best judge of his own interest; and

(ii) no man will consent to what he thinks hurtful to himself.

2. The age of consent in this section is fixed at 18 years that being the age recognised as the age of maturity in moslem law.

3. Any hurt short of grievous hurt (see section 241) may be caused with intention but the causing of death or grievous hurt is not excusable if such injury was intended or known to be likely. In other words, the court must look to the intention or constructive intention which motivated the act causing hurt and not to the degree of harm caused. For example a person may kill another in a boxing match arranged by consent of the parties thereto but he will not be criminally liable unless he struck a blow intending to kill his opponent or knowing that he was likely to kill him.

4. The section affords protection to a person causing damage to the property of another with that other's consent.

5. The section does not protect a person from criminal liability for acts which constitute an offence independently of any injury which they are capable of causing to the person who has given his consent. In this respect the section follows the Sudan precedent and is wider than the Pakistan section.

6. The consent required in this section need not be express : it may be implied or inferred by conduct.

54. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death done by consent for a person's benefit.

COMMENT

Pakistan Penal Code section 88.

ILLUSTRATION (from the Pakistan Penal Code)

A, a doctor, knowing that a particular operation is likely to cause the death of Z, who suffers from a painful disease, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

1. No consent can justify the intentional causing of death. This section makes the unintentional causing of death or grievous hurt justifiable in the circumstance prescribed. The act must have been intended to be beneficial and must have been done in good faith. The most common application of the section is to an operation performed by a surgeon.

2. The section gives a greater latitude to a person working for the benefit of another than to one who inflicts any harm in sport or play (see section 53). A person is not, however, entitled to perform an act, however beneficial, forcibly upon the person of another: consent either express or implied is necessary.

3. Want of care and attention may be relevant in assessing the good faith of the person performing the act.

55. (1) Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done—

Correction of child, pupil, servant or wife.

- (a) by a parent or guardian for the purpose of correcting his child or ward such child or ward being under eighteen years of age; or
 - (b) by a schoolmaster for the purpose of correcting a child under sixteen years of age entrusted to his charge; or
 - (c) by a master for the purpose of correcting his servant or apprentice such servant or apprentice being under eighteen years of age; or
 - (d) by a husband for the purpose of correcting his wife such husband and wife being subject to any native law or custom in which such correction is recognised as lawful.
- (2) No correction is justifiable which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction is justifiable in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted.¹

COMMENT

Nigeria Criminal Code (Cap. 42) section 295.

1. S. 89 of the Pakistan Penal Code contains a similar, though wider, provision. S. 295 of the Nigerian Criminal Code is supplemented by the addition in paragraph (d) of subsection (1) which excuses a husband in the correction of his wife if the husband and wife are subject to a native law and custom in which such correction is recognised. An accused wishing to invoke paragraph (d) in his defence would therefore firstly, have to prove that the native law or custom to which both he and his wife were subject permitted the correction and, secondly, that the form of correction had not been excessive, i.e., that the correction was justifiable

1. Eighteen years substituted for sixteen years by Penal Code (Amendment) Law, 1962 (N.N. No. 11 of 1962).

within the limits prescribed by the section. This provision was added to the section to meet the requirements of the moslem jurists, who pointed out that the degree of correction permitted by moslem law was so light that it would fall within the terms of an act causing slight harm excused under section 58. Paragraph (d) of subsection (1) is therefore included simply to make clear that the right to correct a wife has not been abandoned where native law and custom permit it.

2. The other three relationships dealt with by the section recognise the power of a person *in loco parentis* to correct the person under his charge providing that the person so corrected is under eighteen years of age.

3. The correction must not only be such as not to amount to grievous hurt but must also be reasonable in kind and degree and under no circumstances can be applied to an infant child or a person mentally unsound or otherwise incapable of understanding the reason for the punishment.

4. Correction implies that there is some fault to be corrected: arbitrary chastisement without cause is not excused by the section and good faith on the part of the person *in loco parentis* is therefore an element to be considered by the court when a question under this section arises.

56. 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.

Communication made in good faith.

ILLUSTRATION

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, though he knew it to be likely that the communication might cause the patient's death.

COMMENT

Pakistan Penal Code section 93.

Sudan Penal Code section 52.

A communication made in good faith may amount to defamation (see section 391) or it may perhaps amount to hurt (section 240) or more. The section provides that a person making communication to another is protected if:

- (i) the communication is made in good faith; and
- (ii) if it is shown to have been made for the benefit of the person to whom the communication was made.

57. Except culpable homicide 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 reasonable 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 apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such compulsion.

COMMENT

Pakistan Penal Code section 94.

Sudan Penal Code section 53.

1. This section excuses a person from the criminal consequence of any act except culpable homicide and offences against the State punishable with death, providing that the act was done under fear of instant death. The exception is therefore narrower than English law where fear of grievous hurt provides good justification.

2. The fear must be of instant death, i.e., death at the time of the act : menaces of death at some future time are not sufficient justification.

3. The defence of necessity stated in this section does not justify the causing of the death of another person on the ground that no man has a right to take another's life to save his own. Treason and such like offences against the State are excepted also since the State has an overriding right to ensure its own preservation.

58. Nothing is an offence by reason that it causes or that it is intended to cause or that it is likely to cause any injury if that injury is so slight that no person of ordinary sense and temper would complain of such injury.

Act causing slight harm.

COMMENT

Pakistan Penal Code section 95.

Sudan Penal Code section 54.

1. This is a codification of the maxim "*de minimis non curat lex.*" The definitions of various crimes in the Code are broad. Were it not for this section, for instance, it is theft to dip a pen into another man's ink bottle, and assault to cover a person with dust whilst driving past him. There are innumerable such acts without which men could not live together and which differ from crimes only in degree. The Code therefore specifically declares such acts not criminal rather than to leave the decision to the courts.

2. The intentional causing of harm is excepted also on account of the triviality of the offence.

3. Whether the injury caused is sufficient to justify a criminal conviction is a question for the decision of the court.

The Right of Private Defence

59. Nothing is an offence which is done in the lawful exercise of the right of private defence.¹

Things done in private defence.

COMMENT

Pakistan Penal Code section 96.

Sudan Penal Code section 55.

1. The right of self defence is based upon the principle that it is the first duty of man to help himself. The rule must, however, be qualified or it might encourage vendettas and lead to a disregard for the forces of law and order.

2. An accused person must plead the right of defence; i.e., bring in evidence a full account of the occurrence and prove the plea.

3. There is no right of self defence against any act which is not itself an offence under the Code. Further, an act done in the exercise of the right of self defence is not an offence and does not therefore justify the exercise of the right of self defence in return.

4. See sections 60 to 67 for the limits of and conditions governing the right of self defence.

60. Every person has a right, subject to the restrictions hereinafter contained, to defend—

Right of private defence.

(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.

1. The right of self defence under the Code was discussed in the case of the Queen v. Oji on appeal before the Federal Supreme Court (1961). All N.L.R. Part II P. 262.

COMMENT

Pakistan Penal Code section 97.

Sudan Penal Code section 56.

1. This section defines the extent of the right of self defence. The section is wider than English law in that a stranger may defend the person or property of another person. In English law some relationship must be proved before aid to another person is justified.

2. In order that the act may be pleaded as justified by the right of self defence there must be a specific offence committed or attempted to be committed, and paragraphs (a) and (b) of the section prescribe the types of offences which give rise to the right. In the case of the right to defend one's body or the body of another person, an offence the human body under Chapter XVIII of the Code must have been committed or attempted. Similarly an offence falling under the definition of theft (s. 286), robbery (s. 296) mischief (s. 326) or criminal trespass (s. 342) or an attempt to commit any such offence is necessary before the right of self defence can be used in defence of property.

61. When an act, which would otherwise be a certain offence is not that 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 defence against that act which he would have if the act were that offence.

Right of private defence against act of a person of unsound mind, etc.

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 defence 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 defence against Z, which he would have if Z were not acting under that misconception.

COMMENT

Pakistan Penal Code section 98.

Sudan Penal Code section 57.

This section lays down that for the purpose of exercising the right of self defence, the physical or mental incapacity of the person against whom the right is exercised is no bar.

62. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

General limit of right of private defence.

COMMENT

Pakistan Penal Code section 99.

Sudan Penal Code section 58.

1. In a case of injuring others in self defence there must be two elements :—

(i) no more harm must be inflicted than is necessary to stay the danger to life or property; and

(ii) there must be a reasonable fear of danger to the body or property from the attempt or threat to commit the offence; and the right to injure another in self defence does not commence until there is such reasonable fear, e.g., a weak old woman's threats to attack bare fisted a strong young man would not normally give rise to a reasonable fear of danger to justify the use of force in self defence.

2. The force used must be justifiable, e.g., no man has a right to kill a mere thief any more than a mere trespasser. The right extends to the protection of himself and the recovery of his property and no force not necessary for the purpose is justifiable. If, therefore, a thief is found escaping empty handed from a house and there is no fear of injury to the person or property, there is no right to kill him in self defence because the issue of self defence does not arise.

No right of private defence when protection of public authorities available.

63. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

COMMENT

Pakistan Penal Code section 99.

Sudan Penal Code section 59.

No person has the right to take the law into his own hands for the protection of his life and property if there is reasonable opportunity of preventing the injury by recourse to the public authorities. The tendency in all modern societies is to restrict the right to self help as police services and other means at the disposal of public authorities to maintain law and order are expanded and become more efficient.

Limitation of right of private defence against act of public servant.

64. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done—

- (a) by a public servant doing an act justifiable by law and in good faith; or
- (b) by the direction of a public servant acting lawfully and in good faith.

Explanation.—A person is not deprived of the right of private defence against an act done or attempted to be done—

- (a) by a public servant as such unless he knows or has reason to believe that the person doing that act is such public servant; or
- (b) 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 unless such person states the authority under which he acts or, if he has authority in writing, unless he produces such authority if demanded.

COMMENT

Pakistan Penal Code section 99.

Sudan Penal Code section 60.

1. There is no right of self defence against the act of a public servant who is :

- (i) acting in good faith and—
- (ii) under colour of his office.

2. The right is retained against the act of a public servant if the alleged authority for the act is, in fact, no authority at all and is wholly defective in form or where the public servant goes clearly and widely outside his authority, or where the person invoking his right of self defence has no knowledge or reason to know that the person doing the act is a public servant acting as such.

3. The words "not strictly justifiable by law" are inserted to protect a public servant, who may be exercising his lawful authority in error. The words do not protect a public servant who is acting completely without authority.

65. The right of private defence of the body extends, under the restrictions mentioned in sections 62 and 63, to the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely—

When right of private defence of the body extends to causing death.

- (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.

COMMENT

Pakistan Penal Code section 100.

Sudan Penal Code section 61.

1. This section should be read as subject to the provisions of sections 62, 63 and 64 : in particular, two factors may curtail the right to cause death :

- (i) where resort could reasonably have been had to public authority; and—
- (ii) the rule that the injury caused should be preventive and not punitive.

2. The causing of death in defence of the person is justifiable only upon the plea of necessity, which can only arise under the Code when preventing any of the forcible and atrocious crimes detailed in the section. The right is purely a defensive right. A person exercising the right must show that he was under a reasonable apprehension that one of the offences listed was about to be committed.

3. It must be clearly established by the defence that the assault sought to be justified was really justifiable under the section. The defence must show by the nature of the attack and other circumstances that he had reason to apprehend the injury contemplated by the section and that the injury could not have been prevented by milder means.

4. In the case of *Abdulkaki v. Katsina Native Authority* (1961 N.N.L.N. 12) the High Court on appeal held that a plea of self defence was not open to the appellant because nothing which the deceased in the case did or was seeking to do to the appellant fell within the categories of acts set out in paragraphs (a) (b) or (c) of the section.

See also the case of *Waziri Ibrahim v. Gombe N.A.* (1962 N.N.C.N. 15) where the High Court discusses the application of section 65 and the right of private defence.

66. The right of private defence of property extends, under the restrictions mentioned in sections 62 and 63, to the voluntary causing of death only when the act to be repelled is of any of the following descriptions, namely—

When right of private defence of property extends to causing death.

- (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 a human dwelling or as a place for the custody of property; or
- (b) theft, mischief, or house-trespass in such circumstances as may reasonably cause apprehension that, if such right of private defence is not exercised, death or grievous hurt will be the consequence.

COMMENT

Pakistan Penal Code section 103.

Sudan Penal Code section 62.

1. Like s. 65, this section is limited by the provisions of sections 62, 63 and 64.

2. S. 66 limits the right given in paragraph (b) of section 60 by defining the circumstances in which death may be caused in defence of property. Robbery, house-breaking by night and mischief by fire are all crimes in which there is either an element of violence or in which there would commonly arise a reasonable fear that death or grievous hurt will be caused by resistance to the offence. It should be noted that paragraph (d) specifically limits the right in respect of theft, mischief or house trespass in that the causing of death may only be justified if there are such circumstances as may reasonably cause apprehension that, if the right of self defence is not exercised, death or grievous hurt will be the consequence. The effect of paragraph (d) is to place a greater burden on the defence to justify the intentional killing of a

man in defence of property in the case of the offences listed there in. Paragraphs (a) (b) and (c) deal with crimes which by their very nature raise a presumption in favour of a person exercising his right of self defence and a presumption that there was a reasonable apprehension which would justify killing a person in repelling the act, aimed at depriving him or another of his property.

67. If, in the exercise of the right of private defence 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 defence extends to the running of that risk.

Right of private
defence against
deadly assault when
there is risk of harm
to innocent person.

ILLUSTRATION

A is attacked by a mob which attempts to kill him. He cannot effectually exercise his right of private defence 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.

COMMENT

Pakistan Penal Code section 106.
Sudan Penal Code section 63.

This section should be read in conjunction with section 65 to which it relates. It provides for the risk which a person may have to run to defend himself against an assault reasonably causing apprehension of death.

CHAPTER III PUNISHMENTS AND COMPENSATION

68. (1) The punishments to which offenders are liable under the provisions of this Penal Code are—

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

(2) Offenders who are of the Moslem faith may in addition to the punishments specified in subsection (1) be liable to the punishment of Haddi lashing as prescribed by Moslem law for offences contrary to sections 387, 388, 392, 393, 402, 403, and 404 of this Penal Code.

(3) Nothing in this section shall prevent a court dealing with an offender N.R. No. 19 of 1957 in accordance with the Probation of Offenders Law, 1957.

COMMENT

Pakistan Penal Code section 53.
Sudan Penal Code section 64.

1. The Code provides maximum punishments and, except where it prescribes a death penalty for an offence, the convicting court is left to decide the adequate punishment. A proper proportion should be maintained between the seriousness of the crime and the punishment imposed. In a limited number of sections the court is bound to pass a sentence of imprisonment and has no power to pass on alternative sentence. Section 303 lays down that a penalty of not less than seven years imprisonment shall be imposed for robbery or brigandage with an attempt to cause to death or grievous hurt. These fetters upon the discretion of the court are designed to indicate that the authors of the Code considered that convictions under these sections should always carry a sentence of imprisonment on account of their gravity. The Pakistan and Sudan Codes permitted a discretion in the passing of a death sentence but the Northern Nigerian Penal Code has followed English practice in not giving such a discretion. Maximum sentences for offences in the Northern Nigerian Penal Code are in many instances higher than the Pakistan or Sudan equivalents in order that penalties in the Northern Region should be equated with those imposed for similar offences under the Nigerian Criminal Code which remains in force elsewhere in the Federation of Nigeria.

2. The powers of criminal courts in the Northern Region to pass sentences under this Code are set out in Chapter 3 of the Criminal Procedure Code. The High Court may pass any sentence authorised by law (see the Northern Region High Court Law N.R. No. 8 of 1955). The powers of native courts are given in the Schedule to the Native Courts Law 1956 (N.R. No. 6 of 1956). The powers of magistrates are given in sections 18-21 of the Criminal Procedure Code.

3. Any offender may, when appropriate, be disposed of in accordance with the Probation of Offenders Law, 1957 (N.R. No. 19 of 1957) where the court has jurisdiction to administer that law and this power is effective notwithstanding the punishments imposed by the Code. Section 11 of the Children and Young Persons Law, 1958, (N.R. No. 28 of 1958) also prescribes limitations on the power to imprison juveniles.

4. The Death Penalty.—Under this Code, the death penalty is only imposed for—

- (i) giving or fabricating false evidence on account of which an innocent person suffers death (subsection 2 of section 159);
- (ii) the gravest degree of culpable homicide (section 221);
- (iii) abetment of the suicide of a child or insane person (section 227). Section 273 of the Criminal Procedure Code states that where a death sentence is passed the sentence shall direct that the condemned person shall be hanged by the neck until he is dead;
- (iv) trial by ordeal where the death of a person results (section 214 (b)) and
- (v) treason (section 411 of the Schedule to L.N. No. 25 of 1960).

5. Forfeiture.—As a punishment appears to be permitted only in section 111 of the Code.

6. Imprisonment.—There appears now to be no distinction in Her Majesty's prisons in Nigeria between simple and rigorous imprisonment.

7. Detention in a reformatory.—This punishment is further defined in section 71 and in the Children and Young Persons Law, 1958, (NR No. 28 of 1958) and is intended to provide an alternative to imprisonment in suitable cases involving juveniles.

8. Fine.—In imposing a fine it is always necessary to have as much regard to the financial circumstances of the offender as to the magnitude and character of the offence. Ability to pay must be considered by the court.

9. Combination of imprisonment and fine.—The Code sometimes sanctions either a term of imprisonment or a fine or both and it is left to the discretion of the Court to decide what penalty or combination of penalties it will impose in a particular case.

10. Caning.—All courts may pass a sentence of up to twelve strokes of the cane for any offence committed under the Code. Sections 308, 309 and 310 of the Criminal Procedure Code, prescribe the procedure to be followed in carrying out a sentence of caning. The First Schedule to the Native Courts Law, 1956 (N.R. No. 6 of 1956) gives native courts of all grades power to award a sentence of caning for all offences, the sentence being limited to six strokes for a first offence and twelve strokes for each subsequent offence.

11. Haddi Lashing.—Subsection 2 of the section permits the imposition upon a Moslem offender of the traditional and symbolic punishment of *Haddi* lashing. These punishments are all that remain in the Northern Region of the *haddi* punishments laid down in the *Quran* and *Sunna* and defined by the Moslem jurists of the *Maliki* School for the following offences:

- (i) Sections 387 and 388. *Adultery*. Adultery as defined in these sections is more correctly fornication.
- (ii) Sections 392 and 393. *Defamation and Injurious Falsehood*. Here the offence proved must be *Kazafi* (the slandering of a chaste Moslem's chastity) to justify a punishment of *Haddi* lashing.
- (iii) Sections 401, 402, 403 and 404. *Drinking of Alcohol*. The mere consumption of alcohol by a Moslem for other than medicinal purposes renders him liable to *Haddi* punishment in Moslem Law.

The punishment is intended to be purely symbolic and is carried out in a public place. The beating should be given with a soft leather whip on the back and shoulders and the person to be beaten should be in a squatting position with his back and shoulders bared. Elaborate precautions are prescribed by the *Maliki* texts to ensure that the striker does not hit hard and *Maliki* jurists in the Region have recently approved that a heavy object should be placed under the striker's arm to prevent him from raising his arm above the shoulder.

Section 307 of the Criminal Procedure Code, 1960, empowers the Governor in Council to make rules prescribing the manner and method of carrying out *Haddi* lashing in the Region.¹

To justify the imposition of *Haddi* punishment upon a Moslem it is necessary not only to prove the offence under appropriate section of the Penal Code but also to prove that the offence is one punishable at Moslem law with *Haddi* lashing.

1. See Criminal Procedure (Haddi Lashing) Order in Council, 1960 (N.R.L.N of 1960) for Rules made in exercise of this power.

12. General.—In passing sentence, courts should have regard to part VII of the Criminal Procedure Code, 1960, Chapter XXIV of which deals with execution of sentences and orders of courts. Special procedure is laid down in section 294 of the Criminal Procedure Code, 1960 for carrying out a sentence of death and the procedure to be adopted by the High Court in passing such a sentence. Section 394 of the Criminal Procedure Code lays down the procedure to be followed when a native court has passed a sentence of death.¹

69. No sentence of imprisonment shall be passed on any person who
Limitation on in the opinion of the Court is under fourteen years of age.
punishments. COMMENT

See subsection (1) of section 11 of the Children and Young Persons Law, 1958 (N.R. No. 28 of 1958) which enacts a similar provision.

70. In calculating fractions of terms of punishment, imprisonment
for life shall be reckoned as equivalent to imprisonment
for twenty years.
Fractions of term for life shall be reckoned as equivalent to imprisonment
of punishment. for twenty years. COMMENT

Pakistan Penal Code section 57.

Sudan Penal Code section 66.

For calculating fractions of terms of imprisonment this section provides that imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. But it does not provide that, for any other purpose, imprisonment for life is to be treated as imprisonment for twenty years. The sentencing court must regard a sentence of life imprisonment as a sentence of imprisonment for the whole of the remainder of the convict's natural life. It is a matter for the Executive in the exercise of the clemency powers to review long-term sentences from time to time. This section should, therefore, be properly regarded as a yard stick only.

71. When an accused person who has completed his seventh but not
completed his eighteenth year of age is convicted by a
court of any offence the court may, instead of passing
the sentence prescribed by law, deal with such accused
person in accordance with the provisions of the Children
and Young Persons Law, 1958.”
Special provision for juvenile offenders. COMMENT

This section was substituted by the Penal Code (Amendment) Law, 1962 (N.N. No. 11 of 1962) so as to make it clear that a court which decides not to pass a sentence prescribed by law on a person above the age of seven but below the age of eighteen years shall have power to invoke all the provisions of the Children and Young Persons Law, 1958 (N.R. No. 28 of 1958) and not merely the power to order such a person to be detained in a reformatory or other approved establishment.

72. 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 exceed the jurisdiction of the court imposing it
and shall not be excessive.
Amount of fine. COMMENT

Pakistan Penal Code section 63.

Sudan Penal Code section 66.

1. Due proportion must be preserved with regard to the nature of the offence and the means of the offender. The object of this section is to prohibit the imposition of fines which it would be impossible or very difficult for an accused person to pay or wholly unreasonable when related to the character of the offence.

2. The court must have due regard to its jurisdiction before passing a sentence of fine.

1. see also Office Guide Chapters 18 and 19—Capital Cases Procedure revised at 30 September 1960 for Administrative direction in such cases.

PRACTICE

Procedure—When a fine has been imposed, the court may issue a warrant for the levy of fine in accordance with the procedure provided in the Criminal Procedure Code. The whole or part of the fine so recovered may be applied :

- (a) in defraying the costs of the prosecution;
(b) in compensation to a person who has suffered loss or injury caused by the offence when the court considers that substantial damages would be recoverable by such person in a civil action; and
(c) in compensating a bona fide purchaser where he has been deprived of property as a result of the conviction.

2. When more persons than one are fined on conviction for a joint offence, the court should impose specific fines on each accused.

73. Whenever an offender is sentenced to a fine whether with or without imprisonment under this Penal Code 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.

Sentence of imprisonment for non-payment of fine.

COMMENT

Pakistan Penal Code section 64.
Sudan Penal Code section 71.

1. The object of this section is to empower a court to imprison a person in default of his payment of a fine. The imprisonment is by way of imprisonment for contempt and not imprisonment as an alternative to the payment of the fine. By going to prison under this section, a person does not escape liability for payment of the fine. It is for this reason that a court should always consider the ability of a person to pay before imposing a fine. If he is able to pay and does not, there is a clear contempt to be punished as such.

2. Lord Macaulay points out that it is wrong in principle to give a convicted person a choice of punishments because he will choose the punishment which hurts him least. It is for the court to fix an appropriate punishment.

74. If an offence is punishable with fine or with imprisonment and fine the court may direct that in default of payment the offender be imprisoned for any term not exceeding the maximum fixed in the following scale, that is to say—

Table with 2 columns: 'Where the fine—' and 'The period of imprisonment shall not exceed—'. Rows include: 'does not exceed ten shillings ... seven days;', 'exceeds ten shillings and does not exceed one pound ... fourteen days;', 'exceeds one pound and does not exceed ten pounds ... one month;', 'exceeds ten pounds and does not exceed thirty pounds ... two months;', 'exceeds thirty pounds and does not exceed fifty pounds ... four months;', 'exceeds fifty pounds and does not exceed one hundred pounds ... six months;', 'exceeds one hundred pounds and does not exceed two hundred pounds ... one year;', 'exceeds two hundred pounds ... two years.'

E

COMMENT

Criminal Procedure Ordinance section 390.
(Cap. 43 of the Laws of Nigeria 1948).

The Code deviates from the Sudan and Pakistan Codes in retaining the scale of punishment in default of payment provided in section 390 of the Criminal Procedure Ordinance of Nigeria. This has been done to retain conformity of practice within the Federation.

75. Where a fine or any part thereof remains unpaid the offender or his estate, if he is dead, is not 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.

Fine not discharged by death or service of sentence in default of payment.

COMMENT

Pakistan Penal Code section 70.
Sudan Penal Code section 73.

Imprisonment in default of payment is imprisonment for contempt of court and does not discharge a person from liability to pay the fine. See comment to section 73.

76. When the same act falls within the definition of more than one offence or when an offence consists of a series of acts each of which or 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.

Limit of punishment when act within definition of more than one offence or when offence made up of several 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 to voluntarily causing hurt to Z and to another for the blow given to Y.

COMMENT

Pakistan Penal Code section 71.
Sudan Penal Code section 74.

1. The section limits the punishment in cases in which the greater offence is made up of two or more minor offences. The section provides a rule of substantive law governing the measure of punishment.

2. A single transaction may give rise to :

- (i) several offences of a different character each complete in itself and distinct from the other; or
(ii) several offences of the same character but affecting different persons; or
(iii) several offences of the same character affecting the same person.
(i) and (ii) give rise to a situation in which a court may impose separate and accumulative sentences but (iii) gives rise to the situation dealt with by this section (See illustrations (a) and (b) above).

77. A sentence of caning not exceeding twelve strokes may be passed by any Court whether trying a case summarily or otherwise on any male offender in lieu of or in addition to any other punishment to which he might be sentenced for any offence not punishable with death.

COMMENT

cf. Sudan Penal Code section 77.

1. See comment to section 68.

2. Note that the First Schedule to the Native Courts Law, 1956 (N.R. No. 6 of 1956) limits the powers of native courts so that a native court may only award up to six strokes for a first offender.

3. See Chapter XXIV of the Criminal Procedure Code for procedure to be adopted by a court in passing a sentence of caning and conditions under which a sentence of caning are to be executed.

78. Any person who is convicted of an offence under this Penal Code may be adjudged to make compensation to any person injured by his offence and such compensation may be either in addition to or in substitution for any other punishment.

COMMENT

Kenya Penal Code section 31 (Laws of Kenya Cap. 24).

See Chapter XXXI of the Criminal Procedure Code for procedure to be adopted by courts awarding compensation under this section.

CHAPTER IV

JOINT ACTS

79. 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.

Acts done by several persons in furtherance of common intention.

COMMENT

Pakistan Penal Code section 34.
Sudan Penal Code section 78.

1. This section and sections 80, 81 and 82 state the general doctrine of joint liability in crime.

2. The section is framed to meet the case in which it may be difficult to distinguish between the acts of the individual members of a party or to prove precisely the part played by each individual. The reason why all are deemed guilty in such cases is that the presence of accomplices affords encouragement, protection and support to the persons actually engaged in the criminal act. If two or more persons intentionally do a thing jointly it is the same as if each had done it individually.

3. The section punishes conspirators for the act actually done and not for the act jointly intended by them but only those persons can be held liable under the section who had a common intention to commit the crime which was actually committed. All the persons charged under this section must have consented to the commission of the crime. (cf. section 108 where the offence committed need not have been the offence intended. It will suffice if it was considered likely.)

4. The criminal act must have been done by "several persons". If it is done by one person, section 79 will not apply. (cf. section 83 on abetment).

5. The section deals with the doing of separate acts, similar or diverse, by several people, the sum of which add up to the committing of the criminal offence. Each person is not only liable for his own acts but also for the sum of the acts of his fellow conspirators in the furtherance of the common intention.

6. The essence of joint responsibility lies in the common intention to commit the act complained of, e.g., if the act complained of is culpable homicide punishable with death, all the accused must be shown to have joined in a plot to kill. It is not sufficient to show that they had started to commit an assault.

PRACTICE

Constructive liability must be specifically charged. A charge under this section should run thus :

I [] hereby charge you [*name of accused*] as follows :
That you on or about the day of at had formed a common intention with B, C and D to commit an offence, namely in furtherance of which you did the following criminal act an offence punishable under section of the Penal Code and I, therefore, hereby charge you of the said offence under section read with section 79 of the Penal Code.

80. 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.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

COMMENT

Pakistan Penal Code section 35.

Sudan Penal Code section 79.

Section 79 deals with an act following a joint intention whilst this section deals with an act following not a joint but a like intention. In a case brought under this section, an accused has nothing to rebut until the prosecution have established criminal intention or knowledge on the part of each and every accused. The measure of liability is the extent of intention or knowledge of each accused. The act complained of is not, by itself, a criminal act : it only becomes criminal because of the intention motivating it. If several persons join in an act each having a different intention or knowledge, each is liable according to his own intention or knowledge and not further.

81. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

ILLUSTRATIONS

(a) A and B agree to kill 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 kill Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of culpable homicide 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 co-operate 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 culpable homicide.

(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 co-operation 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 culpable homicide; but as A did not co-operate with B, A is guilty only of an attempt to commit culpable homicide.

COMMENT

Pakistan Penal Code section 37.

Sudan Penal Code section 80.

1. This section provides that when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with the intention to co-operate in the offence, makes a person liable to be punished for the commission of the offence.

2. Section 81 differs from section 79. The former section deals with the intentional co-operation in the offence, which has resulted from several acts, each of which, standing by itself, is not the offence with which the accused is charged. The latter section requires common intention for a criminal act which is done by a number of persons in order that they should become liable as if the act was done by each of them.

82. Where several persons are engaged or concerned in the commission of a criminal act each person may be guilty of a different offence or offences by means of that act.

Persons concerned in criminal act may be guilty of different offences.

ILLUSTRATION

A attacks Z in such circumstances of grave provocation that his killing of Z would be only culpable homicide not punishable with death. B, having ill-will towards Z and intending

to kill him and not having been subject to provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of culpable homicide punishable with death and A is guilty only of culpable homicide not punishable with death.

COMMENT

Pakistan Penal Code section 38.

Sudan Penal Code section 81.

1. This section deals with liability for acts done with different intentions. cf. section 79 which deals with acts done with a common intention.

2. The section covers two different types of cases :

- (i) Where several persons concert together in furtherance of common intention, the court may convict each person of a different offence if there are extenuating circumstances in a particular case.
- (ii) Where there is a common act but the accused engaged upon it with differing intentions, the court may find each guilty of the particular offence constituted by his individual act and intention.

CHAPTER V

ABETMENT

Abetment defined. 83. 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 any 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 wilful misrepresentation or by wilful 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 authorised by a warrant from a Court of Justice to arrest Z. B, knowing that fact and also that C is not Z, wilfully 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.

COMMENT

Pakistan Penal Code section 107.

Sudan Penal Code section 82.

1. Chapter V is concerned with *accessoris* and follows English law closely except that that it deals only with offenders who would be classified in English law as *accessories before and at the fact*. *Accessories after the fact* are dealt with under the heading of *Screening of Offenders* in sections 167 to 170.

2. The definition of abetment in section 83 is general. A general definition is necessary in addition to the definition of "abetment of offence" in section 84 to cover the cases where the Code hold an abettor solely liable and the person abetted as wholly innocent.

3. Three essentials must be present to complete abetment :

- (i) there must be an abettor;
- (ii) he must abet; and
- (iii) the abetment must be of an act of some sort.

4. To constitute abetment, there must be either instigation (i.e. goading or incitement) or intentional aiding or engaging in a conspiracy.

5. There must be knowledge or intention on the part of the abettor and the knowledge or intention must be related to the crime. English law holds that mere passive acquiescence in the committing of the crime is not abetment; there must be some active proceeding on the part of the abettor.

6. To constitute the conspiracy required by paragraph (b) :

- (i) there must be at least two persons;
- (ii) they must "engage" in the commission of an act;
- (iii) "an act or omission" must take place in pursuance of the conspiracy. There is no conspiracy so long as it rests on the intention only.
- (iv) the act must have been done in pursuance of the object of the conspiracy. There can be no joint responsibility unless the act is done in pursuance of the common intention.

7. Intentional aiding in paragraph (c) may consist of either :
- (i) doing an act which assists directly the commission of the crime; or
 - (ii) doing an act which affords facilities for the commission of the crime; or
 - (iii) an illegal omission resulting in similar consequences.

PRACTICE

1. It is not necessary to specify the particular species of abetment in the charge.
2. It must be made clear in the charge that the accused has to meet a charge of abetment of the offence and not of committing the offence itself.
3. A person charged with a substantive offence can be convicted of abetment if the facts justify a conviction, where the circumstances bring the case under section 216 and section 217 of the Criminal Procedure Code. (see Illustration to section 217 of the Criminal Procedure Code).

84. A person abets an offence who abets either the commission of
Abetment of an offence or the commission of an act which would be an
offence defined. 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 abetment 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 kill C. B refuses to do so. A is guilty of abetting B to commit culpable homicide.

(b) A instigates B to kill D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit culpable homicide.

Explanation 3.—It is not necessary that the person abetted 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.—The 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 kill Z. B accordingly instigates C to kill Z and C kills Z in consequence of B's instigation. B is liable to be punished for his offence with the punishment for culpable homicide; 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 concert 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 killed, C has therefore committed the offence defined in this section and is liable to the punishment for culpable homicide.

COMMENT

Pakistan Penal Code section 108.

Sudan Penal Code section 83.

1. "Abettor" under this section means the person who abets (a) the commission of an offence; or (b) the commission of an act which would be an offence if committed by a person not suffering from any physical or mental incapacity. In English law, in the circumstances of (b), a person using an innocent agent is deemed to be a principal.

2. Explanation 3 makes it clear that the person abetted need not have any guilty intention in committing the act. The offence of abetment depends upon the intention of the abettor and not upon the knowledge or intention of the persons he employs to act for him.

3. Explanation 4 shows that a person may himself be an abettor by the intervention of third parties, without any direct communication between himself and the person who actually commits the act.

4. Explanation 5 applies to abetment by conspiracy and shows that it is not necessary that all persons in the conspiracy should be aware of every detail of the plot.

Abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.

85. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Penal 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 culpable homicide. A is guilty of abetting that offence by conspiracy and is liable to the punishment for culpable homicide.

COMMENT

Pakistan Penal Code section 109.

Sudan Penal Code section 84.

1. Under this section, an abettor is liable to any punishment which may be inflicted on the principal:

(a) if the act of the principal is committed as a result of the abetment; and
(b) where the Code makes no express provision for the punishment of the abettor.

2. See section 117 which specifies a punishment for abetment by a public servant of an offence under section 116 (taking gratification in order to influence a public servant).

PRACTICE

1. The general procedure for cases of abetment is in accordance with that for the offence abetted. Abetments are therefore bailable or non-bailable, compoundable or non-compoundable etc., according to the procedure laid down for the offence abetted.

2. The charge may be worded as follows:

(a) I [] hereby charge you [name of accused] as follows:

That [name of principal or if person unknown "an unknown person"] on or about the..... day of..... at..... committed the offence of....., and that you abetted the said [] in the commission of the said offence of [] which was committed in consequence of your abetment and that you have thereby committed an offence punishable under section 85 and section [] of the Penal Code.

(b) (If the abettor is tried jointly with the principal offender).

That you..... on or about the..... day of..... a..... abetted the commission of the offence of..... by..... which was committed in consequence of your abetment and that you have thereby committed an offence punishable under Section 85 and Section [] of the Penal Code.

86. 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.

Abetment if person abetted does act with different intention from that of abettor.

COMMENT

Pakistan Penal Code section 110.

Sudan Penal Code section 85.

The liability of the person abetted is not affected by this section. In this connection see Explanation 3 of section 84.

87. When an act is abetted and a different act is done and 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, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it.

Liability of abettor when one act abetted and different act done.

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 provides them with arms for that purpose. B and C break into the house and being resisted by Z, one of the inmates, kill Z. Here, if that killing was the probable consequence of the abetment, A is liable to the punishment provided for culpable homicide.

COMMENT

Pakistan Penal Code section 111.
Sudan Penal Code section 86.

1. "Every man is presumed to intend the natural consequences of his act." This section applies only when the act done is the probable consequence of the abetment. See subsection (2) of section 19 for definition of "probable."

2. An abettor is liable for the commission of an act different from the one he instigated providing that the different act was a probable consequence of the abetment and was committed under the influence of the instigation. An unusual or unexpected consequence cannot be described as a probable consequence.

PRACTICE

Prove :

- (i) that the accused abetted the commission of a particular act.
- (ii) that the act actually committed was done under the influence of the abetment.
- (iii) that the act was a probable consequence of the abetment.

88. If the act for which the abettor is liable under section 87 is committed in addition to the act abetted and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted for act done.

COMMENT

Pakistan Penal Code section 112.
Sudan Penal Code section 87.

The abettor is here liable for the offence abetted as well as the offence committed.

89. 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.

Liability of abettor for an effect caused by the act abetted different from that intended by abettor.

Explanation.—The abettor shall not be liable under this section to be sentenced to death, unless he knew that death would be the probable effect of the act abetted.

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.

COMMENT

Pakistan Penal Code section 113.
Sudan Penal Code section 88.

This section should be read with section 87. The act actually done is the act abetted but the effect is different from that intended. If the effect is one likely to be caused by the act, the abettor is liable. See definition of "likely" in subsection (1) of section 19.

90. 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.

Abettor present when offence committed liable as principal.

COMMENT

Pakistan Penal Code section 114.
Sudan Penal Code section 89.

The section says that a person present abetting an offence is to be deemed to have committed the offence : not that he has committed it. The abettor thus become a principal offender. Actual presence plus prior abetment means participation in the offence.

PRACTICE

Prove :

- (i) the committing of the principal offence.
- (ii) that the accused was present when it was committed.
- (iii) that the accused was an abettor of the offence (section 84).

91. (1) Whoever abets the commission of an offence punishable with death or imprisonment for life shall, if that offence be not committed in consequence of the abetment and no express provision is made by this Penal Code or by any other Ordinance or Law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Abetment of offence punishable with death or imprisonment for life if offence not committed.

(2) If the abettor is a public servant whose duty it is to prevent the commission of such offence, he shall be liable to imprisonment for a term which may extend to ten years and shall be liable to fine.

ILLUSTRATION

A instigates B to kill Z. The offence is not committed. If B had killed Z, B would have been liable to the punishment of death. Therefore A is liable to imprisonment for a term which may extend to seven years or, if he is a public servant whose duty it is to prevent the killing, to ten years and also in any event to a fine.

COMMENT

Pakistan Penal Code section 115.
Sudan Penal Code section 90.

This section punishes the abetment of certain serious offences which are either not committed at all, or not committed in consequence of the abetment, or only partially committed.

PRACTICE

1. Prove :

that the offence abetted, though not committed in consequence of the abetment is one punishable with death or life imprisonment.

2. Offences under this section are not normally bailable (See chapter XXIX of the Criminal Procedure Code).

3. Charge.—[] hereby charge you [] as follows :
That you, on or about the day of at
abetted the commission by one [] of an offence of
(punishable with death or imprisonment for life) which said offence was not committed in consequence of the abetment, and thereby committed an offence punishable under Section [] of the Penal Code.

92. (1) 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 Penal Code or by any other Ordinance or Law for the time being in force for the punishment of such abetment, be punished with imprisonment for a term which may extend to one fourth part of the longest term provided for that offence or with such fine as is provided for that offence or with both.

(2) If the abettor is a public servant whose duty it is to prevent the commission of such offence, he shall be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

ILLUSTRATION

A, a policeman, whose duty it 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.

COMMENT

Pakistan Penal Code section 116.
Sudan Penal Code section 91.

1. This section corresponds with section 91 and punishes an abetment of any offence punishable with imprisonment if the offence is not actually committed in consequence of the abetment.

2. No section provides for punishment of abetment of an offence punishable only with fine when the offence is not actually committed.

PRACTICE

1. For an offence under subsection (2) prove (in addition to the fact that the offence abetted, though not committed in consequence, is one punishable with imprisonment) that the accused is a public servant and that it was his duty to prevent the commission of such offence.

2. Charge.—as for section 91 substituting “punishable with imprisonment” for “punishable with death” or “life imprisonment”. If the charge is under subsection (2) insert “being a public servant with a duty to prevent the commission of such an offence” after the name of the accused.

93. Whoever abets the commission of an offence by the public generally or by any member or class of persons exceeding ten, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Abetting commission of offence by the public or by more than ten persons.

COMMENT

Pakistan Penal Code section 117.
Sudan Penal Code section 92.

ILLUSTRATION (from Pakistan Penal Code)

A affixes in a public place a notice instigating the members of a political party consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of another party, who are holding a procession for which they have a permit. A has committed the offence defined in this section.

1. Under this section it is sufficient to show any instigation or other mode of abetment, though neither the effect intended nor any other effect follows from it.

2. In order to prove abetment of the public it is necessary to show that the public had knowledge of the abetment. (e. g. posting a notice inviting a disturbance published at dead of night and removed by the police before anybody had opportunity to read it would not constitute an abetment of the public under this section.)

PRACTICE

1. Prove :

- (i) abetment of the offence in question by the accused.
- (ii) that the offence was to be committed by the public or by more than ten persons.

2. Charge.—as for section 85 inserting the words “the public” or “by more than ten persons” as the case may require.

94. Whoever administers, or takes, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence shall be punished—

- (a) with imprisonment for a term which may extend to seven years or with fine or with both; and
- (b) if the offence is an offence punishable with death, with imprisonment for life or for any less term or with fine or with both.

COMMENT

Sections 53 and 54 Nigerian Criminal Code (Cap. 42. Laws of Nigeria, 1948)

1. This section is taken from the Nigerian Criminal Code and inserted in this chapter for convenience only.

2. The section punishes—

- (a) the person administering the oath;
- (b) the person who takes the oath;
- (c) the person who is present at the ceremony of administration of the oath and consents to it.

3. The section creates a complete offence which stands on its own, carries its own punishment and is unconnected with any other offence under the Code. The nature of the offence committed, or intended to be committed as a result of the taking of an unlawful oath is only relevant in deciding the measure of punishment to be imposed and whether it should be imposed under paragraph (a) or paragraph (b) of the section.

4. It is not necessary for an offence to be committed as a result of the taking of the oath. It is sufficient if the purpose for which the oath was administered is shown to have been to bind the person who takes it to commit an offence.

5. “Engagement in the nature of an oath” covers any ceremony which although not strictly an oath-taking, has the effect of binding a person to undertake to do something.

6. Note that to commit an offence under this section the accused must have been present in person at the ceremony.

7. The word “purports” widens the section in that it is not necessary to show that the oath etc., was actually binding upon the person taking it. It is sufficient if the intention of the person administering oath was so to bind a person.

PRACTICE

Prove :

- (i) that an oath or engagement in the nature of an oath was administered.
- (ii) that the accused administered or took or was present and consented to administering of an oath or similar engagement.
- (iii) that the oath etc., purported to bind the person taking it to commit an offence.
- (iv) if the charge is framed under paragraph (b) ; that the offence to be committed in consequence of the oath was an offence punishable with death.

CHAPTER VI
ATTEMPTS TO COMMIT OFFENCES

95. 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 Penal Code or by any other Ordinance or Law for the time being force for the punishment of such attempt, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both.

Attempting to commit offences punishable with imprisonment.

ILLUSTRATIONS

(a) A makes an attempt to steal some jewels by breaking open a box and finds after opening the box that there is no jewel in it. He 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.

COMMENT

Pakistan Penal Code section 511.

Sudan Penal Code section 93.

1. This is a general provision dealing with attempts to commit offences not made punishable by any other section. It is limited to attempts to commit offences punishable with imprisonment.

2. In every criminal act there is :

- (a) an intention to commit it ;
- (b) usually a preparation to commit it ; and
- (c) an attempt to commit it.

If (c) is completed successfully, the crime is complete. If the attempt fails, nevertheless, the Code punishes the person making the attempt because morally the guilt of the offender is the same as if he had been successful. An attempt to commit a crime must therefore be something more than preparation to commit it. The difference between a mere preparation and an actual attempt consists chiefly in the greater degree of determination in the attempt. The dividing line will often be difficult to assess and each case must be decided on its facts. Intention alone, or intention followed by preparation are not sufficient : to prove an attempt it is necessary to show intention and an act done towards the committing of the offence.

3. The section would cover an attempt to abet an offence.

4. In the Code the following sections specifically punish attempts :

- s. 99 : attempt at official breach of trust.
- s. 115 : attempts by a public servant to obtain gratification.
- s. 116 : attempt to obtain gratification to influence a public servant.
- s. 119 : attempts by a public servant to obtain a valuable thing without consideration
- s. 161 : attempts to use as true evidence known to be false.
- s. 163 : attempts to use as true certificate known to be false.
- s. 164 (2) : attempts to use as true a declaration known to be false.
- s. 168 : attempts to take gratification to screen an offender.
- s. 229 : attempts to commit culpable homicide punishable with death.
- s. 230 : attempts to commit culpable homicide not punishable with death.
- s. 231 : attempts to commit suicide.

- s. 293 : attempts at extortion.
 s. 303 : attempting brigandage armed with deadly weapon, etc.
 sections 296, 297, 298, 299 and 300: attempts at robbery in various degrees.
 s. 357 : attempts to cause death, etc., whilst housebreaking by night.

PRACTICE

1. Prove :

- (i) an attempt to commit an offence by the accused or that he attempted to abet the commission of an offence.
 (ii) that the accused in the attempt did some act not of an ambiguous kind, directly towards the commission of the offence.

2. Charge.—[] hereby charge you [] as follows :

That you, on or about the..... day of....., at..... attempted to commit [*offence attempted*] and in such attempt did a certain act towards the commission of the said offence, to wit (*specify the act done*) ; and that you thereby committed an offence punishable under section..... [*specify the section of the Penal Code or other Ordinance or Law punishing the offence attempted or if no specific section expressly punishes the attempt - under section 95 of the Penal Code*].

CHAPTER VII

CRIMINAL CONSPIRACY

Criminal con- 96. (1) When two or more persons agree to do or cause
 spiracy defined. to be done—

- (a) an illegal act; or
 (b) an act which is not illegal by illegal means,
 such an agreement is called a criminal conspiracy.

(2) Notwithstanding the provisions of subsection (1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation 1.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Explanation 2.— This section shall not apply to an agreement of two or more persons to do or cause to be done any act in contemplation or furtherance of a trade dispute if such act committed by one person would not be punishable as an offence.

Explanation 3.—Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is provided by any Ordinance or other Law.

COMMENT

Pakistan Penal Code section 120A.

Sudan Penal Code section 94.

1. Conspiracy is distinguished from other offences in that the crime consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. In other offences, the intention to do a criminal act is not a crime of itself until something is done amounting to the doing or attempting to do some act to carry out the intention. Section 96 codifies English law in this matter.

2. Where a conspiracy amounts to an abetment within the definition in section 83, there is no need to proceed under section 96 as conspiracy of that type is specifically provided for in section 83 and in Chapter V generally.

3. A mere agreement between two or more persons to commit an illegal act is sufficient to constitute the offence.

4. An agreement to do a lawful act by unlawful means would appear to fall within the meaning of subsection (2) which by way of proviso requires some act in furtherance of the conspiracy where the agreement is not to commit an unlawful act.

5. Explanation 2 is designed to save the activities of trade unions and associations. Within the background of a trade dispute, it is lawful for two or more persons to do an act in contemplation or furtherance of the dispute provided that such an act is lawful if committed by one person.

97. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

COMMENT

Pakistan Penal Code section 120B.

Sudan Penal Code section 95.

To punish conspiracy, it is often optional for the prosecution to proceed either under Chapter V as an abetment or under section 97 as the substantive offence.

PRACTICE

1. Prove :

- (i) an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.
- (ii) where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in furtherance of the agreement.
- (iii) specifically that each of the accused individually participated in the conspiracy.

2. The burden of proving the facts necessary to invoke Explanation 2 lies with the defence.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....agreed to do [or caused to be done] an illegal act, to wit.....[or an act.....by illegal means, to wit.....and that the same act was done in pursuance of the agreement], and that you thereby committed an offence punishable under section 97 of the Penal Code.

4. Note.—The offence of conspiracy is a separate offence. Acts done in pursuance of a conspiracy can be separately punished provided that these acts are separately charged in the manner prescribed in section 212 of the Criminal Procedure Code.

97A. A society is an unlawful society if declared by an order of the Governor in Council to be a society dangerous to the good Government of the Northern Region or any part thereof.

Unlawful Society defined.

97B. Whoever manages or is a member of an unlawful society shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Punishment for Managing Unlawful Society.

COMMENT

Nigerian Criminal Code Sections 62—68 inclusive.

These sections were added to the Code by section 2 of the Penal Code (Amendment) Law, 1960 (N.R. No. 19 of 1960). An Order-in-Council is an order made by the Governor acting on the advice of the Executive Council of the Region.

2. The sections are designed to reinforce the law of criminal conspiracy by covering the activities of societies dangerous to good government in the Region where no adequate evidence of a conspiracy under S. 98 may be available. The society so designated may not even be operating within the Northern Region. If it has been declared unlawful, mere membership, albeit inactive, is sufficient to constitute an offence subject to the provisions of section 4 of the Penal Code Law concerning the place in which the offence was committed.

3. The following societies have been declared dangerous to the good government of the Northern Region—

- (a) the society commonly known as Gbogbo Agboiye;
- (b) the society commonly known as the Union des Populations du Cameroun;
- (c) the society commonly known as the Kameroun Democratic Youth but alternatively as Jeunesse Democratique Camerounaise ;
- (d) the society commonly known as the Kameroun Women's Democratic Union but alternatively as the Union des Femmes Camerounaises ;¹
- (e) the society commonly known as Indozi Obodo, alternatively Odozi Obodo;
- (f) the Armee de Liberation Nationale Kamerounaise;²
- (g) the One Kameroun Party.³

Most of the above societies were probably of passing political interest during the period of the Cameroun plebiscite except for 3 (e) above which prescribes a dangerous secret society proved to be responsible for a large number of murders in Benue Province and the Eastern Region.

PRACTICE

1. Prove :

- (i) that the accused managed or is a member of a society.
- (ii) that the society has been declared by Order-in-Council to be a society dangerous to the good government of the Northern Region or any part thereof.

2. Procedure :

A warrant is required for the arrest of an accused person. The offence is not bailable and may be tried by the High Court or by a magistrate of the first grade or by a native court of grade A limited.

3. Charge :

I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....managed (or, were a member of) a society declared by an order of the Governor in Council to be a society dangerous to the good government of the Northern Region [or, any part thereof] and that you thereby committed an offence punishable under Section 97B of the Penal Code.

1. The Declaration of Unlawful Societies Order in Council, 1961 (N.N.L.N. 45 of 1961).
2. The Declaration of Unlawful Societies Order in Council (No. 2), 1961 (N.N.L.N. 84 of 1961).
3. The Declaration of Unlawful Societies Order in Council (No. 3), 1961 (N.N.L.N. 118 of 1961).

CHAPTER VIII

BREACH OF OFFICIAL TRUST

98. Whoever, by reason or by means of his employment as a public servant 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 in the public interest to be communicated at that time, is said to commit a breach of official trust.

Breach of official trust defined.

COMMENT

Sudan Penal Code section 102.

1. This section defines as an offence the disclosure by a public servant to a person against the public interest of information acquired by him in the course of his employment and whilst he is under an obligation to his employer to keep the information secret.

2. From the definition of public servant in section 10, it will be seen that the section is wide and includes *inter alia* the unlawful disclosure of confidential information concerning the affairs of a native authority or public corporation.

3. It is necessary to show not only that the information divulged was obtained by the public servant under secrecy but that it was not in the public interest to divulge it to any other person at the time. Information once secret does not always remain so: what is "in the public interest" also may vary from time to time.

4. The obligation of secrecy may be express or implied. Senior Government servants are often placed under an oath of secrecy in respect of specific matters (e.g. officers with access to minutes of the proceedings of the Executive Council) but all Government servants are under an express or implied obligation of secrecy in respect of information of a confidential nature. Similar considerations apply to employees of native authorities, etc.

5. Sections 98 and 99 do not appear in the Pakistan Penal Code.

Punishment for breach of official trust.

99. 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, be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine; and
- (b) in any other case shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Sudan Penal Code section 113.

PRACTICE

1. Prove :

- (i) that the accused is a public servant.
- (ii) that he communicated or attempted to communicate information to a person to whom the information should not in the public interest have been communicated at that time.
- (iii) that the information divulged was such that the public servant was under an obligation of secrecy express or implied not to divulge it.

2. Procedure.—A warrant is required for the arrest of an accused. An offence under paragraph (a) is not normally bailable, an offence under paragraph (b) is bailable. Neither offence is compoundable. An offence under paragraph (a) is triable only in the High Court but an offence under paragraph (b) may be tried by a magistrate of the first grade or by a native court of grade A limited.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....communicated to [.....]]for sub-paragraph (a)—the agent of a foreign power] information which it was not in the public interest at that time should be so communicated to any person and which you acquired by reason or by means of your employment as a public servant and in respect of which you were under an oath of secrecy express or implied and thereby committed an offence punishable under section 99 of the Penal Code.

CHAPTER IX

OFFENCES AGAINST THE PUBLIC PEACE

100. An assembly of five or more persons is designated an unlawful assembly if the common object of the persons composing that assembly is—

Unlawful assembly defined.

- (a) to overawe by criminal force or show of criminal force the Government or the Government of the Federation or any Government of Nigeria or any public servant in the exercise of his lawful powers; or
- (b) to resist the execution of any law or of any legal process; or
- (c) to commit any mischief or criminal trespass or other offence; or
- (d) by means of criminal force or show of criminal force to enforce any right or supposed right; or
- (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.

101. Whoever being aware of facts which render any assembly an unlawful assembly intentionally joins that assembly or continues in it is said to be a member of an unlawful assembly.

Member of unlawful assembly defined.

102. Whoever is a member of an unlawful assembly shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.

Punishment for membership of unlawful assembly.

COMMENT

Pakistan Penal Code sections 141, 142 and 143.

Sudan Penal Code sections 115, 116 and 117.

1. The essence of an offence under section 102 is the assembling of a number of persons, united in a purpose to commit a criminal offence. The agreement to commit an offence is itself an offence distinct from the offence which the persons agree and intend to commit.

2. In section 100 :

- (i) the common object of the assembly must be one of the five objects mentioned.
- (ii) the assembly must consist of five or more persons having as their common object one of the five specified subjects. It is not sufficient that five persons have assembled if all five have not subscribed to the common object.
- (iii) no one is a member of an unlawful assembly unless he is aware of the common object of the assembly and connives in it.
- (iv) **paragraph (a)** : *to overawe by criminal force etc.* To carry a conviction under this paragraph, the common object of the persons composing the assembly must have been to overawe a public servant (or Government etc.); the mere fact that they did overawe a public servant is not in itself sufficient.

- (v) **paragraph (b)** : Some open act of resistance is necessary : mere words or threats are not sufficient, unless it is shown that there is an intention to carry them out.
- (vi) **paragraph (c)** : "Offence" under this paragraph means an offence punishable under the Code or some other Ordinance or Law. It does not appear to have been the intention that the word should be construed *ejusdem generis* with mischief and criminal trespass.
- (vii) **paragraph (d)** : "to enforce a right or supposed right". There is a distinction between enforcing a right and maintaining a right. This paragraph would appear to concern the case where the party claiming the right has not got possession of it. A person entitled but not in possession may gain possession by peaceful means. He has no right to take the law into his own hands and enter by force in a manner likely to provoke a breach of the peace. This paragraph does not take away the right of self defence to defend property given in paragraph (b) of section 60. A mere claim to title (even if *bona fide*) does not of itself give rise to the right of self defence.
- (viii) **paragraph (e)** : This paragraph is generally worded to mean that no one can use criminal force to compel illegally another to do or forbear to do any act connected or unconnected with property. e.g., if a person sees another person committing theft, he is entitled to arrest the later under the Criminal Procedure Code. If other persons more than five in number intervene to secure the release of the thief, their act falls within the ambit of paragraph (e).
- (ix) the Explanation is intended to make clear that a lawful assembly can become an unlawful assembly as a result of the subsequent acts of its members.

3. The common object might be inferred from mere words used by persons present in an assembly. In the case of *Na Juma & 7 others v. Kano Native Authority*,¹ accused were heard to say that they intended to burn a house, thereby committing the offence of arson. The assembly was broken up whilst stones were being thrown at the house. Nevertheless, it was held on appeal that arson was the common object of the assembly and even if the accused had taken no steps to achieve it, the accused were properly convicted of participating in an unlawful assembly.

4. Section 101 explains—

- (i) Who may be said to be a member of an unlawful assembly; i.e. any person who joins an unlawful assembly or stays in it.
- (ii) If a person pleads that he was an innocent bystander, he must prove that he was there through no fault of his own and that he was unable to leave.

PRACTICE

1. Prove :

- (a) that the assembly consisted of five or more persons.
- (b) that the object of the persons so assembled was or became within the ambit of any of the five objects defined in paragraphs (a) to (e) of section 100.
- (c) that the object was common to the persons assembled.
- (d) that the accused joined in or continued in the assembly.
- (e) that the accused did so intentionally and that he did so being aware of the above facts.

2. Procedure.—the offence is bailable, cannot be compounded and may be tried by any magistrate's court or native court.

3. Charge.—I [] hereby charge you [] as follows :—
That you, on or about the day of at were a member of an unlawful assembly, the common object of which was [] and thereby committed an offence punishable under Section 102 of the Penal Code.

103. Whoever being a member of an unlawful assembly is armed with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Joining unlawful assembly armed with deadly weapon.

1. *Na Juma and 7 Others v Kano Native Authority* 1961 N.N.C.N. 9

COMMENT

Pakistan Penal Code section 144.

Sudan Penal Code section 118.

1. The risk to the public peace is obviously aggravated by the intention to use force shown any assembly armed with deadly weapons.

2. Whether or not a weapon is a deadly weapon or anything which if used as a weapon is likely to cause death is a question of fact to be decided by the Court.

PRACTICE

1. **Prove.**—as for section 102 and that the accused was armed with a deadly weapon, or with anything which used as a weapon of offence, was likely to cause death.

2. **Charge.**—as for section 102 with the addition after the name of the accused of the words: "being armed with a deadly weapon to wit.....[or, being armed with] which if used as a weapon of offence, is likely to cause death."

104. Whoever joins or continues in an unlawful assembly knowing that such unlawful assembly has been lawfully commanded to disperse, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Joining or continuing in unlawful assembly knowing it has been commanded to disperse.

COMMENT

Pakistan Penal Code section 145.

Sudan Penal Code section 119.

Section 101 of the Criminal Procedure Code prescribes the persons by whom an unlawful assembly may be ordered to disperse. Section 152 of the Penal Code provides for the punishment of disobedience of any lawful order promulgated by a public servant. See also section 110 of the Penal Code.

PRACTICE

1. **Prove.**—as for section 102 and further—

(a) that the unlawful assembly had been commanded to disperse.

(b) that such command was given in the manner prescribed by law.

(c) that the accused joined or continued in such unlawful assembly after it had been commanded to disperse.

(d) that the accused did so, knowing that it has been commanded to disperse.

2. **Procedure.**—As for section 102 except that the accused should not normally be released on bail.

3. **Charge.**—That you, on or about the.....day of.....at.....joined [or, continued in] an unlawful assembly, knowing that such assembly had been commanded in the manner prescribed by law to disperse, and thereby committed an offence punishable under Section 104 of the Penal Code.

105. 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 is guilty of the offence of rioting.

Rioting defined.

106. Whoever is guilty of rioting shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Punishment for rioting.

COMMENT

Pakistan Penal Code sections 146 and 147.

Sudan Penal Code sections 120 and 121

1. A riot is simply an unlawful assembly in a particular state of activity. It is only the use of force which distinguishes a riot from an unlawful assembly.

2. In the case of *Na Juma & 7 others v. Kano Native Authority*,¹ the High Court held on appeal that violence or injury to a human being is not an essential ingredient of the offence of riot. Nor need the violence displayed be necessarily directed towards achieving the common object of the unlawful assembly. In this case the object was arson but the violence offered was the throwing of stones at a house.

3. Two essentials are required to make every member of an unlawful assembly guilty of rioting :

(a) the use of force or violence by an unlawful assembly or by any member thereof; and

(b) the force or violence must have been used in prosecution of the common object.

4. See section 263 for a definition of criminal force. The use of any force or violence, however slight, by an unlawful assembly is rioting and the offence is complete as soon as the force or violence is used. Violence may be force used against a person or against property.

PRACTICE

1. **Prove :**

(a) the existence of an unlawful assembly (See comment to section 102).

(b) that the accused, or any member of the unlawful assembly, used force or violence.

(c) that the force or violence was used in furtherance of the common object.

2. **Charge.**—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....were a member of an unlawful assembly and, in prosecution of the common object of such assembly, [here state the common object], committed the offence of rioting and thereby committed an offence punishable under Section 106.

107. Whoever is guilty of rioting being armed with a deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Rioting armed with deadly weapon.

COMMENT

Pakistan Penal Code section 148.

Sudan Penal Code section 122.

1. The offence under this section is simply an aggravated form of the offence under the last section, carrying an enhanced punishment.

2. If one member of an unlawful assembly is armed with a deadly weapon the other members cannot on that account be charged under this section. It is only the person so armed who should be so charged.

3. Whether a weapon is a deadly weapon etc., or not must be determined on the facts in each case.

PRACTICE

1. **Prove.**—as for section 106 and further that the accused was armed with a deadly weapon or with something which was likely to cause death, when used as a weapon of offence.

2. **Procedure.**—This offence cannot be tried by a court with less powers than the court of a magistrate of the first grade or a native court grade B. The offence is not ordinarily bailable and not compoundable.

3. **Charge.**—That you, on or about the.....day of.....at.....were a member of an unlawful assembly, and did, in prosecution of the common object of such assembly (state here the common object) commit the offence of rioting and at that time were armed with a deadly weapon [or something which used as a weapon of offence was likely to cause death] (state the weapon) and thereby committed an offence punishable under Section 107 of the Penal Code.

1. *Na Juma and 7 Others V Kano Native Authority* 1961 N.N.C.N. 9

108. 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, is guilty of that offence.

Every member of unlawful assembly guilty of offence committed in prosecution of common object.

COMMENT

Pakistan Penal Code section 108.
Sudan Penal Code section 123.

1. This section makes a member of an unlawful assembly vicariously liable for an offence committed by others in furtherance of the common object. The section means that a person accused under it cannot plead that he did not himself commit the offence committed in prosecution of the common object of the assembly.

2. There are two essentials to an offence under this section :

- (a) commission of an offence by any member of an unlawful assembly; and
- (b) the offence must have been committed in prosecution of the common object of the assembly, or must be such as the members of the assembly knew to be likely to be committed.

PRACTICE

Prove :

- (a) that there was an unlawful assembly.
- (b) that the accused was a member of that unlawful (section 101).
- (c) that he had intentionally joined or continued in the unlawful assembly.
- (d) that an offence was committed by a member of the unlawful assembly.
- (e) (i) that the offence was committed in prosecution of the common object of the assembly; or
- (ii) that the offence committed was such as the members of the assembly knew to be likely to be committed in prosecution of the common object.

109. 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 had himself been a member of such unlawful assembly.

Promoter of an unlawful assembly liable as a member.

COMMENT

Pakistan Penal Code section 150.
Sudan Penal Code section 124.

1. This section is intended to punish the persons, who whilst not actually present in an unlawful assembly, are the real originators and instigators of the disturbance. In many cases the law of abetment would cover such cases.

2. Promotion involves active assistance or instigation. It must be shown that the promotion was in respect of an individual person or of a real person. It is not intended to cover general promotion.

PRACTICE

1. Prove :

- (a) that the accused promoted or did an act assisting in the promotion of an unlawful assembly;
- (b) that the unlawful assembly in respect of which the promotion was undertaken took place.

2. **Procedure.**—The offence is bailable, not compoundable and may be tried by any court with jurisdiction over the offence committed by any member of the unlawful assembly.

3. **Charge.**—I [.....] hereby charge you [.....] as follows :
That you, on or about the.....day of.....at.....promoted [or did

an act, viz.....with intent to assist the promotion of] one, (name of member of assembly promoted) to join as [or become] a member of an unlawful assembly and that the said (name of member of assembly promoted) as a member of the unlawful assembly in pursuance of such promotion committed (specify the offence) and that you thereby committed an offence punishable under Section 109 of the Penal Code.

110. 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 be punished with imprisonment for a term which may extend to one year or with fine or with both.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 100, the offender will be punishable under section 104.

COMMENT

Pakistan Penal Code section 151.
Sudan Penal Code section 125.

1. This section differs from section 104 in that the assembly under this section need not be an "unlawful assembly." It need only be an assembly likely to cause a breach of the peace.

2. See section 102 of the Criminal Procedure Code for circumstances in which such an assembly may lawfully be ordered to disperse.

PRACTICE

1. Prove :

- (1) the assembly was composed of five or more people.
- (2) that the assembly was likely to cause a breach of the peace.
- (3) that the assembly was lawfully commanded to disperse.
- (4) that the accused joined, or continued in, such assembly after it had been so commanded to disperse.
- (5) that the accused did so knowingly.

2. **Procedure.**—The offence is triable by any magistrate's court or native court, bailable, and not compoundable.

3. **Charge.**—I [.....] hereby charge you [.....] as follows :

That you, on or about the.....day of.....at.....joined [or continued in] an assembly of five or more persons likely to cause a disturbance of the public peace, and thereby committed an offence punishable under section 110 of the Penal Code.

111. Whoever wears, carries or displays in public any emblem, flag, article of clothing or other token or device in such manner or on such occasion or in such circumstances as—

- (a) to constitute an offence under any other section of this Penal Code, or of any other subsisting Ordinance or Law; or
- (b) to cause or be likely to cause annoyance to the public or any section thereof, or a breach of the peace, or disturbance of the public peace, or the commission of an offence,

shall be punished with imprisonment for a term which may extend to six months or with fine or with both, and in addition the emblem, flag, article of clothing or other token or device in respect of which an offence under this section has been committed shall be liable to forfeiture.

Wearing and carrying of emblem, flag, etc.

COMMENT

Sudan Penal Code section 125A.

1. This section was interpolated into the Sudan Penal Code to deal with circumstances generally covered in the Northern Region by the Public Order Law, 1957 (N.R. No. 11 of 1957). The Sudan section has been retained in the Code for completeness but has been modified to ensure that it does not conflict with the Public Order Law, 1957.

2. Note that in section 140 (i) (d) of the Criminal Procedure Code, it is provided that the fiat of the Director of Public Prosecutions is required for a prosecution if the offence constituted under paragraph (a) of section 11 is an offence under either section 4 or section 5 of the Public Order Law, 1957.

3. In the case of *Liti Dangani v. Katsina Native Authority*,¹ the High Court held on appeal that paragraphs (a) and (b) of the sections are two separate and distinct offences and that a court when drafting a charge should state under which of the two paragraphs the accused is charged. The accused in this case had been convicted of wearing a party badge and the appeal was allowed because no section of the Penal Code or other Ordinance or Law prohibits the wearing of such a badge and no evidence was offered that the wearing of the badge caused or was likely to cause annoyance to the public, or a breach of the peace. The High Court assumed that Section 111 was expressed in such general terms as to include badges but this assumption need not be taken as a decision that political cap badges do in fact come within the meaning of the section. Section 125A of the Sudan Penal Code made specific reference to 'badge' whilst the word is omitted from section 111 which is otherwise identical. This omission was deliberate because the legislature considered that the wearing of political button badges was commonplace in the Region *and per se* inoffensive. It may well be, however, that the mere omission of the word from the section has not achieved the desired object.

4. Paragraph (a) would appear to permit a prosecution under the Penal Code for offences falling under sections 4 and 5 of the Public Order Law, 1957.

5. "Annoyance" It is reasonable to suppose that Indian precedent in the interpretation of the meaning of this word will have strong persuasive effect in the Region's courts. "Annoyance" in India is considered to be a wider term than "nuisance". The word "annoy" must be taken to mean annoyance that would generally and reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.

6. In *Liti Dangani's* case referred to above, the lower court convicted the accused because it was considered that the accused wore the badge with the intention of causing a disturbance. The High Court held that the intention of the accused in such cases is not relevant. What must be proved is that the accused actually caused annoyance to the public or a breach of the peace or commission of an offence or that what he did was likely to cause one of these effects.

7. The section provides for forfeiture of the emblem, flag etc., in the event of a conviction.

PRACTICE

1. Prove :

(a) that the accused wore, carried or displayed in public an emblem, flag, article of clothing or other token or device.

(b) that the manner, or the occasion or the circumstances in which he committed the act either :

(i) constituted an offence under any other section of the Penal Code or of any other Ordinance and Law; or

(ii) resulted in any of the alternative effects laid out in paragraph (b) of the section.

2. Procedure.—An offence under this section can be tried by any magistrate or native court and is bailable but not compoundable. Where an offence is punishable under paragraph (a) of section 111 and is also an offence under section 4 or 5 of the Public Order Law, 1957, the sanction of the Director of Public Prosecutions is necessary to prosecute. (See section 140 of the Criminal Procedure Code).

L1: i Dangani V Katsina Native Authority 1961 N.N.C.N. 3

3. Charge.—(i) under paragraph (a)—I [] hereby charge you [] as follows :—

That you, on or about the day of at wore [or carried, or displayed [an emblem [or flag etc.] (*here state the nature of the emblem, flag etc.*) in such a manner [or, on such occasion or, in such circumstances] as to constitute an offence under Section of the Penal Code [or of any other Ordinance or Law] and thereby committed an offence punishable under Section 111 of the Penal Code.

(ii) Under paragraph (7)—as above but after the word "manner" continue—as to cause [or be likely to cause] annoyance to the public [or a breach of the peace or a disturbance of the public peace or the commission of an offence] and thereby committed an offence punishable under Section 111 of the Penal Code.

112. 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, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Assaulting or obstructing public servant when suppressing riot, etc.

COMMENT

Pakistan Penal Code section 152.

Sudan Penal Code section 126.

1. This section is related to section 110 but punishes more severely persons who assault a public servant endeavouring to disperse an unlawful assembly.

2. In the case of *Sarkin Kinkiba Tsoho Ladan v. Zaria Native Authority*,¹ it was held that it was inappropriate to convict under this section when a policeman had been obstructed in attempting to arrest a person who had been concerned in a riot at a time when the riot was over.

PRACTICE

1. Prove :

(1) that an unlawful assembly was held.

(2) that an endeavour was made to disperse it.

(3) that the person making the endeavour was a public servant acting in the discharge of his duty as a public servant.

(4) that the accused assaulted, or threatened to assault or obstructed or attempt to obstruct the public servant in the discharge of his duty or that he used, or threatened to use criminal force to the public servant, discharging his duty.

2. Procedure.—The offence is triable by the court of a magistrate of the first grade or by a native court of grade C or above and is bailable and not compoundable.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at assaulted [or threatened to assault, etc.] (*name*)

a 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] and thereby committed an offence punishable under Section 112 of the Penal Code.

113. Whoever in a public place disturbs the public peace shall be

punished with imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both.

Disturbance of public peace.

2. Sarkin Kinkiba V Zaria Native Authority 1962 N.N.L.R.53

COMMENT

cf. Pakistan Penal Code section 159.

Sudan Penal Code section 127.

The Code follows section 127 of the Sudan Penal Code and differs from the Pakistan section which treats of the offence of affray. This is a wider section. For an offence to be committed under this section it is essential that there should be a disturbance of the public peace in a public place. The offence differs from the offences relating to unlawful assemblies in that it does not require any minimum number of persons to complete the offence and an unlawful assembly may occur in either a public or a private place.

PRACTICE

1. Prove :

- (i) that the accused disturbed the public peace.
- (ii) that the disturbance occurred in a public place.

2. Procedure.—The offence may be tried by any magistrate or by any native court, and is bailable and not compoundable.

114. Whoever does any act with intent to cause or which is likely to cause a breach of the peace or disturb the public peace shall be punished with imprisonment which may extend to two years or with fine or with both.

Inciting disturb-
ance.

COMMENT

Sudan Penal Code section 127A.

1. This section is considerably wider than section 113 in that it punishes a person doing an act likely to cause or with intent to cause a breach of the peace. It is not necessary that an actual disturbance or breach of the peace should take place as a result of the act.

2. Note that a higher maximum penalty is set for an offence under this section than for section 113.

PRACTICE

1. Prove.—that the accused did an act intending to cause or which was likely to cause a breach of the peace or disturb the public peace.

2. Procedure.—As for section 113.

CHAPTER X

OFFENCES BY OR RELATING TO PUBLIC SERVANTS

115. 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 lawful remuneration, as a motive or reward—

Public servants
taking gratification
in respect of official
act.

- (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 the public service or with any public servant as such,

shall be punished—

- (i) with imprisonment for a term which may extend to seven years or with fine or with both;
- (ii) if such public servant is a public servant in the service of the Government of the Northern Region or of the Government of the Federation acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment for a term which may extend to fourteen years or with fine or with both.

Explanation 1.—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office and that he will serve them, he may be guilty of cheating but he is not guilty 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, is guilty of an offence under this section.

ILLUSTRATIONS

(a) A an Alkali 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 District Head accepts a sum of money from a large land-owner. 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 land-owner. 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 land-owner. A has committed an offence under this section.

(c) A a public servant induces Z erroneously to believe that A's influence with the Government has obtained for Z the position of messenger and thus induces Z to give A money as a reward for this service. A has committed an offence under this section.

COMMENT

Pakistan Penal Code section 161.
Sudan Penal Code section 128.

1. This section refers only to the taker and not the giver of the bribe. The general doctrine of abatement applies to the giver of a bribe and section 118 provides special punishment for such cases.

2. "Expecting to be"—it must be proved in such a case that the person accepting the bribe—

- (a) expected to obtain employment as a public servant; and
- (b) that he led the other party to believe that he was about to obtain public employment. (See Explanation 1.)

3. Strict proof is required that the accused is or was or was expecting to be a public servant within the definition in section 10.

4. The section covers an attempt to obtain a bribe. It is not necessary to prove how the bribe was demanded or obtained, if it is proved that it was obtained.

5. "Any other person"—the other person need not be a public servant.

6. The word "gratification" is very wide and is not limited to money or material things— it presumably covers honorary distinctions, such as the gift of a traditional title.

7. "Legal remuneration"—means the salary and allowances, etc., officially paid to the public servant by his employer or any other payment from other sources, which the public employee is permitted by his employer to receive.

8. "Motive or reward"—implies that there is an understanding that the bribe was given in consideration of some official act or conduct. It is not necessary to show that the official act, the subject of the consideration, was performed by the public servant and it is not a defence to show that the act, if performed, was a legal act and against the person who tendered the bribe. It is also not necessary to show that at the time of taking a bribe a public servant intended to perform the act promised. (See Explanation 2).

9. "Official act"—in paragraph (a). The act in consideration of which the bribe was tendered must be shown to be an act connected with the official functions of the accused.

10. The section provides in paragraph (ii) a heavier penalty for an offence committed by a public servant of the Regional or Federal Government when acting in a judicial capacity or as a public officer. This paragraph does not apply to offences by employees of Native Authorities acting as such.

PRACTICE

1. Prove :

- (i) that the accused at the time of the offence was, or expected to be, a public servant.
- (ii) that he accepted, or obtained, or agreed to accept or attempted to obtain from some person a gratification for himself or any other person.
- (iii) that the gratification was not legal remuneration.
- (iv) that he accepted, etc., the gratification 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 some one; or
 - (c) for rendering or attempting to render any service or disservice to someone with any department of the public service or with any public servant.

2. Procedure.—A warrant to arrest is required. The offence is bailable and not compoundable. An offence punishable under paragraph (i) is triable only in the High Court. Any other type of offence in the section may be tried by a magistrate of the first grade or by a native court of grade C or above except that a native court has no jurisdiction in respect of an offence committed by a Government servant.

3. Charge.—I [.....] hereby charge you [.....] as follows :
That you on or about the day of at being a public servant in [here, state clearly nature of the office held] directly accepted from (name) for another party state the name of other party) a gratification other than legal remuneration, as a motive etc., for [here state one of the circumstances shown in (a), (b) or (c) of the section and thereby committed an offence punishable under Section 115 of the Penal Code.

116. Whoever 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 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; or
- (b) in the exercise of the official functions of such public servant to show favour or disfavour to any person; or
- (c) to render or attempt to render any service or disservice to any person with any department of the public service or with any public servant as such,

shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

COMMENT

Pakistan Penal Code section 162.
Sudan Penal Code section 129.

This section deals with the case where a person takes a gratification as a reward for inducing a public servant to do something by corrupt or illegal means. Note that it is the person accepting the bribe who must use corrupt or illegal means : not necessarily the public servant.

PRACTICE

1. Prove :

- (a) that the accused accepted or obtained or agreed to accept, or attempted to obtain from some one, for himself or someone else, a gratification.
- (b) that he accepted etc., the gratification as a motive or reward to induce by corrupt or illegal means a public servant to do anything contained in any of paragraph (a), (b) or (c) of the section.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable but not compoundable and is triable by a magistrate of the first grade or a native court of grade C and above except that a native court has no jurisdiction in respect of a Government servant.

3. Charge.—I [.....] hereby charge you [] as follows :
That you on or about the day of at accepted (or obtained etc.) from for yourself [or for] a gratification (this should be specified) as a motive or reward for inducing, by corrupt or illegal means, a public servant, (name) to do [or forbear to do] an official act (state act) [or to show favour etc.] and thereby committed an offence punishable under Section 116 of the Penal Code.

117. Whoever being a public servant, in respect of whom an offence under section 116 is committed, abets the offence, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Abetment by public servant of offence mentioned in section 116.

COMMENT

Pakistan Penal Code section 164.

Sudan Penal Code section 130.

Illustration.—'A' is a public servant. 'B', A's wife, receives a present as a reward for soliciting A to give employment to a particular person. A abets her in doing so. B is punishable under section 116 and A under section 117 (Pakistan Penal Code section 164).

PRACTICE

1. Prove :

- (a) that the accused is a public servant.
- (b) that an offence under section 116 was committed in respect of that public servant.
- (c) that the public servant abetted the offence.

2. Procedure.—As for section 116.

3. Charge.—I [.....] hereby charge you [.....] as follows :

That you on or about the.....day of.....at.....being a public servant, abetted the commission of the offence punishable under Section 116 by [.....], and thereby committed an offence punishable under Section 117 of the Penal Code.

118. Whoever offers or gives or agrees to give any gratification whatever whether pecuniary or otherwise in the circumstances and for any of the purposes mentioned in section 115 and 166 shall be punished with imprisonment which may extend to three years or with fine or with both.

Offering or giving gratification to public servant.

COMMENT

Sudan Penal Code section 131.

This section is intended to punish specifically the abetment of offences under sections 115 and 116 by punishing any person who offers or gives or agrees to give any gratification to a public servant in the circumstances covered by the two sections.

PRACTICE

1. Prove :

that the accused offered or gave, or agreed to give a gratification in the circumstances and for any of the purposes mentioned in sections 115 and 116.

2. Procedure.—As for section 116.

3. Charge.—I [.....] hereby charge you [.....] as follows :

That you on or about the.....day of.....at.....offered [or gave or agreed to give] a gratification (*state gratification*) to.....a public servant [or to.....] in the circumstance and for the purpose of (*state purpose, mentioned in section 115 or 116*) and thereby committed an offence punishable under Section 118 of the Penal Code.

Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant.

119. Whoever being a public servant accepts or obtains or agrees to accept 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 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,

shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

ILLUSTRATIONS

(a) A, a District Head hires a house of Z, who has a boundary case pending before him. It is agreed that A shall pay two pounds a month the house being such that, if the bargain were made in good faith, A would be required to pay five pounds a month. A has obtained a valuable thing from Z without adequate consideration.

(b) Z's brother is arrested and taken before A an Alkali on a charge of perjury. A sells to Z an old cow for ten pounds when its market value is only one pound. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

COMMENT

Pakistan Penal Code section 165.

Sudan Penal Code section 132.

1. This section is wider than section 115 and makes punishable the mere taking of presents by a public servant, when it cannot be proved that the presents were taken corruptly. The question of the motive or reward of the giver of the present is not material. The section covers the taking by a public servant of anything without consideration or for inadequate consideration from any person having any connection with the official functions of the public servant.

2. The section does not prohibit the sale or purchase of anything by a public servant at a fair price or gifts from relatives and friends which are unconnected with the official duties of the public servant.

PRACTICE

1. Prove :

- (a) that the accused is a public servant.
- (b) that he has accepted or obtained, or has agreed to accept or has attempted to obtain for himself or for someone else, a valuable thing.
- (c) that he gave no consideration for it or an inadequate consideration.
- (d) that the person from whom the present was received was known to the accused to have been, or to be, or to be likely to be concerned in the transaction of public business with him or his subordinate, [or that the person from whom the present was received was known by the accused to be related to a person having been concerned or likely to be concerned in transacting public business with the accused].

2. Note.—Care should be taken not to accept the uncorroborated evidence of a decoy witness, who has set out to trap the accused.

3. Procedure.—As for section 116, except that the offence is not normally bailable.

4. Charge.—I [.....] hereby charge you [.....] as follows :

That you being a public servant on or about the.....day of.....at.....accepted (or obtained etc.) for yourself [or for.....] a valuable thing (*state the thing*) without consideration [or for consideration which you know to be inadequate] from (.....) whom you knew to have been concerned in a proceeding [or business transacted by you viz. (*state business*) [or whom you knew to be interested in or related to, the person so concerned] and thereby committed an offence punishable under Section 119 of the Penal Code.

120. Whoever in any of the circumstances mentioned in section 119 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Offering or giving valuable thing without consideration.

COMMENT

Sudan Penal Code section 133.

This section simply provides a specific penalty for abetting an offence under section 119, by the giving or offering etc., of a present to a public servant in the circumstances described in section 119.

PRACTICE

1. Prove :

- (a) that the accused gave, offered or agreed to give to public servant or to any person in whom the public servant is interested or to whom he is related, a valuable thing without consideration or for inadequate consideration.
- (b) that any of the circumstances described in section 119 were present.

2. Procedure.—As for section 116.

121. Whoever knowingly profits by any gratification or benefit obtained in any of the circumstances mentioned in section 115, 116 or 119 but does not take any active part in obtaining such gratification or benefit, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Third person profiting by gratification.

COMMENT

Sudan Penal Code section 134.

This section punishes a third party who has profited from any of the unlawful transactions mentioned in sections 115, 116 and 119. The accused must be shown to have known the nature of the transactions, though he need not be shown to have taken an active part in them. The section therefore covers a type of abetment which would be difficult to prove by the normal rules covering abetment.

PRACTICE

1. Prove :

- (a) that the accused profited from a transaction constituting an offence under section 115 or section 116 or section 119.
- (b) that the accused knew that the illegal transaction had taken place although he had taken no active part in it.

2. Procedure.—As for section 116

122. Whoever being a public servant in his capacity as such dishonestly receives from any person any money or other property which he is not authorised to receive or which is in excess of the amount which he is authorised to receive, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Public servant dishonestly receiving money or property not due.

COMMENT

Sudan Penal Code section 135.

1. This section covers the case of a public servant dishonestly receiving money or property from a person in circumstances when he was not entitled to receive them. Here the person handing over the money or property has no guilty intent. The offence is commonly

committed by tax collectors deliberately over-collecting tax and converting the over-collection to their own use. The section covers all cases where public servants use their position to exact money or property from members of the public, who are either ignorant of what they should pay or pay out of fear or to avoid inconvenience on the demand of a public servant : e.g., illegal tolls collected by public ferrymen or at road barriers.

2. In the Pakistan Penal Code, public servants committing such offences are punished under the general law.

PRACTICE

1. Prove :

- (a) that the accused is a public servant.
- (b) that, acting as such, he received from a person money or other property which he was not authorised to receive or which was in excess of the amount which he was authorised to receive.
- (c) that the public servant was acting dishonestly.

2. Procedure.—As for section 116, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That you, being a public servant, on or about the day of at dishonestly received from the sum of [or, property to wit,] which you were not authorised to receive [or which was in excess of the amount which you were authorised to receive) and thereby committed an offence punishable under Section 122 of the Penal Code.

Public servant disobeying direction of law with intent to cause injury or to save person from punishment or property from forfeiture.

123. 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,

shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 166.

Sudan Penal Code section 136.

In Pakistan, this section also embraces the offences stated in sections 125, 126 and 127 of the Code.

PRACTICE

1. Prove :

- (a) that the accused was a public servant, and acting as such.
- (b) that he conducted himself in the particular manner charged.
- (c) that his conduct was in disobedience to a direction of law.
- (d) that the accused knowingly disobeyed the direction of law.
- (e) that when the accused knowingly disobeyed the direction of law, he intended or knew that he was likely thereby to cause one of the three classes of effect set out in the section.

2. Procedure.—A warrant is necessary to arrest. The offence is bailable but not compoundable and may be tried by a magistrate of the third grade or a native court of grade D

or above, except that a native court has no jurisdiction in respect of an offence committed by a Government servant.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....did (or, omitted to do).....such conduct being contrary to (state the direction of law) intending thereby (or knowing yourself likely thereby) to cause injury to a person [or the public] (give name of person) [or alternatives shown in paragraphs (b)-(c) of the section] and thereby committed an offence punishable under Section 123 of the Penal Code.

124. Whoever, being a public servant, and being as such public servant charged with the preparation or translation of any document, frames or translates that document in a manner which he knows and believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Public servant framing incorrect document with intent to cause injury.

COMMENT

Pakistan Penal Code section 167.

Sudan Penal Code section 137.

1. This section deals with a specific instance of the type of offence generally covered by section 123.

2. In India, there was a conflict of authority upon the question of whether the word "preparation" included the making of a copy of a document.

PRACTICE

1. Prove :

- that the accused was a public servant.
- that he was charged with the preparation or the translation of the document.
- that he was so charged in his capacity as a public servant.
- that he framed or translated it in an incorrect manner.
- that he knew, or believed, that he was incorrectly framing or translating it.
- that he so acted with the intention or with knowledge that it was likely that he would cause injury to some person.

2. Procedure.—A warrant is required for an arrest. The offence is bailable but not compoundable and may be tried by a magistrate of the first grade or by a native court of grade C or above except that a native court has no jurisdiction in a case in which a Government servant is accused.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....being a public servant, and being, as such public servant, charged with the preparation [or translation] of the document relating to....., framed [or translated] the document in a manner which you knew (or believed) to be incorrect, intending thereby to cause (or knowing it to be the document relating to....., framed (or translated) the document in a manner which you knew (or believed) to be incorrect, intending thereby to cause [or knowing it to be likely that you might thereby cause] injury to.....and that you thereby committed an offence punishable under Section 124 of the Penal Code.

125. Whoever, being a public servant knowing that he is likely to cause injury to any person or intending unlawfully to give any person an advantage, makes or pronounces in any stage of a judicial proceeding any report, order, judgment or decision which he knows to be contrary to law, shall be punished with imprisonment, which may extend to seven years or with fine or with both.

Public servant in judicial proceedings acting contrary to law.

126. Whoever, being a public servant authorised by law to commit persons for trial or to confinement or to keep persons in confinement, commits any person for trial or to confinement or keeps any person in confinement—

- knowing that he is acting contrary to law; and
- knowing that he is likely to cause injury to any person or intending unlawfully to give any person an advantage, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

COMMENT

Pakistan Penal Code section 219.

Sudan Penal Code sections 138 and 139.

These two sections deal with special cases of offences where the offender is a public servant acting judicially or responsible for keeping a person in confinement. Section 126 should be read also with reference to sections 254 to 261 dealing with Wrongful Restraint and Wrongful Confinement. The sections as originally drafted followed the Sudan Code in punishing the intention to commit any of the acts in knowledge that the offender was acting contrary to law. This wording was considered capable of too tight a construction and the wording of the Pakistan Code was substituted by sections 3 and 4 of the Penal Code (Amendment) Law, 1960 (N.R. No. 19 of 1960). The effect of the amendments is to put upon the prosecution the burden of proving knowledge of the likelihood of causing injury or giving advantage to some person.

PRACTICE

1. Prove :

(a) Section 125.

- that the accused was a public servant.
- that he made or pronounced in a judicial proceeding, a report, order, judgment or decision contrary to law.
- that he knew that he was thereby likely to cause injury to a person or that he intended unlawfully to give some person an advantage.

(b) Section 126.

- that the accused was a public servant authorised by law to commit persons for trial or to confinement or to keep persons in confinement.
- that, in that capacity, he committed a person for trial or to confinement.
- that, in doing so, he knew that he was acting contrary to law and
- that, in doing so, he knew that he was likely to cause injury to some person or that he would unlawfully give advantage to some person.

2. Procedure.—A warrant is required for an arrest under both sections. Both offences are not normally bailable and not compoundable and may be tried by a Chief Magistrate or a native court of grade A Limited or above except that no native court has jurisdiction in a case where the accused person is a Government servant.

3. Charge.—Under Section 125 (for section 126 wording appropriately changed is required)—

I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at..... being a public servant in the course of a judicial proceeding and knowing that you were thereby likely to cause injury to.....[or, intending unlawfully to give.....an advantage] made [or pronounced] a report [or order, etc.] knowing that the said report [or order, etc.] was contrary to law and thereby committed an offence punishable under Section 125 of the Penal Code.

127. Whoever, being a public servant whose duty it is as such public servant to arrest any person or to keep any person in confinement or custody, intentionally omits 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, shall be punished as follows, that is to say—

- (a) with imprisonment for a term which may extend to fourteen years with or without fine, if such person is under sentence of death; or
- (b) with imprisonment for a term which may extend to seven years with or without fine, if such person is under sentence of imprisonment for a term of ten years or upwards or is charged with or liable to be arrested for an offence punishable with death; or
- (c) with imprisonment for a term which may extend to three years or with fine or with both, if such person is under sentence of imprisonment for a term not extending to 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; or
- (d) with imprisonment for a term which may extend to two years, or with fine or with both, in any case not above specified.

COMMENT

Pakistan Penal Code sections 221-222.
Sudan Penal Code section 140.

1. This section is a further elaboration of the general offence described in section 123, and lays down heavier penalties for policemen, prison warders and other public servants charged with the duty to arrest and keep in custody criminals. Penalties are graduated to accord with the gravity of the crime of which the escapee has been convicted.

2. Note that in this section the public servant must intentionally omit to arrest or facilitate the escape of the person and compare this section with section 128 where negligence only is required to complete the offence.

PRACTICE

1. Prove :

- (a) that the accused is a public servant charged with a duty to arrest or keep a person in confinement.
- (b) that the person was not arrested or that he escaped or attempted to escape from custody.
- (c) that the public servant omitted to arrest the person or allowed the person to escape from custody or aided the person to escape or attempt to escape.
- (d) that the public servant acted with intention.

2. Procedure.—A warrant is required for the arrest of the public servant. The offence is not normally bailable and not compoundable. The offence may be tried :

- (a) if the person escaping is under sentence of death, by the High Court or by a native court of grade A Limited or above.
- (b) if the offender is under a sentence of imprisonment for ten years or upward or is charged with an offence punishable with death, by a Chief Magistrate or by a native court of grade 'A' Limited or above.
- (c) if the offender is under a sentence of imprisonment for a term not extending to ten years or is charged with an offence punishable with imprisonment of up to ten years by a magistrate of the first grade or by a native court of grade C or above.

(d) in all other cases by a magistrate of the third grade or by native court of grade D or above, except that no native court has jurisdiction in a case where the accused is a Government servant.

3. Charge.—I [] hereby charge you [] as follows :
That you on or about the day of at being a public servant whose duty it was to arrest [or to keep in confinement or custody] intentionally omitted to arrest [or intentionally suffered to escape, etc.] and thereby committed an offence punishable under Section 127 of the Penal Code.

128. Whoever, being a public servant whose duty it is as such public servant to arrest any person or to keep any person in confinement or custody, negligently omits to arrest that person or negligently suffers that person to escape from confinement or custody, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 223.
Sudan Penal Code section 141.

This section differs from section 127 only in that it punishes a public servant who by his negligence fails to arrest a person or to keep a person in custody, when he has a public duty to do so.

PRACTICE

1. Prove.—as for section 127 except that negligence only on the part of the public servant is required to complete the offence.

2. Procedure.—A warrant is required to arrest the public servant. The offence is bailable but not compoundable. The case may be tried by a magistrate of the third grade or by any native court except that the native court has no jurisdiction over a Government servant.

3. Charge.—as for section 127 with the substitution of the word "negligently" for "intentionally."

129. Whoever being a public servant wilfully omits to perform any duty pertaining to his office which he is legally bound to perform shall, if such omission 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 which may extend to two years or with fine or with both.

COMMENT

Sudan Penal Code section 142.

1. This section is another special case flowing from section 123.
2. Intention and not mere negligence is required to complete the offence.

PRACTICE

1. Prove :

- (a) that the accused is a public servant.
- (b) that he wilfully omitted to perform a duty pertaining to his office.
- (c) that his omission to perform the duty caused or tended to cause danger to human life, health or safety or caused or tended to cause a riot.

2. Procedure.—A warrant is required for the arrest of a public servant. The offence is bailable and not compoundable and is triable by a magistrate of the third grade or by any native court except that a native court has no jurisdiction where the accused is a Government servant.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of at being a public servant

legally bound to perform a duty..... wilfully omitted to perform that duty and thereby caused [or tended to cause] danger to human life [or health or safety or caused a riot or tended to cause a riot] and thereby committed an offence punishable under Section 128 of the Penal Code.

130. Whoever being a public servant wrongfully abandons his duties in pre-arranged agreement with two or more other such public servants shall, 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, be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Sudan Penal Code section 143.

1. This section is intended to prevent intentional injury or damage or grave inconvenience to the public at large by illegal stoppages of work by public servants acting in concert resulting in interference with a public service.

2. The section does not make any strike by public servants illegal. Strikes legalised by legislation affecting trade and professional unions are not affected by this section.

3. "Wrongful" in this context means illegal and if inconvenience is caused it must be "grave."

PRACTICE

1. Prove :

- that the accused is a public servant.
- that he acted in a pre-arranged agreement with two or more other such public servants.
- that he abandoned his duties wrongfully.
- that his intention or the effect of the abandonment was to interfere with the performance of a public service to an extent which would cause injury, or damage, or grave inconvenience to the community.

2. Procedure.—A warrant is required for the arrest of a public servant. The offence is bailable and not compoundable and is triable by a magistrate of the third grade or by any native court except that a native court has no jurisdiction if the accused is a Government servant.

3. Charge.—I [] hereby charge you [] as follows :—

That you, on or about the.....day of.....at.....being a public servant acting in pre-arranged agreement with.....and.....[and other] being also public servants, wrongfully abandoned your duties with the intention of interfering with the performance of a public service [or which abandonment resulted in an interference with the performance of a public service] to an extent which will cause injury (or damage or grave inconvenience to the community) and thereby committed an offence punishable under Section 130 of the Penal Code.

131. Whoever, being a public servant and being legally bound as such public servant not to purchase or bid for certain property, purchase or bids for that property in his own name or in the name of another or jointly or in shares with others, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 169.

Sudan Penal Code section 145.

The object of this section is to make it an offence for a public servant to purchase or bid for property when he is under a legal obligation in respect of the property not to purchase it. Being in an official position there are many circumstances in which a public servant could

obtain unfair advantages over other traders. e.g., A sheriff buying property at a sale of goods levied in execution of a judgment of a court. See section 376 of the Criminal Procedure Code.

PRACTICE

1. Prove :

- that the accused was a public servant.
- that he as such public servant, was legally bound not to purchase or bid for the property in question.
- that he purchased or bid for the property, either in his own name, or in the name of another, or jointly, or in shares with others.

2. Procedure.—A warrant is necessary to arrest a public servant. The offence is liable and not compoundable and is triable by a magistrate of the third grade or any native court except that a native court has no jurisdiction over a Government servant accused under this section.

3. Charge.—I [] hereby charge you [] as follows :

That you, being a public servant and being legally bound as such public servant not to purchase [or bid for] certain property, viz....., purchased [or bid for] that property in your name [or in the name of.....or jointly or in shares with.....] and thereby committed an offence under Section 131 of the Penal Code.

132. 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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

COMMENT

Pakistan Penal Code section 170.

Sudan Penal Code section 146.

1. This section punishes a person who pretends to hold public office as a public servant or who falsely pretends to be any other person holding such office and does any act in the guise of such a public servant.

2. It is not necessary to show that the particular office actually exists.

3. "Falsely" does not mean "fraudulently". (See section 17). Intent to defraud is immaterial.

4. Some positive act under colour of the office is necessary to complete the offence.

PRACTICE

1. Prove :

- that the accused personated a public servant or that he pretended to hold the post of a public servant.
- that he was not such a servant, or did not hold the post pretended.
- that he acted falsely or that he knew that he did not hold the office in question.
- that he, when assuming the character, did or attempted to do something under colour of his assumed office.

2. Procedure.—Accused may be arrested without a warrant. The offence is bailable and not compoundable. Any court may try the offence.

3. Charge.—I [] hereby charge you [] as follows

That you.....on or about the.....day of.....at....., pretended to hold the office of.....as a public servant, [or falsely personated....., pretended to hold the office of.....] and in such assumed character did [or attempted to do].....under colour of such office and thereby committed an offence punishable under Section 132 of the Penal Code.

133. Whoever not belonging to a certain class of public servant wears any dress or carries any token resembling any dress or token used by that class of public servant with the intention that it may be believed that he belongs to that class of public servant, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Wearing dress or carrying token used by public servant.

COMMENT

Pakistan Penal Code section 171.
Sudan Penal Code section 147.

This section punishes the wearing of any recognised uniform or the carrying of a badge or other symbol of office used or like that used by a public servant with the intention of passing off as that public servant. Proof of intent to defraud is not necessary.

PRACTICE

1. Prove :

- (a) that the accused wore the garb, or carried the token in question.
- (b) that the garb worn or the token carried resembled that used by a class of public servants.
- (c) that the accused was not a public servant entitled to use such garb or token.
- (d) that he did as in (c) with the intention, or with the knowledge, that it was likely that it might be believed that he belonged to such a class of public servants.

2. Procedure.—An accused may be arrested without warrant. The offence is bailable and not compoundable and may be tried by any court.

CHAPTER XI

CONTEMPTS OF THE LAWFUL AUTHORITY OF
PUBLIC SERVANTS

134. Whoever absconds in order to avoid being served with a summons or notice or order proceeding from any public servant legally competent as such public servant to issue such summons, notice or order, shall be punished—

Absconding to avoid service of summons, notice or order.

- (a) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
- (b) if the summons or notice or order is to attend in person or by agent or to produce a document in a Court of Justice, with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 172
Sudan Penal Code section 148.

1. This section only applies to a summons, notice or order which must be served formally upon a person before it is effective.
2. The term "abscond" does not mean that the person "absconding" must necessarily leave the place in which he is normally to be found. If he hides himself to avoid service he has absconded.
3. An accused must be shown to have had knowledge of the issue of the process or to have had reason to know that process would issue.

PRACTICE

1. Prove :

- (a) that the process in question was a summons, notice or order.
- (b) that it was issued by a public servant legally competent to issue it.
- (c) that the process was ordered to be served on the accused.
- (d) that the accused absconded in order to avoid the service;
- (e) that the process required the presence of the accused or his agent or the production of a document in a Court of Justice.

2. Procedure.—A warrant is required for the arrest of an accused. Consent of the public servant issuing the process or of some public servant to whom he is subordinate is required to lay a complaint. The offence is bailable, not compoundable, and triable in any court.

Preventing service or publication of summons, etc.

135. Whoever in any manner—

- (a) 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
- (b) intentionally prevents the lawful affixing to any place of any such summons, notice or order; or

- (c) intentionally removes any such summons, notice or order from any place to which it is lawfully affixed; or
- (d) 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, shall be punished—
- (i) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
- (ii) if the summons, notice, order or proclamation is to attend in person or by agent or to produce a document in a Court of Justice with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 173.

Sudan Penal Code section 149.

Some kind of intentional opposition must be offered to the officer serving the process.

PRACTICE

1. Prove :

- (a) that the process was a summons, notice, or order.
- (b) that the process issued from a public servant legally competent to issue it.
- (c) that the summons, etc. was issued to be served either on the accused, or upon some other person or publicly.
- (d) that the accused prevented the service.
- (e) that he did so intentionally;
- and for paragraph (ii) of the section, additionally :
- (f) that the process required the attendance of the accused in person or by representative or the production of a document in a Court of Justice.

2. Procedure.—A warrant is required for the arrest of an accused. Consent of the public servant issuing the process or of some public servant to whom he is subordinate is required to lay a complaint. The offence is bailable, not compoundable, and triable in any court.

136. 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—

- (a) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
- (b) if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Failure to attend in obedience to an order from public servant.

COMMENT

Pakistan Penal Code section 174.
Sudan Penal Code section 150.

1. The public servant must be legally competent to issue the process and this fact must be strictly proved.

2. This section was considered by the Northern Nigerian High Court on appeal in the case of Paul Mechanic V. Bedde Native Authority. In this case, a police officer had told the appellant that he was wanted in a police station and the appellant had refused to go. The High Court held that there should have been evidence that the appellant had received an order of a kind which he was bound to obey under Section 123 of the Criminal Procedure Code and that the order had come from a person who, under the same section, was legally competent to issue it. A police officer acting "merely as a messenger" is not legally competent to issue the order unless it is shown that he has been deputed to investigate the case.

3. Proof of service of the process is essential.

PRACTICE

1. Prove :

- (a) that there was an obligation to attend in obedience to the summons, etc.
- (b) that the summons, etc., as issued by a public servant legally competent to issue it.
- (c) that the accused thereby became legally bound to attend in person or by agent at a certain time and place.
- (d) that he did not so attend or that he left the place before the time at which it was lawful for him to depart.
- (e) that he so acted with intention.
- and for a conviction under paragraph (b) of section 136 :
- (f) that the summons, etc., was to attend in person or by agent in a Court of Justice.

2. Procedure.—Warrant is required for the arrest of an accused. Consent of the public servant issuing the process or of some public servant to whom he is subordinate is required to lay a complaint. The offence is bailable, not compoundable, and triable in any court.

137. 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, shall be punished—

- (a) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
- (b) if the document is to be produced or delivered up to a Court of Justice, with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 175.
Sudan Penal Code section 151.

A witness who has a document and fails to produce it when required to do so is punishable under this section if the process is issued by a civil court. The section is not limited to process issued in the exercise of criminal jurisdiction.

PRACTICE

1. Prove :

- (a) that it was a public servant or a Court of Justice against whom the offence was committed.
- (b) that the accused was legally bound to produce or deliver up the document in question.

1. Paul Mechanic V Bedde Native Authority 1962 N.N.L.R. 23.

(c) that the accused had the document in his possession or the means of obtaining it and omitted to produce or deliver it up.

(d) that the accused did so intentionally.

2. Procedure.—A warrant is required for the arrest of an accused. Consent of the public servant issuing the process or of some public servant to whom he is subordinate is required to lay a complaint. The offence is bailable, not compoundable, and triable by any court.

138. 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, shall be punished—

Failure to give notice or information to public servant.

- (a) with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both; or
- (b) if the notice or information required to be given is in respect of the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to arrest an offender, with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 176.

Sudan Penal Code section 152.

Chapter XI of the Criminal Procedure Code contains a number of sections defining the duties of the public and of native authority staff to give information to the Police in criminal matters. Failure to give information under those sections is punishable under section 138 of the Penal Code.

PRACTICE

1. Prove :

- (a) that the accused knew of the circumstance or had the information in question;
- (b) that he was legally bound to give notice thereof or to furnish the information;
- (c) that such notice should have been given;
- (d) that he omitted to give such notice or furnish the information as required by law;
- (e) that he did so with intention;

and in the case of an offence under paragraph (b) of the section, additionally—

- (f) that the notice or information had referred to the commission of an offence or concerned the arrest of an offender.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by any court. The consent of the public servant to whom the accused was under an obligation to give the information or of some public servant to whom such public servant is subordinate is necessary to lay a complaint.

3. Charge.—The charge must distinctly set out the particular offence, in respect of which the accused omitted to give information and it must be made clear what his duty was in the matter.

139. 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, shall be punished—

Furnishing false information.

- (a) with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both; or
- (b) if the information which he is legally bound to give is in respect

of the commission of an offence or is required for the purpose of preventing the commission of an offence or in order to arrest an offender, with imprisonment for a term which may extend to two years or with fine or with both,

COMMENT

Pakistan Penal Code section 177.

Sudan Penal Code section 153.

1. Both in sections 138 and 139, there is no legal liability unless a legal obligation to give information exists.

5. It is not necessary to prove an intention to defraud. The mere giving of false information is sufficient providing the person giving it knows or has reason to believe that it is untrue.

PRACTICE

1. Prove :

- (a) that the accused was legally bound to furnish the information in question to a public servant.
- (b) that he did furnish information accordingly.
- (c) that the information was false.
- (d) that the accused gave the information as true although he knew or had reason to believe that it was false :

and to constitute an offence under paragraph (b) of the section additionally :

- (e) that the information was in respect of the commission of an offence.

2. Procedure.—A warrant is necessary to arrest an accused. The offence is bailable but not compoundable and the offence may be tried by any court. The consent of the public servant to whom the information was given or a public servant to whom he is subordinate is necessary before a complaint may lie.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....being legally bound to furnish information on any subject, to wit.....,furnished information which you knew [or, had reason to believe] to be false [and the information which you were bound to give was in respect of the commission (or prevention) of an offence (or apprehension of an offender)] and thereby committed an offence punishable under Section 139 of the Penal Code

140. 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—

False information with intent to mislead public servant.

- (a) to do or to omit anything which such public servant ought not to do or omit if the true state of facts respecting such information is given were known by him; or
- (b) to use the lawful power of such public servant to the injury of annoyance of any person,

shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to twenty pounds or with both.

ILLUSTRATION

(a) A informs a police officer that Z a policeman subordinate to such police officer 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 police officer 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 that 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 this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

COMMENT

Pakistan Penal Code section 182.

Sudan Penal Code section 154.

1. This section covers the case where a person, under no legal obligation to give information, deliberately gives false information to a public servant in order to mislead him and thereby causes him to exercise his powers as a public servant to the injury of another person.

2. In India, this section has been held to apply to a case where a police investigation was initiated as a result of false information given to the police.

3. It is not necessary that the public servant is induced by the false information to do anything or omit to do anything: it is necessary that the person giving the false information should be shown to have had the intention that the public servant should act upon it in one of the ways indicated in paragraphs (a) and (b) of the section.

PRACTICE

1. Prove :

- that the person to whom the information was given was a public servant.
- that the accused gave the information in question to the public servant.
- that the information was false.
- that the accused knew or believed such information to be false when giving it.
- that the accused intended thereby to cause, or knew that it was likely that he would thereby cause the public servant to act in one of the ways specified in paragraphs (a) and (b) of section 140.

2. **Procedure.**—A warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried by any court. The consent of the public servant to whom the false information is given or of a public servant to whom he is subordinate must be obtained before a complaint is laid.

141 (1) Whoever refuses to bind himself by an oath or affirmation to state the truth when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

(2) The provisions of this section shall not apply to a witness in judicial proceeding who, having been called upon to take an oath or make a solemn affirmation that he will speak the truth under Sub-section (1) of section 229 of the Schedule to the Criminal Procedure Code Law, 1960, refuses to take such oath or make such affirmation under the provisions of section 230 of the Schedule to the Criminal Procedure Code Law, 1960.¹

COMMENT

Pakistan Penal Code section 178.

Sudan Penal Code section 155.

Note that Subsection (2) was inserted by the Penal Code (Amendment) Law, 1963 to remove an apparent conflict between the original section and section 230 of the Criminal Procedure Code. It is not an offence to refuse to take an oath in judicial proceedings.

PRACTICE

1. Prove :

- that the accused was required by a public servant to bind himself by an oath or affirmation to tell the truth.

1. Inserted by Section 2 of the Penal Code (Amendment) Law, 1963 (N.N. No. of 1963).

(b) that such public servant was legally competent to require that the accused should so bind himself.

(c) that the accused refused to bind himself as required.

2. **Procedure.**—A warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried in any court. The consent of the public servant or court requiring the oath to be taken or of a public servant to whom the public servant is subordinate is necessary before a complaint may lie. The offence may be tried in a court before which a contempt has been committed subject to the provisions of Chapter XXV of the Criminal Procedure Code.

142. Whoever, being legally bound to answer questions put to him

on any subject by any public servant in the exercise of his lawful powers of such public servant, refuses to answer any such question, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Refusing to answer public servant authorised to question.

COMMENT

Pakistan Penal Code section 179.

Sudan Penal Code section 156.

1. The question which the accused refuses to answer must be relevant to the subject concerning which the public servant is authorised to enquire. The section does not cover the giving of a false answer in reply to a question.

2. There must be a legal obligation to state the truth.

3. An accused person is not compelled to answer questions and the section does not apply to such refusals. See section 21(9) of the Second Schedule to the Nigerian Constitution and sections 235 and 236 of the Criminal Procedure Code.¹

PRACTICE

1. Prove :

- that the accused was legally bound to state the truth to a public servant on the subject in question.
- that the public servant questioned him in the subject.
- that the public servant was exercising his legal powers in putting the questions.
- that the accused refused to answer the questions.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and is triable in any court. If the contempt was committed in a court, that court may try the case subject to the provisions of Chapter XXV of the Criminal Procedure Code. The consent of the public servant or the court the subject of the contempt is necessary before a complaint may be laid.

143. 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, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to ten pounds or with both.

Refusing to sign statement.

COMMENT

Pakistan Penal Code section 180.

Sudan Penal Code section 157.

The statement must be such, that the accused can be legally required to sign it. Strict proof of the authority of the public servant to require the signature is necessary.

1. *Yatsar Damu Shinkafi v. Sokoto Native Authority* (1961 N.N.L.N. 4) and *Mallam Gajere v. Jos N.A. Police* (1962 N.N.C.N. 36).

PRACTICE

1. Prove :

- (a) that the accused made the statement.
- (b) that he was required to sign the statement by a public servant.
- (c) that the public servant was legally competent to require the signature.
- (d) that the accused refused to sign it.

2. Procedure.—A warrant for the arrest of an accused is necessary. The offence is bailable but not compoundable and may be tried by any court including a court before which the contempt is committed subject to the provisions of Chapter XXV of the Criminal Procedure Code. Consent of the public servant or a public servant to whom he is subordinate, or of the court before which the contempt was committed is necessary before a complaint can be laid.

144. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant knowing or having reason to believe that he is such public servant, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Resistance to taking of property by lawful authority of public servant.

COMMENT

Pakistan Penal Code section 183.
Sudan Penal Code section 158.

The section applies to resistance to the taking of property by the lawful authority of a public servant and does not extend to resistance to acts of a public servant not strictly justifiable by law. See section 64, which defies the right of private defence in respect of acts done by public servants.

PRACTICE

1. Prove :

- (a) that the person resisted was a public servant.
- (b) that the property was being taken by his authority.
- (c) that the authority was lawful.
- (d) that the accused resisted the taking of the property.
- (e) that the accused knew at the time that it was a public servant who authorised the taking.

2. Procedure.—A warrant is necessary for the arrest of an accused. The offence is bailable and not compoundable and may be tried in any court. Consent of the public officer issuing the authority or of a public servant to whom he is subordinate is necessary before a complaint may lie.

145. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both.

Obstructing sale of property offered for sale by authority of public servant.

COMMENT

Pakistan Penal Code section 184.
Sudan Penal Code section 159.

PRACTICE

1. Prove :

- (a) that the property was offered for sale.
- (b) that such sale was by the authority of a public servant.
- (c) that the authority was lawful.
- (d) that the accused obstructed the sale.
- (e) that he did so with intention.

2. Procedure.—As for section 144.

146. Whoever, when any property has been attached or taken by the lawful authority of any public servant, knowingly and with intent to hinder or defeat the attachment or process receives, removes, retains, conceals, or disposes of such property, shall be punished with imprisonment for three years or with fine or with both.

Removing property under lawful seizure.

COMMENT

This section is a variation of section 144 and is not in the Pakistan or Sudan Penal Codes because section 183 of that Pakistan Code has been held to cover the offence. The section is modelled on section 144 of the Nigerian Criminal Code (Cap. 42).

PRACTICE

1. Prove :

- (a) that the property was attached or taken by a public servant.
- (b) that the public servant had lawful authority so to attach or take the property.
- (c) that the accused received, removed, retained, concealed or disposed of the property.
- (d) that he did so knowingly and with intent to hinder or defeat the attachment or process.

2. Procedure.—A warrant is needed for the arrest of an accused. The offence is bailable but not compoundable and may be tried in any court. The consent of the public servant or court whose process has been the subject of the contempt must be obtained before a complaint may be laid.

147. 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, shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both.

Illegal purchase or bid for property offered for sale by authority of public servant.

COMMENT

Sudan Penal Code section 160.

This section punishes two types of offences :

- (a) when a person purchases or bids for property either on his own account or as agent for another knowing that either he or his principal is under a legal incapacity to purchase property at the sale (e.g. a person acting as an agent for a public servant legally bound not to purchase or bid for property). This constitutes an abetment of an offence under section 131 of the Code; and
- (b) when a person bids at a sale held under the authority of a public servant not intending to fulfil his obligation to pay the price.

PRACTICE

1. Prove :

- (a) that the sale of property was held by the lawful authority of a public servant.
- (b) that the accused purchased or bid for property at the sale whether himself or on the account of any other person; and
- (c) that he knew that he and his principal were under a legal incapacity to purchase property at the sale; or
- (d) that he did not intend to fulfil the obligations under which he bound himself by his bidding.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried in any court. The consent of the public servant by whose authority the sale was held is necessary before a complaint may be laid.

148. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty pounds or with both.

Obstructing public servant in discharge of functions.

COMMENT

Pakistan Penal Code section 186.

Sudan Penal Code section 161.

1. The obstruction must be intentional and it must occur when the public servant is discharging his public functions.

2. The use of the word "voluntarily" implies that some positive act on the part of the accused is necessary not mere passive conduct.

3. Resistance to the process of a civil court is punishable under this section.

4. In the case of Sarkin Kinkiba Tsoho Ladan V. Zaria Native Authority the Northern Nigerian High Court on appeal held that a policeman who entered the appellant's house without permission to arrest a person was a trespasser unless he had legal authority to do so by virtue of section 34 of the Criminal Procedure Code, as being authorised to effect an arrest under section 26 of the Criminal Procedure Code. Evidence that the policeman was authorised to make the arrest was not put in evidence and therefore, *prima facie*, the entry was a trespass and illegal. A public servant acting illegally in the discharge of his duty is not discharging his duty. The public servant must be shown to have acted lawfully before an offence under section 148 can be said to have been committed.¹

5. If criminal force is used to a public servant a prosecution under section 267 is an alternative.

PRACTICE

1. Prove :

- (a) that the person obstructed was a public servant.
- (b) that at the time of obstruction he was lawfully discharging his public functions.
- (c) that the accused obstructed him.
- (d) that he did so voluntarily.

2. Procedure.—A warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried by any court. Consent of the public servant obstructed is necessary before a complaint may be laid.

149. Whoever voluntarily obstructs any public servant in the discharge of his public functions under any Imperial Law or written law or voluntarily obstructs any person engaged in the discharge of any duty imposed on him by an Imperial Law or written law shall be punished with imprisonment which may extend to two years or with fine or with both.

Obstructing public servant in discharge of duty under Imperial Law or written law.

COMMENT

1. This section is included to bring the Code into line with similar provisions in the Nigerian Criminal Code (Cap. 42). A distinction is therefore drawn between obstructing a public servant in the discharge of his official functions (section 148) and obstructing a public servant when he is carrying out specific duties imposed upon him by a written law. A statutory duty or function must be proved before this section can be invoked.

2. Refusal by an accused person to answer questions in a court is not an obstruction for the purposes of this section.²

1. Sarkin Kinkiba v. Zaria Native Authority 1962 N.N.L.R. 53.

2. Yatsar Damu Shinkafi v. Sokoto Native Authority 1961 N.N.C.N. 4.

PRACTICE

1. Prove :

- (a) that the person obstructed is a public servant.
- (b) that at the time of obstruction he was carrying out a public function or discharging a duty imposed upon him by an Imperial Law or any written Law.
- (c) that the accused obstructed him in the same.
- (d) that he did so voluntarily.

2. Procedure.—As for section 148.

150. 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, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to extend to twenty pounds or with both.

Failing to assist public servant when bound by law to assist.

COMMENT

Pakistan Penal Code section 187.

Sudan Penal Code section 161.

1. Chapters X and XI of the Criminal Procedure Code lay down circumstances in which a person is bound to assist a public servant.

2. Possible defences to a charge under this section would be that there was no reasonable necessity to call upon the accused to assist or that the accused refused on account of physical incapacity or lawful excuse.

PRACTICE

1. Prove :

- (a) that the person requiring assistance was a public servant.
- (b) that he was acting in the execution of his duties.
- (c) that the accused was legally bound to assist him.
- (d) that he omitted to assist when required to do so.
- (e) that he did so intentionally.

2. Procedure.—As for section 148.

151. Whoever being legally prohibited from residing in any district, or being legally ordered to reside in any district, intentionally disobeys any such prohibition or order shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Contravention of residence order.

COMMENT

Sudan Penal Code section 162A.

This section would only appear to be applicable in the Northern Region in respect of residence orders issued under the authority of the Ex-Native Office Holders Removal Ordinance (Cap. 68). It does not apply to orders issued under section 47 of the Native Authority Law 1954, (N.R. No. 4 of 1954) which are only directions to a person to leave the area of a native authority.

PRACTICE

1. Prove :

- (a) that the accused had been legally prohibited from residing in any district or had been legally ordered to reside in any district.
- (b) that he had remained in the district or had not set up residence in the district in contravention of the prohibition or order.
- (c) that he did so intentionally.

2. Procedure.—An accused may be arrested without warrant. The offence is bailable

but not compoundable and may be tried by a magistrate of the first grade or by a native court of grade A limited or above. The consent of the public servant issuing the order or prohibition is necessary before a complaint may be brought before a court.

152. 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 action with respect to certain property in his possession or under his management, disobeys such direction, shall—

Disobedience to order duly promulgated by public servant.

- (a) if such disobedience causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed, be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty pounds or with both;
- (b) if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Pakistan Penal Code section 188.

Sudan Penal Code section 163.

1. An accused must be shown in evidence to have had knowledge of the order. There is no presumption that a person has knowledge of an order (although he is presumed to have knowledge of the law). Knowledge may be inferred if there are circumstances before the court justifying such an inference.

2. The order must be an order and not simply a notice and the public servant issuing the order must be lawfully empowered to issue it.

3. Mere disobedience of the order is not in itself an offence. It must be shown that by disobeying an order, the accused caused or tended to cause one or any of the effects laid out in paragraph (a) and (b) of the section.

PRACTICE

1. Prove :

- (a) the promulgation of the order.
- (b) that it was promulgated by a public servant.
- (c) that the public servant was lawfully empowered to promulgate the order.
- (d) that the order directed the accused to abstain from a certain act or to take certain action.
- (e) that the accused knew of such order to him.
- (f) that he disobeyed the order.
- (g) that the disobedience caused or tended to cause, obstruction, annoyance or injury or risk of the same to a person lawfully employed or that the disobedience caused or tended to cause danger to human life, health or safety or tended to cause a riot or affray.

2. Procedure.—A warrant is required for the arrest of an accused person. The offence is bailable but not compoundable and may be tried by any court. The consent of the public servant issuing the order is required before a complaint may be brought before a court.

153. 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,

Threat of injury to public servant.

shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 189.

Sudan Penal Code section 164.

1. This section provides special punishment for the offence of threatening to injure a public servant. cf. sections 396 and 397 which deal generally with the offence of criminal intimidation.

2. A mere threat does not complete the offence : it must be shown that the purpose of the threat was to induce the public servant to do or not to do an official act.

PRACTICE

1. Prove :

- (a) that the accused held out the threat.
- (b) that the threat was to injure.
- (c) that the person threatened was a public servant or some person in whom the accused believed that the public servant was interested.
- (d) the purpose of the threat, i.e., that it was to induce the public servant to do, or forbear to do or to delay to do an official act.

2. Procedure.—A warrant is required to arrest an accused person. The offence is bailable and not compoundable and may be tried by any court. The consent of the public servant threatened is necessary before a complaint may be made to a court.

154. 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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Threat of injury to induce person to refrain from applying for protection to public servant

COMMENT

Pakistan Penal Code section 190.

Sudan Penal Code section 165.

The object of this section is to prevent a person from terrorising another in order to prevent him from seeking the protection of the public authorities.

PRACTICE

1. Prove :

- (a) that the accused held out a threat.
- (b) that the threat was to injure.
- (c) that the purpose of the threat was to induce the person threatened to refrain or desist from making a legal application for protection against some injury.
- (d) that the application was about to be made to a public servant.
- (e) that the public servant had legal powers to give the protection or cause it to be given.

2. Procedure.—As for section 153.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of at held out a threat of injury (state nature of threat) to (name of person) for the purpose of inducing him to refrain or desist from making a legal application for protection against such injury to a public servant legally empowered to give such protection [or cause such protection to be given] and thereby committed an offence punishable under section 154 of the Penal Code.

155. 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 shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Intentional insult or interruption to public servant sitting in judicial proceeding.

COMMENT

Pakistan Penal Code section 228.

Sudan Penal Code section 166.

1. This section is a supplement to the powers given to a court by the Criminal Procedure Code to punish summarily a contempt in the face of the court. See Chapter XXV of the Criminal Procedure Code.

2. The public servant must be acting judicially at the time when the insult or interruption is offered.

3. If a court is proceeding under the procedure set out in section 315 of the Criminal Procedure Code and the offence is under section 155 of the Penal Code, the record of the court must show the nature and stage of the judicial proceedings in which the court interrupted or insulted was sitting and the nature of the interruption or insult. See Section 316 of the Criminal Procedure Code.

PRACTICE

1. Prove :

- (a) that the accused insulted or caused an interruption to a public servant.
- (b) that the public servant was sitting in a stage of a judicial proceeding.
- (c) that the accused acted with intention.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by any court. The consent of the public servant or court interrupted or insulted is necessary before a complaint may be brought before a court. See Chapter XXV of the Criminal Procedure Code for the conditions under which a court insulted or interrupted may dispose summarily of the contempt committed in the face of the court.

CHAPTER XII

FALSE EVIDENCE AND OFFENCES RELATING TO THE
ADMINISTRATION OF JUSTICE
Offences relating to Evidence

156. 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, verbally or otherwise, which is false in a material particular 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 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 stating 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.

Explanation 2.—A material particular within the meaning of this section means a particular which is material to any question then in issue or intended to be raised in that proceeding.

ILLUSTRATIONS

(a) A, in support of a just claim which B has against Z for ten pounds, 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. Here A's statement is merely as to his belief and is true as to his belief and therefore although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

COMMENT

Pakistan Penal Code section 191.

Sudan Penal Code section 167.

1. This section defines the giving of false evidence, known as perjury in English law.
2. The section does not require that the false statement made shall have any bearing upon a matter in issue. It is sufficient if the false statement is made with the intention of deceiving the court and the statement is made deliberately and in the knowledge that it is false.

3. The section differs from English law in that :

- (a) the false statement need not be made in the course of or be related to a judicial proceeding;
- (b) it need not be made on oath or affirmation provided that the person making it was under an express provision of law to tell the truth;
- (c) it need not be material to proceedings before a court;
- (d) corroboration is not stated to be a requirement to prove that a false statement was made.

4. See sections 230, 231 and 232 of the Criminal Procedure Code relating to the administration of oaths in criminal courts especially the provisions relating to the swearing of Moslem witnesses.

6. The false evidence must be intentionally false to the knowledge or belief of the person giving it. The words "does not believe to be true" mean that where a man swears to a particular fact without knowing at the time whether the fact be true or false, he has given false evidence.

157. Whoever causes any circumstance 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 appear in evidence or be used in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator and that such circumstance, false entry or false statement so appearing in evidence or so used may cause any person, who in such proceeding is to form an opinion upon the circumstance, entry or statement, 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 of Justice. 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.

COMMENT

Pakistan Penal Code section 192.
Sudan Penal Code section 168.

1. The offence defined in this section contains the following ingredients :

- (a) (i) causing any circumstance to exist, or
- (ii) making a false entry in a book or record, or
- (iii) making a document containing a false statement.
- (b) the circumstance, false entry, etc., must have been intended to appear in evidence at:
 - (i) a judicial proceeding, or
 - (ii) a proceeding taken by law before a public servant.
- (c) the circumstance, etc., appearing in evidence might cause the person who has to form an opinion upon the evidence to entertain a wrong opinion.
- (d) the opinion so formed must relate to a point material to the result of the case.

2. The power to take evidence on oath or affirmation is the test of a judicial proceeding.

3. The section is not limited to the fabricating of evidence in judicial proceedings. It is sufficient if the false evidence is fabricated to influence a public servant in any proceeding taken by law before him, e.g., false documents produced to a public servant to exercise a lawful power to issue a permit.

158. (1) Whoever intentionally gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of its being used in any stage of a judicial proceeding shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

(2) Whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment for a term which may extend to seven years and shall 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.

COMMENT

Pakistan Penal Code section 193.

Sudan Penal Code section 169

This section specifies the punishments for offences under sections 156 and 157.

PRACTICE

1. Prove :

(A) for giving false evidence :

- (i) that the accused was bound to state the truth, either on oath or affirmation or by an express provision of law.
- (ii) that he made the declaration or statement whilst so bound. Due administration of the oath, etc., must be proved as a fact.
- (iii) that the statement or declaration was made in a stage of a judicial proceeding.
- (iv) that the statement or declaration is false. It must be proved that the statement, etc. is literally false.
- (v) that the accused when making the statement, etc., knew it to be false, or believed it to be false or did not believe it to be true.
- (vi) that he made the false statement intentionally.

Note : Proof of (iii) is unnecessary if the offence falls under sub-section (2) of the section.

(B) for "fabricating false evidence" :

- (i) that the accused (a) caused a certain circumstance to exist, or (b) made a false entry or (c) made the document to contain a false statement.
- (ii) that he did so intending that the circumstance, false entry or statement should appear in evidence in a judicial proceeding, or in a proceeding taken by law, before a public servant or in a proceeding before an arbitrator.
- (iii) that the person conducting the proceeding had to form an opinion upon the evidence before him.
- (iv) that the accused intended that the person should form an erroneous opinion upon the evidence as a result of the inclusion of the false entry, or statement, etc.
- (v) that the erroneous opinion was to be formed on a point material to the result of the proceeding. The evidence on which the perjury is made must be material in respect of matters in issue.

2. A court should bear in mind the danger of convicting under this section on the uncorroborated evidence of one witness, i.e., one man's oath against another's. Where the false statement, etc., was made in the course of judicial proceedings, the record of the proceedings should be proved by its production in court.

3. **Procedure.**—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable. In proceedings under subsection (1), the case is triable by a Chief Magistrate or a native court of grade A Limited or above except that any court may dispose of a case which it considers can be adequately punished by not more than three months imprisonment or by a fine not exceeding the maximum fine which the court has power to impose. Under subsection (2) the court of a magistrate of the first grade or a native court grade C or above may try the case subject to the same exception as that stated above for offences under subsection (1). Under subsection (1), complaint in writing of the court before which the offence is committed or of some other court to which it is subordinate is necessary for a prosecution.

4. Charge.—(i) *Note.*— In framing a charge under this section, the particular matter in respect of which the accused is being tried must be stated. The precise words used by the accused should be stated not merely a paraphrase of the words.

(ii) *Example :*

[] hereby charge you [] as follows :

That you, on or about the day of at in the course of the trial of before stated in evidence that [state here the false statement] Which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under subsection (1) of Section 158 of the Penal Code.

159. (1) 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 shall be punished with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

(2) If an innocent person is convicted and executed in consequence of such false evidence, the person who gave or fabricated such false evidence shall be punished with death.

COMMENT

Pakistan Penal Code section 194.
Sudan Penal Code section 170.

1. This section provides for the punishment of an aggravated form of the offence punishable under section 158.

2. It is settled law in India, that this section requires that the false evidence be given in proceedings in which it is legally possible for there to be a conviction for a capital offence. Thus evidence given at a preliminary inquiry or to the police would not be sufficient to establish an intention or the likely knowledge which must be shown by the accused and which would be established if the false evidence was persisted in at the trial stage.

PRACTICE.

1. Prove :

- (a) as for section 158.
- (b) that the accused intended or knew that it was likely that he would thereby cause the person in question to be convicted of a capital offence. *If the offence falls under subsection (2) also :*
- (c) that the capital punishment was carried into effect ; and
- (d) that the person executed was innocent.

2. Procedure.—A warrant is required for the arrest of the accused. The offence is not bailable and not compoundable and is triable only in the High Court or in a native court of grade A. A complaint in writing of the court before which the offence is committed or of some other court to which that court is subordinate is required for a prosecution.

3. Charge.— 1 [] hereby charge you [] as follows :

That you, on or about the day of at in the course of the trial of before gave false evidence [or fabricated false evidence] intending thereby to cause [or knowing it to be likely that you will thereby cause] to be convicted of the offence of which offence is punishable with death and that you thereby committed an offence punishable under Section 159 of the Penal Code.

160. 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 upwards shall be punished as a person convicted of that offence would be liable to be punished.

Giving false evidence to procure conviction of offence punishable with imprisonment.

COMMENT

Pakistan Penal Code section 195.
Sudan Penal Code section 171.

PRACTICE

1. Prove :

- (a) as for section 158 and further—
- (b) that the accused, when giving or fabricating the false evidence intended or knew that it was likely that he would thereby cause the person in question to be convicted of an offence punishable with imprisonment for a term of seven years or upwards.

2. Procedure.—A warrant is required for the arrest of an accused person. The offence is not bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court of grade C or above. A complaint in writing by the court before which the offence is committed or of some other court to which it is subordinate is required.

3. Charge.—As for section 159 substituting the offence punishable with imprisonment for seven years or more for the capital offence.

161. Whoever uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

COMMENT

Pakistan Penal Code section 196.
Sudan Penal Code section 172.

1. The accused must be shown to have known that the evidence used was false evidence within the meaning of sections 156 and 157.

2. The section may also include cases of suborning false witnesses and attempting to produce their evidence in judicial proceedings.

PRACTICE

1. Prove :

- (a) that the evidence in question is false or fabricated.
- (b) that the accused used, or attempted to use such false evidence.
- (c) that he used or attempted to use the evidence as true.
- (d) that he knew the evidence to be false or fabricated.

2. Procedure.—A warrant is required for the arrest of an accused person. The offence is bailable or not according as the offence of giving such evidence is bailable or not. The offence is not compoundable and is triable by the same class of court as may try the making or fabricating of the false evidence. A complaint in writing of the court before whom the false evidence was used etc., or of such court to which the court is subordinate is required for a prosecution.

3. Charge :

- (a) The charge must be related to section 158, 159 or 160 as the section does not specify the amount of punishment independently of those sections.
- (b) Using and attempting to use false evidence are distinct offences and should be separately charged.

162. Whoever issues or signs any certificate required by law to be given or signed or relating to any fact of which such certificate is legally admissible in evidence knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Issuing or signing false evidence.

COMMENT

Pakistan Penal Code section 197.

Sudan Penal Code section 173.

1. The certificate must be false in a material point and the issuing and signing of it must be by the officer or person authorised to certify. cf. section 362 concerning the making of a false document.

2. Proof of intent to injure a person is not necessary.

PRACTICE

1. Prove :

- (a) that the document in question purports to be a certificate.
- (b) that the document is required by law to be given or signed or that it related to some fact of which such a certificate is admissible in evidence.
- (c) that the certificate is false;
- (d) that it is false in a material particular.
- (e) that the accused issued or signed the certificate.
- (f) that he, when doing so, knew or believed the certificate to be false.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is bailable but not compoundable and is triable by the same class of court as may try the giving or fabricating of the false evidence.

3. **Charge.**—I [] hereby charge you [] as follows :

That you.....on or about the.....day of.....at.....issued [or signed] a certificate [required by law to be given or signed] (or) [relating to.....a fact of which such certificate is by law admissible in evidence] knowing or believing that such certificate was false in a material point to wit.....and thereby committed an offence punishable under Section 162 of the Penal Code.

163. Whoever uses or attempts to use any certificate mentioned in section 162 as a true certificate knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Using as true a certificate known to be false.

COMMENT

Pakistan Penal Code section 198.

Sudan Penal Code section 174.

PRACTICE

1. Prove :

- (a) As in section 162 points (a), (b), (c) and (d) and additionally—
- (b) that the false certificate was signed or issued.
- (c) that the accused used or attempted to use the false certificate.
- (d) that he knew when using it, that the certificate was false in a material point.

2. **Procedure.**—As for section 162.

3. **Charge.**—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....used [or attempted to use] as true a certificate [required by law to be given and signed] (or) [relating to a fact of which such certificate is by law admissible in evidence] but which was false in a material point, to wit....., and known by you to be so false and thereby committed an offence punishable under Section 163 of the Penal Code.

164. (1) Whoever in any declaration made or subscribed by him, which declaration any Court of Justice or any public servant or other person is bound or authorised 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, shall be punished in the same manner as if he gave false evidence.

False statement in declaration which is by law receivable as evidence.

(2) Whoever uses or attempts to use as true any such declaration knowing the same to be false in any material point, shall 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 this section.

COMMENT

Pakistan Penal Code section 199.

Sudan Penal Code section 175.

1. This section differs from section 156 in that section 156 deals with false statements made by a person legally bound to tell the truth whilst section 164 deals with false statements in declarations, which, though not compellable by law, are, once made, bound to be admitted as evidence in a court. (e.g., statutory affidavits).

PRACTICE

1. Prove :

- (a) that the accused made or subscribed to the declaration in question.
- (b) that the court was bound or authorised to receive the declaration in evidence.
- (c) that the accused made the statement in question contained in the declaration.
- (d) that the statement was false.
- (e) that the false statement touched a point material to the object of the declaration.
- (f) that the accused, when making the statement, knew that it was false or believed it to be false or did not believe it to be true.

2. **Procedure.**—As for section 162.

3. **Charge.**—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....in a declaration made [or subscribed] by you before.....made a false statement, which you knew [or believed] to be false [or did not believe to be true] touching a point material to the object for which the declaration was made, to wit....., and which declaration was by law receivable as evidence and thereby committed an offence punishable under Section 164 of the Penal Code.

165. 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 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, shall be punished in the same manner as if he gave false evidence.

COMMENT

Sudan Penal Code section 177.

1. Where a false translation is made by a public servant, it would be normal to proceed under section 124.

2. The section is by way of a special application of section 157 and does not appear in the Pakistan Penal Code.

3. The section punishes the translator and any person who uses the false translation or copy in a judicial proceeding.

PRACTICE

1. Prove :

- A (i) that the accused translated the evidence of a witness, statement of an accused person or of a party to a suit or made a translation of a copy of a document.
 (ii) that the translation or copy was false.
 (iii) that the accused intended or knew that it was likely that the translation or copy would be used in a judicial proceeding; or
- B (i) that the accused knew that a translation or copy of evidence or a document was false; and
 (ii) that he with that knowledge, used it in a judicial proceeding.

2. Procedure.—As for section 162.

166. Whoever secretes or destroys any document, which he may be lawfully compelled to produce as evidence in a Court of Justice 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Destruction of document to prevent its production as evidence.

COMMENT

Pakistan Penal Code section 204.
 Sudan Penal Code section 178.

1. This section deals with the destruction or screening of documentary evidence and is an aggravated form of the offence covered by section 137.

2. The section applies equally to evidence relating to civil and criminal proceedings.

PRACTICE

1. Prove :

- (a) that the accused secreted or destroyed the document and that he obliterated or rendered illegible the whole or part of it.
 (b) that he was lawfully compellable to produce the same as evidence either in a court or in proceedings lawfully held by a public servant.
 (c) that he did as in (a) with the intention of preventing the document from being used or produced in evidence or that he so acted after he had been ordered to produce the document in a court or to a public servant.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by a magistrate of the first grade or a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....secreted [or destroyed] a document namely....., which you were law-

fully compelled to produce as evidence in a Court [or proceeding lawfully held by a public servant] and thereby committed an offence punishable under Section 166 of the Penal Code.

Note.—Appropriately redraft for “obliterates or renders illegible the whole or any part of a document with the intention of preventing the document from being produced or used as evidence before a Court”.

Screening of Offenders

167. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of the offence to disappear with the intention of screening the offender from legal punishment, or with a like intention or intending to prevent his arrest 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, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine.

Causing disappearance of evidence of offence or giving false information to screen offender.

Explanation.—In this section the word “offence” includes any act done outside the Northern Region which if done in the Northern Region 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 Northern Region.

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.

COMMENT

Pakistan Penal Code sections 201 and 212.
 Sudan Penal Code section 179.

1. See section 40 for definition of “Harbour”.

2. The section deal with what are known in English law as accessories after the fact. It punishes any person who knows or has reason to believe that an offence has been committed and, who, intending to protect an offender from punishment causes evidence to disappear or gives information which he knows or believes to be false.

3. In English law a principal cannot be convicted of being an accessory after the fact. In India there is a conflict of authority in the interpretation of this section but it would appear that an accused can be convicted of destroying evidence of an offence, which he has himself committed.

4. The Sudan Penal Code exempts from this section the case of a man harbouring his wife or vice-versa. This reservation was particularly omitted from the draft Northern Regional Code.

5. The effect of the Explanation is that it is an offence for a person in the Northern Region to screen from lawful punishment another who has committed an offence outside the Region. The screening is a distinct offence and prosecution in the Northern Region is not prevented by the provisions of section 4 of the Law.

PRACTICE

1. Prove :

- (a) that an offence has actually been committed. ¹
 (b) that the accused knew or had reason to believe, that the offence had been committed.
 (c) that the accused caused evidence of the commission of the offence to disappear, or gave false information about the offence, knowing or having reason to believe that the information was false.
 (d) that the accused did so with the intention of screening the offender from punishment.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at knowing [or having reason to believe] that an offence, namely has been committed did cause evidence of the offence to disappear, to wit [or knowingly gave false information to wit] with the intention of screening the said [person who committed the offence] from legal punishment and thereby committed an offence punishable under section 167 of the Penal Code.

Note.—Suitably amend the charge if the offence was to “harbour or conceal a person whom the accused knew or had reason to believe to be an offender”. (cf. section 212 Pakistan Penal Code).

168. (1) Whoever accepts or attempts to obtain or agrees to accept 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 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, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine.

(2) This section shall 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 Northern Region which if done in the Northern Region 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 Northern Region.

COMMENT

Pakistan Penal Code section 213.
 Sudan Penal Code section 180.

1. See comment to section 167 with reference to the explanation. See Appendix C to the Criminal Procedure Code for offences, which may be compounded.

2. If the person accepting gratification is a public servant, he should be proceeded against under section 115.

3. No person has the right to compound a crime, even if he himself is the person injured by the offence unless the offence is legally compoundable.

4. This crime is common in the Northern Region in case of animal theft and is a disguised form of the offence known in Moslem law as the accepting of “*Bushara*,” whereby restoration of stolen property is effected for money payment.

1. Confirmed as a requirement in the case of *Idi Garandiya V Kano N.A* (1962 N.N.C.N. 38)

PRACTICE.

1. Prove :

- (a) The commission of the offence concealed.
 (b) that the accused—
 (i) concealed the offence; or
 (ii) screened the offender from punishment; or
 (iii) omitted to proceed against the offender.
 (c) that the accused accepted or attempted to obtain or agreed to accept a gratification in consideration of doing one of the things stated in (b) above.

2. Procedure.—As for section 167.

3. Charge. I [] hereby charge you [] as follows:

That on or about the day of at one [name] committed the offence of and that you on or about the day of at accepted [or attempted to obtain or agreed to accept] a gratification, namely for yourself in consideration of your concealing the said offence of [or screening the said from legal punishment for the said offence or not proceeding against the said for the purpose of bringing him to legal punishment] and that you thereby committed an offence punishable under section 168 of the Penal Code.

169. (1) Whoever 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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) This section shall 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 Northern Region which if done in the Northern Region 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 Northern Region.

COMMENT

Pakistan Penal Code section 214.
 Sudan Penal Code section 180.

This section relates to section 168 and punishes the offerer of a gift in similar circumstances. See comment to section 168.

PRACTICE

1. Prove :

- (a) as in (a) and (b) to section 168.
 (b) that the accused gave or caused to be given or offered or caused to be offered the gratification.
 (c) that he so gave or caused to be given etc. the gratification in consideration of the concealment of the offence etc.

2. Procedure.—As for section 168.

3. Charge.—As for section 168 suitably reframed to cover the giving, offering etc., of the gratification.

170. Whoever, knowing 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 of screening them or any of them from punishment, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

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 Northern Region or elsewhere.

COMMENT

Pakistan Penal Code section 216A.

Sudan Penal Code section 181.

This section is inserted to permit of a heavier punishment than that provided by section 167 for the harbouring of robbers and brigands.

PRACTICE

1. Prove :

- (a) that the persons in question were about to commit or had recently committed robbery or brigandage.
- (b) that the accused knew this.
- (c) that the accused harboured some or all of them.
- (d) that the accused did so with the intention of either facilitating the commission of the robbery or brigandage or of screening some or all of them from punishment.

2. Procedure.—As for section 167 except that arrest may be made without a warrant.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of at knowing [or having reason to believe] that was about to commit robbery [or brigandage] [or that had on or about the day of at committed robbery or brigandage] harboured him with the intention of facilitating the commission or robbery [or brigandage or screening him from punishment] and that you thereby committed an offence punishable under section 170 of the Penal Code.

Resistance to Arrest, and Escape

171. 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 shall be punished—

- (a) with imprisonment for a term which may extend to seven years or with fine or with both; and
- (b) If such other person is under sentence of death, shall be punished with imprisonment which may extend to imprisonment for life and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 225.

Sudan Penal Code section 182.

The intention of the accused is an important ingredient of the offence. If the arrest is itself not lawful, then resistance to the arrest will not be an offence under this section. Similarly, the person from whose custody a rescue is effected must have authority to detain lawfully the person rescued or no offence will have been committed in the rescue.

PRACTICE

1. Prove :

- (a) that the person in question was detained in custody or that he was being arrested.
- (b) that the detention or arrest was in respect of an offence.
- (c) that the detention or arrest was lawful.
- (d) that the accused resisted the arrest or rescued or attempted to rescue the person.
- (e) that he did so intentionally and prove further whether the offence falls under either paragraph (a) or (b) of the section.

2. Procedure.—No warrant is required for arrest. The offence is not normally bailable. The offence is not compoundable. An offence under paragraph (a) may be tried by a magistrate of the first grade or by a native court of grade C or above. An offence under paragraph (b) must be tried either by the High Court or a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at intentionally offered resistance [or illegal obstruction] to the lawful arrest of for the offence of [or rescued etc. the said from the custody in which the said was lawfully detained for the offence of] and thereby committed an offence punishable under section 171 of the Penal Code.

172. 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, shall be punished with imprisonment for a term or with which may extend to seven years or with fine or with both.

Resistance or obstruction by a person to his lawful arrest or escape.

COMMENT

Pakistan Penal Code section 224.

Sudan Penal Code section 183.

1. This section is similar to section 171 and the intention of the accused is the vital ingredient of the offence.

2. Where a person lawfully confined escapes with the consent of his gaolers, he is guilty under this section. The gaoler might be guilty of an offence under sections 127 or 128 of the Code.

PRACTICE

1. Prove :

A :—When the offence charged is that of resistance to arrest :

- (i) that the accused was charged with an offence.
- (ii) that he offered illegal resistance or obstruction to his lawful arrest.
- (iii) that he did so intentionally.

B :—When the accused is charged with escape :

- (i) that the accused was charged with or convicted of an offence.
- (ii) that he was lawfully detained in custody.
- (iii) that the accused escaped or attempted to escape from custody.
- (iv) that he did so intentionally.

2. Procedure.—No warrant is required for an arrest. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

that you, on or about the day of at [intentionally offered resistance (or illegal obstruction) to your lawful arrest for the offence of with which you were charged (or with which you had been convicted)] or [escaped or attempted to escape from the custody of in which you were lawfully detained for the offence of] and thereby committed an offence punishable under section 172 of the Penal Code.

173. Whoever in any case not provided for in section 172 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Resistance or obstruction to lawful arrest or escape, in cases not provided for by section 172.

COMMENT

Pakistan Penal Code section 225B.

Sudan Penal Code section 184.

This section was specifically introduced in the Indian Penal Code to cover the case of a person escaping from custody when being taken before a court to be bound over to be of good behaviour, i.e., he was not charged with an actual offence nor had he been convicted of an offence at the time.

2. Resistance to arrest must be resistance to lawful arrest. Where an attempt was made to arrest a person suspected of an offence under Section 136 and the police had no warrant, the Northern Nigerian High Court held that there was not sufficient evidence that the attempted arrest was lawful since Appendix A of the Criminal Procedure Code prescribes that a warrant is required for the arrest of a person suspected of an offence under Section 136. 1

PRACTICE

1. Prove :

- that the accused offered some resistance or illegal obstruction.
- that he did so to prevent his arrest or to escape or attempt to escape from custody in which he was lawfully detained.
- that he did so intentionally.

2. **Procedure.**—As for section 172

3. **Charge.**—As for section 172 suitably amended to show reason for the arrest or detention.

Fraudulent removal of property to prevent lawful seizure or execution.

Fraudulent Dealings with Property

174. 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 of Justice 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 of Justice; 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 practises any deception touching the same or accepts or dishonestly or fraudulently accepts, receives or claims such property or any interest therein, knowing that he has no right or rightful claim thereto, shall be punished with

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imprisonment for a term which may extend to 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

COMMENT

Pakistan Penal Code section 206.

Sudan Penal Code section 185.

1. This section together with sections 175 and 176 make criminal all collusion whereby creditors or lawful claimants may be deprived of their rights by fraud.

2. The concealment or removal of the property must be to prevent the property being taken. If it has already been taken, an offence may have been committed under section 146.

3. The offence may be committed by anyone, not necessarily the owners of the property.

PRACTICE

1. Prove :

- that the sentence of fine, or the decree or order of a court had been or was to the knowledge of the accused likely to have been made or that the accused knew that the property was due to be distributed according to law to creditors of himself or another person.
- in cases falling under paragraphs (a) and (b) of the section that the sentence, decree or order had been made or was likely to be made by a Court of Justice.
- that the property in question or interest therein had become or was likely to become liable to be taken as a forfeiture or in payment of a fine or in execution of the decree or order.
- that the accused removed, concealed, transferred or delivered the property or interest therein with intent to prevent such property being taken or being distributed or being available for lawful distribution to creditors.
- that he did so with intent to defraud.

2. **Procedure.**—A warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried by any court. The consent of the court passing sentence or making the decree or order is necessary for complaint.

3. **Charge.**—I [] hereby charge you [] as follows :

That you, fraudulently removed [or concealed etc.] your property (specify property) [or the property.....of.....] intending thereby to prevent that property being taken as a fine sentence of which had been pronounced [or which you knew was likely to be pronounced] by (specify court of justice), and that you thereby committed an offence punishable under section 174 of the Penal Code.

Note. Vary the charge suitably for cases where the property was removed etc., to avoid forfeiture or to avoid execution of a decree or order of a court or distribution amongst creditors accordingly to law or being available for distribution for payment of debt.

175. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of 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 to be executed against him after it has been satisfied or for anything in respect of which it has been satisfied, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Fraudulently suffering decree for sum not due.

ILLUSTRATION

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him fraudulently suffers a judgement to pass against him for a large amount at the suit of 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.

COMMENT

Pakistan Penal Code section 208.
Sudan Penal Code section 187.

PRACTICE

1. Prove :

- (a) that the accused caused, or suffered the decree or order to be passed against him.
(b) that the decree or order was for a sum not due by the accused or for a sum larger than was due, or for property etc., to which the person in whose favour the decree was made was not entitled.
(c) that the accused so acted fraudulently.
or :—(i) that a decree against the accused had been satisfied.
(ii) that he afterwards caused or suffered the decree to be executed against him (i.e. that he paid twice).
(iii) that he had already satisfied the claim for which the decree was issued.
(iv) that he did so with intent to defraud.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable but not compoundable and may be tried by a magistrate of the first grade or a native court of grade C or above. The sanction of the court concerned with issuing the decree or order is necessary before proceedings may be instituted.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., fraudulently caused [or suffered] a decree [or order] to wit (*details of decree or order*) to be passed against name of person and which was for a sum not due [or for a larger sum than was due to such person or for any property or interest in property to which the decree holder was not entitled or fraudulently caused a decree [or order] to be executed against you after it had been satisfied] and thereby committed an offence, punishable under section 175 of the Penal Code.

176. 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 not 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Fraudulently obtaining decree for sum not due.

COMMENT

Pakistan Penal Code section 210.
Sudan Penal Code section 187.

This section is a counterpart of section 175 and the two sections enable both plaintiff and defendant in a collusive or fraudulent suit or execution of a judgement to be penalised alike.

PRACTICE

1. Prove :

- (a) that the accused obtained the decree or order or suffered or permitted it to be obtained in his name.

- (b) that the decree etc., was for a sum not due or for a sum larger than that due or that it was for property etc., to which he was not entitled.
(c) that the accused acted with intent to defraud.
or :—prove (a) and—
(i) that the accused obtained satisfaction of the decree or order.
(ii) that, after obtaining satisfaction, he caused the decree or order to be executed or allowed it to be executed in his name.
(iii) that the accused acted with intent to defraud.

2. Procedure.—As for section 176.

3. Charge.—Reframe as for section 176, substituting “obtained” for “causing etc., to be passed against you”.

177. Whoever dishonestly or fraudulently signs, executes or becomes

Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.

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 charge or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 423.
Sudan Penal Code section 188.

1. This section might logically have been placed under forgery in Chapter XX or under cheating in section 320 as one of the necessary elements of the offence is proof of either dishonesty or fraud.

2. The false statement in order to become criminal must relate to the consideration or to the person to be benefitted by it.

PRACTICE

1. Prove :

- (a) that the accused signed, executed, or became a party to the deed or instrument.
(b) that the purpose of the document was to transfer, or to subject to a charge, the property or any interest in question.
(c) that the document contained a false statement relating to the consideration or relating to the person for whose use or benefit it was really intended to operate;
(d) that the accused acted dishonestly or fraudulently.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried in any court.

Miscellaneous

178. Whoever, knowing 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Giving false information respecting an offence.

COMMENT

Pakistan Penal Code section 203.

Sudan Penal Code section 189.

1. The offence punished in this section is that of obstructing justice by volunteering information, known to be false, in respect of an offence known by the informant to have been committed. The section is similar to section 139 except that in this case the informant is not bound by law to give information.

2. "Whoever" means a person other than the actual offender.

PRACTICE

1. Prove :

- (a) that an offence has been committed.
- (b) that the accused knew, or had reason to believe, that an offence had been committed.
- (c) that the accused gave information.
- (d) that the information was in respect of the offence.
- (e) that the information was false.
- (f) that the accused knew or had reason to know that the information was false.

2. Procedure.—As for section 177

3. Charge.—I [] hereby charge you [] as follows :

That you, knowing that on or about the.....day of.....at.....the offence of.....was committed, gave information respecting the said offence to wit....., which you knew or believed to be false and thereby committed an offence under section 178 of the Penal Code.

179. Whoever falsely personates another, whether that other is an actual or fictitious person, 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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

COMMENT

Sudan Penal Code section 190.

Pakistan Penal Code section 205.

1. Compare with section 132 which deals with personation of a public servant. This section deals with any personation where a person falsely assumes to become another person and in that character makes an admission or confesses judgment or does any act in either a civil suit or a criminal prosecution.

2. To "personate" means to pretend to be a particular person. In India there is a conflict of opinion as to whether or not a person commits an offence under this section by personating a purely imaginary person.

PRACTICE

1. Prove :

- (a) that the accused falsely personated another.
- (b) that he made an admission etc., whilst in the character and in the name of the other person.
- (c) that the admission etc., was made in a civil suit or criminal proceeding.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court grade C or above. The sanction of the Court before which the admission etc., was made is necessary before a prosecution may be commenced.

3. Charge.—I [] hereby charge you [] as follows :

That you on or about the.....day of.....at.....falsely personated (name) in (specifying the civil suit or criminal proceedings) before (name of court) and in such assumed character, (specify the statement made etc.) and thereby committed an offence punishable under section 179 of the Penal Code.

180. Whoever with intent to cause injury to any person institutes or causes to be instituted any criminal proceeding against that person or falsely charges any person with having committed an offence knowing that there is not just or lawful ground for such proceeding or charge against that person, shall be punished—

False charge of offence made with intent to injure.

- (a) with imprisonment for a term which may extend to two years or with fine or with both; and
- (b) where such criminal proceeding is instituted on a false charge of an offence punishable with death or imprisonment for seven years or upwards, with imprisonment for a term which may extend to seven years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 211.

Sudan Penal Code section 191.

1. The section provides for two distinct offences and in paragraphs (a) and (b) provides separate penalties for—

- (a) the actual instituting or causing to be instituted false criminal proceedings; and
- (b) the preferring of a false charge. The latter can be committed although criminal proceedings do not follow.

2. A vexatious charge is not a false charge under the section.

3. The section should be distinguished from section 140 which deals with giving false information to the police or a public servant with the intention of causing injury or annoyance to another person.

4. "Institution of criminal proceedings" means the laying of an information against a person before a court. The information may be laid by the accused or by the police acting in consequence of the action of the accused.

5. "Falsely charges" implies that the charge was made to some person in authority who is in a position to get an offender punished. "Charge" is different from "giving information" in that it must be shown by the accused that the "charge", i.e. accusation, was made with the intention that the person informed against would be brought before a criminal court. "Charge" here means "accusation" and it is not necessary that an actual charge should be framed by a court before the offence is complete.

6. It is not necessary to complete the offence under paragraph (b) of the section that the case shall have been fully heard in a court or shall have resulted in a conviction.

7. It is for the prosecution to prove that the charge was false and made with intent to injure : not for the accused to show just or lawful grounds for instituting the proceedings.

PRACTICE

1. Prove :

- (a) that the accused instituted or caused to be instituted criminal proceedings or that he made a charge of an offence.

- (b) that there were no just or lawful grounds for the proceedings or that the charge was false.
- (c) that the accused knew that there were not just or lawful grounds for instituting the criminal proceedings or making the charge.
- (d) that he did so with intent to cause injury to the person in question.

Note.—The fact that a person has charged another with a criminal offence and has failed to establish his complaint in a court does not justify of itself a counter charge that the complaint was false.

2. Procedure.—As for section 179. The sanction of the court before which the false charge was made is necessary before institution of proceedings.

3. Charge.—I [] charge you [] as follows :

That you, on or about the.....day of.....at.....with intent to injure.....[instituted criminal proceedings before (court) charging the said.....with having committed the offence of.....] or [falsely charged the said.....before.....with having committed the offence of.....] knowing at the time that there was no just or lawful ground for such proceedings [or charge] against the said.....and that you thereby committed an offence under section 180 of the Penal Code.

181. 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, shall, unless he uses all means in his power to cause the offender to be brought to justice, be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Explanation.—In this section the word “offence” includes any act done outside the Northern Region which if done in the Northern Region would be an offence.

COMMENT

Pakistan Penal Code section 215.

Sudan Penal Code section 192.

This section is similar to section 168 but does not require proof of an intention to screen. The offence defined here is well known in Moslem and customary law and is aimed at persons, usually in league with thieves or well aware of their activities, who obtain money for the recovery of stolen property without making any effort to bring the thieves to justice.

PRACTICE

1. Prove :

- (a) that the owner of the property was deprived of it by an offence under the Code.
- (b) that the accused took, or agreed, or consented to take, the gratification.
- (c) that the gratification was under the pretence of, or on account of, helping to recover the property.
- (d) that the accused failed to use all means in his power to cause the offender to be brought to justice.

Note.—It is for the defence to prove that the accused did all that he could to bring the offenders to justice providing that the prosecution prove points (a), (b) and (c).

2. Procedure.—As for section 179 except that the offence is not normally bailable.

3. Charge.—When the question is likely to arise whether the accused, who accepted the gratification, is, in fact, the thief as well, alternative charges should be framed. (Sec Chapter XIX of the Criminal Procedure Code).

182. Whoever with intent to influence the course of justice in any civil or criminal proceeding does any act whereby the fair hearing, trial or decision of any matter in that proceeding may be prejudiced shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Influencing course of justice.

COMMENT

Sudan Penal Code section 192A.

This section is so worded that it would in fact cover all the offences in Chapter XII of the Code. The intention is to cover all acts prejudicial to the fair hearing of a case, whether civil or criminal, which are not specifically covered by some section in Chapter XII.

PRACTICE

1. Prove :

- (a) that the accused did something prejudicial to the fair hearing, trial or decision of a matter.
- (b) that the matter was the subject of civil or criminal proceedings.
- (c) that the fair hearing, trial or decision of the matter might thereby have been prejudiced.
- (d) that the accused so acted with the intention of influencing the course of justice.

2. Procedure.—A warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried by any court. The sanction of the court before which the act was committed is necessary before proceedings are instituted.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....with intent to influence the course of justice in a criminal [or civil] proceeding, did (state act) whereby the fair hearing [or trial or decision] of the matter before the court might have been prejudiced and that you thereby committed an offence punishable under section 182 of the Penal Code.

CHAPTER XIII
PUBLIC NUISANCE

183. (1) A person is guilty of a public nuisance who does an act or is guilty of 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.

Public nuisance defined.

(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 been guilty of the 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 is a public nuisance is a matter of fact, which may depend 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.

COMMENT

Pakistan Penal Code section 268.

Sudan Penal Code section 216.

1. The Code only makes criminal a public nuisance. A private nuisance cannot give rise to a criminal prosecution but may be the ground for a civil action.

2. A public nuisance is an offence affecting the public at large, caused either by the doing of a thing which tends to annoy the whole community in general or by neglecting to do anything which the common good requires. A public nuisance must interfere with rights which the public would otherwise enjoy. A private nuisance is an act causing injury of annoyance affecting the rights of a particular individual or individuals as distinguished from the public at large.

3. Note that subsection (2) of the section makes a joint owner responsible for a nuisance committed on his property although he himself might not be actually present at the time the nuisance is committed.

PRACTICE

1. The definition contained in this section is relevant in deciding cases falling under section 198.

2. See Chapter IX of the Criminal Procedure Code for the powers of courts to restrain public nuisance by the making of conditional orders.

184. 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, shall be punished with imprisonment for a term which may extend to one year or with fine not exceeding one hundred pounds.

Adulteration of food or drink intended for sale.

COMMENT

Pakistan Penal Code section 272.

Sudan Penal Code section 217.

1. The word 'adulterates' means mixes with any other substance, whether wholly different or of the same kind but inferior quality.

2. This section is wider than the corresponding Pakistan section. The words "so as to affect injuriously the quality, substance or nature" have been substituted for "so as to make such article noxious as food or drink". The effect of this change is that adulteration with harmless ingredients for the purpose of getting more profit is punishable under the section (e.g., putting water into milk to increase its bulk for sale—but this offence is better covered by section 186).

3. An adulteration of which notice is given to the purchaser is not caught by the section.

PRACTICE

1. Prove :

(a) that the article in question is food or drink.

(b) that the accused adulterated it.

(c) that he thereby affected injuriously the quality substance or nature of the article;

(d) that the accused at the time of the adulteration intended to sell the article or knew that it was likely to be sold as food or drink without notice to the purchaser.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by any court.

3. Note.—On conviction the court may order the food or drink to be destroyed. (See section 359 of the Criminal Procedure Code).

185. Whoever sells any article of food or drink which is not of the nature, substance and quality demanded by the purchaser or the article which the seller represents it to be, shall be punished with fine which may extend to ten pounds.

Sale of food or drink not corresponding to description.

COMMENT

Sudan Penal Code section 218.

1. This section does not appear in the Pakistan Penal Code and in English law may give rise to an action for damages under the Sale of Goods Act 1893.

2. Evidence of an intent to defraud does not appear to be necessary to complete the offence.

PRACTICE

1. Prove :

(a) that the accused sold an article of food or drink.

(b) the nature, substance or quality of the article of food or drink was not that demanded by the purchaser or the article which the seller represented it to be.

2. Procedure.—As for section 184.

3. Note.—On conviction, a court may order the destruction of the article under section 359 of the Criminal Procedure Code.

186. 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

Sale of adulterated food or drink.

notice to the purchaser, shall be punished with imprisonment for a term which may extend to six months or with fine not exceeding fifty pounds or with both.

COMMENT

Sudan Penal Code section 219.

1. This section does not appear in the Pakistan Penal Code.
2. The section deals with two types of offence
 - (a) where an admixture has been fraudulently made to an article of food or drink to increase its bulk, weight or measure or to conceal its inferior quality;
 - (b) where there has been an intentional abstraction of something from the food or drink so as to affect its quality, substance or nature. This is not an adulteration.
3. Note that the goods must have been sold or offered for sale and that the giving of notice to a purchaser is a defence.

PRACTICE

1. Prove :

- (a) that the accused sold, or offered for sale, or exposed for sale an article of food and drink.
 - (b) that the article was either :—
 - (i) one to which an admixture had been fraudulently added to increase its bulk, weight or measure or to conceal its inferior quality; or
 - (ii) one from which a part had been intentionally abstracted so as to affect injuriously its quality, substance or nature.
 - (c) that the accused gave no notice to the purchaser of the facts in (b) above.
2. Procedure.—As for section 184.
3. Note.—On conviction a court may order the destruction of food or drink under section 359 of the Criminal Procedure Code.

187. Whoever sells or offers or exposes for sale as food or drink any article 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Sale of noxious food or drink.

COMMENT

Pakistan Penal Code section 272.

Sudan Penal Code section 220.

1. The word "noxious" means harmful or injurious to health or unwholesome.
2. The section differs from section 184 in that the articles must be sold, or offered or exposed for sale and the section is not limited to adulterated articles of food or drink. Any article which has been rendered or has become noxious to the knowledge of the vendor is within the scope of the section.

PRACTICE

1. Prove :

- (a) that the article is food or drink.
 - (b) that the accused sold, offered or exposed for sale the article.
 - (c) that at the time it had been rendered or had become noxious or was in a state unfit for food or drink.
 - (d) that the accused knew of the condition of the article at the time he sold or offered or exposed it for sale.
2. Practice.—As for section 184.
3. Note.—On conviction, a court may order the destruction of the article under section 359 of the Criminal Procedure Code.

188. 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 medicinal purpose as if it had not undergone such adulteration, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Adulteration of drugs.

COMMENT

Pakistan Penal Code section 274.

Sudan Penal Code section 221.

1. To support a conviction under this section, it is sufficient to show that the usefulness of a drug is lessened. It is not necessary to prove it noxious.
2. See also the Pharmacy Ordinance (Cap. 169).¹

PRACTICE

1. Prove :

- (a) that the article is a drug or medical preparation.
- (b) that it was adulterated by the accused.
- (c) that the adulteration tended to lessen its efficacy, or to change its operation or to make it noxious.
- (d) that the accused intended that the article should be sold or used as a medicine as an adulterated drug; or knew that it was likely to be so used or sold.

2. Procedure.—As for section 184.

3. Note.—On conviction, a court may order the destruction of the article under section 359 of the Criminal Procedure Code.

189. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy or change its operation or render it noxious, sells the same or offers or exposes it for sale or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Sale of adulterated drugs.

COMMENT

Pakistan Penal Code section 275.

Sudan Penal Code section 222.

1. The section not only prohibits the sale of adulterated drugs but prohibits their distribution from a dispensary for medical purposes.
2. "Exposes". The drug may be sold in a packet : it is not necessary that the actual drug be exposed.
3. See also the Pharmacy Ordinance (Cap. 169).²

PRACTICE

1. Prove :

- (a) that the drug has been adulterated.
- (b) that the adulteration was such as to lessen its efficacy, or change its operation or render it noxious.

1. Laws of Nigeria, 1948.

2. *ibid*

- (c) that the accused sold, or offered or exposed the drug for sale; or that he issued it from a dispensary; or that he caused it to be used for a medical purpose.
- (d) that he sold, or issued the drug as unadulterated or caused it to be used by a person, who did not know it to be adulterated.
- (e) that he knew of the condition of the drug.

2. Practice.—As for section 184.

3. Note.—On conviction, a court may order the destruction of the adulterated drug under section 359 of the Criminal Procedure Code.

190. Whoever, knowingly sells or offers or exposes for sale or issues from a dispensary for medicinal purposes any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Sale of drug as a different drug or preparation.

COMMENT

Pakistan Penal Code section 276.

Sudan Penal Code section 223.

1. This section differs from section 189 in that it does not involve the idea of any adulteration. It is sufficient that it is not in fact what it purports to be.

2. See also the Pharmacy Ordinance (Cap. 169). 1

PRACTICE

1. Prove :

- (a) that the accused sold, or offered or exposed for medical purposes the drug or medical preparation.
- (b) that it was so sold, etc., by him as a drug or medical preparation different from what it was.
- (c) that he knew of the difference at the time it was so sold or issued.

2. Procedure.—As for section 184.

3. Note.—On conviction, the court may order the destruction of the drug under section 359 of the Criminal Procedure Code.

191. Whoever voluntarily 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Fouling water of public well or reservoir.

COMMENT

"Pakistan Penal Code section 277.

Sudan Penal Code section 224.

Public well, or reservoir or other public water supply" would not appear to include river.

PRACTICE

1. Prove :

- (a) that the well, reservoir or other water supply is public.
- (b) that the accused caused the water thereof to become corrupt or foul.
- (c) that he did so voluntarily.
- (d) that his act rendered the water supply less fit for use than it ordinarily was before the accused interfered with it.

1. Laws of Nigeria, 1948.

2. Procedure.—As for section 184.

3. Note.—A conditional order may be issued by a court under section 104 of the Criminal Procedure Code.

192. Whoever voluntarily 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, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.

Making atmosphere noxious to health.

COMMENT

Pakistan Penal Code section 278.

Sudan Penal Code section 225.

Prosecutions against offensive trades, which give out bad smells (*e.g.* tanning) fall under this section.

PRACTICE

1. Prove :

- (a) that the accused caused the atmosphere to be vitiated.
- (b) that he did so voluntarily.
- (c) that the vitiation was in its nature noxious to health.
- (d) that it was noxious to the health of persons dwelling or carrying on business in the neighbourhood of the place or passing along the public highway.

2. Procedure.—As for section 184.

3. Note.—A conditional order may be issued by a court under section 104 of the Criminal Procedure Code.

193. Whoever exhibits any false light, mark or buoy intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Exhibition of false light, mark or buoy.

COMMENT

Pakistan Penal Code section 282.

Sudan Penal Code section 226.

To prosecute under this section it is necessary to prove that the showing of the light, mark or buoy was done with the intention to mislead, and not by negligence only.

PRACTICE

1. Prove :

- (a) that the accused exhibited the light, mark or buoy in question.
- (b) that the light, etc., was false.
- (c) that the accused did as in (a) intending, or knowing that the exhibition of the false light, etc., would be likely to mislead any navigator.

2. Procedure.—An arrest may be made without a warrant. The offence is bailable but not compoundable and may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

That you on or about the.....day of.....at.....did exhibit a false light (*or* mark, *etc.*) knowing or intending it to be likely that the exhibition of the said false light [*or* mark, *etc.*] would mislead the officer in charge of navigating a vessel at that place and thereby committed an offence punishable under Section 193 of the Penal Code.

194. Whoever by doing any act or by omitting to keep in order any property in his possession or under his charge causes obstruction in public way or line of navigation, shall be punished with imprisonment which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 283.
Sudan Penal Code section 227.

1. In this section it is immaterial whether the public nuisance was caused by intention or by negligence. All damage to the highway causing danger, obstruction or injury to person is punishable under this section (e.g. digging ditches or placing barriers across road).

2. "To keep in order" means to control the property in one's possession in such a way as to prevent danger, etc.

PRACTICE

1. Prove :

- (a) that the accused caused the danger, obstruction or injury in question.
- (b) that the danger, etc., resulted from the accused's act or omission to keep in order the property in his possession or under his charge.
- (c) that the person put in danger, or obstructed or injured was on the public highway or in a public line of navigation.

2. Procedure : No warrant is required for arrest. The offence is bailable but not compoundable and may be tried by any court.

3. Note.—A conditional order may be issued by a court under section 104 of the Criminal Procedure Code.

195. 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, shall, 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, be punished with imprisonment which may extend to six months or with fine or with both.

Employees engaged on work of public utility ceasing work without notice.

COMMENT

Sudan Penal Code section 228.

The object of this section is to ensure that the employees of public utility concerns do not cease work without giving a period of notice adequate to enable the authorities to make alternative arrangements to ensure the health, safety and convenience of the public. The section is not intended to conflict with the Labour Code (Cap. 99)¹ or with any legislation governing the right of trades unions to strike. Providing that fifteen days notice is given, the right to strike is preserved.

PRACTICE

1. Prove :

- (a) that the accused was employed in work connected with the public health or safety or with any service of public utility.
- (b) that he ceased from such work.
- (c) that he did so in pre-arranged agreement with two or more other employees engaged as the same work.

¹ Law of Nigeria 1948

- (d) that the accused did not give fifteen days notice of his intention to stop work.
- (e) that the intention of the accused in stopping work was to interfere with a general service connected with public health, safety and utility to an extent which would cause injury or damage or grave inconvenience to the community.

2. Procedure.—As for section 184 except that an arrest may be made without warrant.

3. Note.—A conditional order may be issued by a court under section 104 of the Criminal Procedure Code.

196. Whoever does any act in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person or property, or knowingly or negligently omits to take such order with 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, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty pounds or with both.

Negligent conduct causing danger to person or property.

COMMENT

Pakistan Penal Code sections 284, 285, 286, 287 and 288.

Sudan Penal Code section 229.

The section covers criminal negligence in respect of public nuisances.

PRACTICE

1. Prove :

- (a) that the accused committed an act or omitted to take order with any property or substance in his possession or under his control.
- (b) that he acted in a rash or negligent manner or that he omitted to take order of his property, etc., either knowingly or negligently.
- (c) that his act was so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any person or property; or—
- (d) that he omitted to take such order with his property, etc., as is sufficient to guard against probable danger to human life from such property, etc.

2. Procedure.—As for section 184.

197. Whoever knowingly or negligently omits to control any animal in his possession sufficiently to guard against any probable danger to human life or any probable danger of grievous hurt from such animal, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty pounds or with both.

Negligent conduct with respect to animal.

COMMENT

Pakistan Penal Code section 289.

Sudan Penal Code section 230

This section is a specific example of the type of offence punishable under section 196.

PRACTICE

1. Prove :

- (a) that the animal was in possession of the accused.
- (b) that the accused omitted to take sufficient control of the animal to guard against probable danger to human life or of the causing of grievous hurt by the animal.

(c) that the omission was negligent or with knowledge of the danger.

Note.—If the animal is not naturally fierce or vicious, the onus of proving negligence is on the prosecution.

2. Procedure.—As for section 184 except that a warrant is required for arrest of an accused.

3. Note.—A court may make a conditional order in respect of the animal under section 104 of the Criminal Procedure Code.

198. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with imprisonment for one year or with fine or with both.

Punishment for public nuisance in cases not otherwise provided for.

COMMENT

Pakistan Penal Code section 290.

Sudan Penal Code section 232.

This section punishes any nuisance falling within the definition in section 183 not specifically punishable under any other section in this Chapter.

PRACTICE

1. Prove :

- (a) that the accused did an act or was guilty of an illegal omission.
- (b) that such act or omission caused injury, danger or annoyance.
- (c) that the injury, etc. caused was common to the public or the people in general, who dwell or occupy property in the vicinity.

or

- (i) (a) above and—
- (ii) that the act or omission must necessarily cause injury, obstruction, danger or annoyance.
- (iii) that such injury, etc. must necessarily be caused to persons who may have occasion to use any public right.

2. Procedure.—As for section 184.

199. Whoever repeats or continues a public nuisance, having been ordered by any public servant who has lawful authority to give such order not to repeat or continue such nuisance, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Continuance of nuisance after injunction to discontinue.

COMMENT

Pakistan Penal Code section 291.

Sudan Penal Code section 233.

This section punishes a person continuing a nuisance after he has been ordered by a competent public servant not to repeat or continue it. This includes an order by a court under section 111 of the Criminal Procedure Code.

PRACTICE

1. Prove :

- (a) the issue of the order.
- (b) that the order was legally issued.
- (c) that the order is one which restrains the repetition or continuance of a public nuisance.
- (d) that the accused was enjoined by the order not to repeat or continue such nuisance.
- (e) that the accused has repeated or continued the same public nuisance.

2. Procedure.—No warrant is necessary for the arrest of an accused. The offences is bailable but not compoundable and may be tried by any court.

200. Whoever to the annoyance of others does any obscene or indecent act in a public place, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Obscene or indecent acts.

COMMENT

Pakistan Penal Code section 294 (a).

Sudan Penal Code section 234.

1. There must be definite evidence that annoyance was caused to a particular person or persons in general.

2. The word “indecent” is included in the section following the Sudan precedent : it includes acts, which are not necessarily obscene but are nevertheless offensive to public morality.

PRACTICE

1. Prove :

- (a) that the accused did some act.
- (b) that the act was of an indecent or obscene nature.
- (c) that it was done in a public place.
- (d) that it caused annoyance to others.

2. Procedure.—No warrant is required for arrest. The offence is bailable but not compoundable and may be tried by any court.

201. Whoever keeps or manages a brothel shall be punished with imprisonment which may extend to one year or with fine or with both.

Keeping a brothel.

COMMENT

Nigerian Criminal Code (Cap. 42) section 225B.

PRACTICE

1. Prove.—that the accused kept or managed a brothel.

2. Procedure.—As for section 200.

202. Whoever sells or distributes, imports or prints or makes for sale or hire or wilfully exhibits to public view any obscene book, pamphlet, paper, 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Sale of obscene books, etc.

COMMENT

Pakistan Penal Code section 292.

Sudan Penal Code section 235.

1. This section gives effects to Article I of the International Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications.

2. The test of obscenity is whether the tendency of the matter alleged to be obscene is to deprave and corrupt. What is deemed to be obscene may vary from age to age, from place to place and from person to person.

3. Note that in connection with exhibiting obscene matter wilfulness must be proved.

PRACTICE

1. Prove :

(a) that the book, etc., is of an obscene nature.

(b) that the accused sold, or distributed, or imported, or printed or made for sale or hire or wilfully exhibited to public view the book etc., or attempted or offered so to do or had in his possession the obscene book, etc., or other thing for the purpose of sale, hire or distribution or public exhibition.

2. **Note.**—The court may rely on its judgement as well as on the evidence of witnesses in deciding whether a thing is obscene or not.

3. **Procedure.**—No warrant is required for an arrest. As for section 200.

4. **Note.**—On a conviction a court may order the destruction of any obscene material under section 359 of the Criminal Procedure Code.

5. **Charge.**—The charge should specify the matter alleged to be obscene, and should not be framed in general terms.

203. 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, shall be punished with imprisonment for a term which may extend to three months or with fine or with both.

Obscene songs,
etc.

COMMENT

Pakistan Penal Code section 294.

Sudan Penal Code section 236.

1. Annoyance must be caused before the singing, etc., is punishable.

2. See comment to section 202 on the meaning of "obscenity."

3. The singing, etc., need not necessarily be in a public place: it is sufficient if the singing, etc., takes place sufficiently near to a public place to cause annoyance to a person in the public place.

PRACTICE

1. Prove :

(a) that the accused sang, recited, uttered or reproduced by mechanical means words or a song.

(b) that the words or song were obscene.

(c) that the accused did the act in or near a public place.

2. **Procedure.**—As for section 200.

CHAPTER XIV

LOTTERIES AND GAMING HOUSES

Definitions.

204. In this chapter —

"lottery" includes any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot;

"lottery ticket" includes any paper, ticket, token or other article whatsoever, which either expressly or tacitly entitles or purports to entitle any person to receive any money's worth on the happening of any event or contingency connected with any public lottery;

"public lottery" means a lottery to which the public or any class of the public has, or may have, access, and every lottery shall, until the contrary is proved, be deemed to be a public lottery.

COMMENT

Nigerian Criminal Code (Cap. 42) section 204.

1. The Code follows the Nigerian Criminal Code in this and the succeeding section of this Chapter.

2. It was not the intention in drafting these sections that the sections would be applied to pools betting.

205. (1) Whoever keeps any house or place to which the public are admitted for the purpose of betting or 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 shall be punished with imprisonment which may extend to two years or with fine or with both:

Keeping gaming
house or lottery
office.

Provided always that nothing herein contained shall make illegal the use of a totalisator by a race club recognised by the Government at a race meeting, with the approval of the Resident of the province or the Administrator of Kaduna as the case may be.

(2) In this section the word "totalisator" means the instrument, machine or contrivance, commonly known as a totalisator, and any other instrument, machine or contrivance of a like nature, or any scheme for enabling any number of persons to make bets with one another on the like principles.

COMMENT

Nigerian Criminal Code (Cap. 42) section 239.

cf. Pakistan Penal Code section 294A.

cf. Sudan Penal Code section 237.

1. Note the specific exemption from the provisions of subsection (1) contained in the proviso thereto exempting the use of totalisators by authorised race clubs at meetings for which approval has been obtained.

2. The offence stated in the section is the "keeping" of an office, house or place for the purpose of gambling, etc. Using an office, etc., once is not "keeping" it for that purpose: there must be habitual using to constitute "keeping".

PRACTICE

1. Prove :

- (a) that the accused had kept an office, house or place or assisted in the conduct of an office, house or place.
- (b) that the public were admitted thereto for the purpose of betting or playing any game of chance; or that the office or place were kept for the purpose of drawing a lottery.

2. **Note.**—It is for the defence to prove that the operation called into question is justifiable under the proviso to subsection (1)

3. **Procedure.**—A warrant is required for the arrest of an accused person. The offence is bailable but not compoundable and may be tried by a court.

Offences relating to lotteries. **206. (1) Whoever—**

- (a) gives or sells or offers for sale or delivers any lottery ticket or pays or receives directly or indirectly any money or money's worth for or in respect of any chance in or event or contingency connected with a public lottery; or
- (b) draws, throws, declares or exhibits expressly or otherwise the winner or winning number, ticket, lot, figure, design, symbol or other result of any public lottery; or
- (c) writes, prints, publishes, or causes to be written, printed, or published any lottery ticket or any announcement relating to a public lottery; or
- (d) advances, furnishes or receives money for the purpose of a public lottery,

shall be punished with imprisonment which may extend to six months or with fine or with both.

(2) Nothing in this section shall apply—

- (a) to the sale by raffle or lottery of articles exposed for sale at any gathering held for the purpose of raising funds in aid of any institution of a public character where permission for such sale shall have been given in writing by the Governor;
- (b) to any lottery or sweepstake organised or controlled at or in connection with any race meeting held under the auspices of any race club or association in the Northern Region which has been exempted from the provisions of this section by the Governor by notice in the Regional Gazette;
- (c) to any club to which the Governor has granted a licence authorising a lottery to be promoted as an incident of entertainment by members of the club on the premises of the club and subject to any conditions contained in the licence;

- (d) to any lottery or sweepstake organised and controlled by any race club in the Northern Region to which the Governor may by notice in the Regional Gazette extend the provisions of this section, at or in connection with any race meeting held under the auspices of any such club or association.

COMMENT

Nigerian Criminal Code (Cap. 42) sections 240A and 240D.
cf. Pakistan Penal Code section 294A.

1. This section punishes all who participate in the promotion of an illegal lottery, whether in the printing, selling or distribution of tickets or in the arrangement for the drawing of prizes.

2. Subsection (2) excepts lotteries organised by clubs at race meetings or for raising funds for charitable purposes providing that the approval or licence of the Governor has been obtained.¹

PRACTICE

1. Prove :

- (i) the existence of an unlawful public lottery;
- (ii) that the accused did any of the acts in connection with the public lottery as are set out in paragraphs (a) (b) (c) or (d) of subsection (1).

2. **Procedure.**—As for section 205.

1. A formal notice in the Northern Nigerian Gazette is necessary to legalise an activity under S. 206 (2) (d). For an example see the Lotteries and Sweepstakes (Kano Turf Club) Exemption Notice, 1961, N.N.L.N. 137 of 1961.

CHAPTER XV

CRUELTY TO ANIMALS

207. Whoever cruelly beats, tortures or otherwise wilfully illtreats any tame or domestic animal or any wild animal which has previously been deprived of its liberty or arranges, promotes or organises fights between cocks, rams or other domestic animals shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both.

Illtreatment of domestic animals.

COMMENT

Sudan Penal Code section 238
This section punishes cruelty to domestic animals or wild animals reduced to captivity and also the promotion and organisation of cock fights and such like sports.

PRACTICE

1. Prove :

- (a) that the accused beat, tortured or illtreated an animal.
- (b) that the animal was a tame or domestic animal or a wild animal, which had been reduced to captivity.
- (c) that the accused acted cruelly or wilfully in illtreating the animal.
or—that the accused arranged, promoted, or organised a fight between cocks, rams, or other domestic animals.

2. Procedure.—An accused may be arrested without a warrant. The offence is bailable but not compoundable and may be tried by any court.

3. Note.—By virtue of section 209, a court has a power to make an order for the destruction or for the temporary custody of any animal the subject of an offence under this section.

208. Whoever wantonly over-rides, over-drives or over-loads 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, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both.

Over-riding and neglect of animal.

COMMENT

Sudan Penal Code section 239.

1. This section punishes a person who wantonly over-rides or otherwise over-works an animal unfit for work or who neglects an animal in such a way as to cause it unnecessary suffering.

2. "Wantonly" means recklessly, thoughtlessly and without regard for the consequences.

PRACTICE

1. Prove :

- (a) that the accused over-rode, over-drove, over-loaded, or employed an animal; or
 - (b) that the accused employed an animal which was by reason of age, sickness, wounds or infirmity unfit for work; and
 - (c) that the accused acted wantonly.
- or
- (i) that the accused neglected an animal;
 - (ii) that he did so in a manner such as to cause it unnecessary suffering.

2. Procedure.—As for section 207.

3. Note.—By virtue of section 209 a court has the power to make an order for the destruction or for the temporary custody of any animal the subject of an offence under this section.

209. On conviction of an offence under section 207 or section 208 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.

Power to order temporary custody or destruction of animal.

COMMENT

Sudan Penal Code section 240.

This section more properly belongs to the Criminal Procedure Code but is self explanatory in its present context. See notes to sections 207 and 208.

CHAPTER XVI

OFFENCES RELATING TO RELIGION

210. 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Insulting or exciting contempt of religious creed.

COMMENT

Sudan Penal Code section 242.
cf. Pakistan Penal Code section 295A.

1. The offence stated in this section might equally effectively be dealt with as an act likely to cause a breach of the peace under section 114.
2. The section punishes the manner in which the insult, etc., is offered and not the insult, etc., itself.

PRACTICE

1. Prove :

- (a) that the accused publicly insulted or sought to excite contempt of a religion.
- (b) that he did so in a manner likely to lead to a breach of the peace.
- (c) that he did so publicly.

2. Procedure.—No warrant is required for an arrest. The offence is bailable and not compoundable and may be tried by any court.

211. 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 knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Injuring or defiling place of worship

COMMENT

Pakistan Penal Code section 295.
Sudan Penal Code section 243.

1. Intention to insult the religion of a class of persons is the gist of the offence under this section. Mere defilement or destruction, etc., of a place of worship is not sufficient to constitute the offence.

2. It is not necessary to prove that the destruction, etc., caused or was likely to cause a breach of the peace. It need only be shown that the intention was to insult the religious feeling of a class of persons or that it was known that this was likely to be the result of the act.

PRACTICE

1. Prove :

- (a) that the place was a place of worship or that the object was a sacred one.
- (b) that the place or object was held sacred by a class of persons.
- (c) that the accused destroyed, damaged or defiled the place or object.
- (d) that he did so—
 - (i) with the intention of thereby insulting the religion of the class of persons; or
 - (ii) with the knowledge that a class of persons is likely to consider the destruction, etc., as an insult to their religion.

2. Procedure.—As for section 210.

212. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Disturbing religious assembly.

COMMENT

Pakistan Penal Code section 296.

Sudan Penal Code section 244.

1. The section only protects religious assemblies which are lawfully gathered together for the purpose of worship.
2. The disturbance must have been caused intentionally.

PRACTICE

1. Prove :

- (a) the existence of the assembly.
- (b) that the assembly was at the time of the offence engaged in performing religious worship or a religious ceremony.
- (c) that the assembly was a lawful one.
- (d) that the accused disturbed the assembly.
- (e) that the accused did so voluntarily.

2. Procedure.—As for section 210.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....voluntarily caused disturbance to an assembly to wit.....lawfully engaged in the performance of religious worship [or religious ceremonies] and thereby committed an offence punishable under section 212 of the Penal Code.

213. Whoever, with the intention of wounding 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 wounded or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of burial or offers any indignity to any human corpse or causes disturbance to any person assembled for the performance of funeral ceremonies, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Committing trespass on place of worship or burial.

COMMENT

Pakistan Penal Code section 297.

Sudan Penal Code section 245.

1. This section extends the principle laid down in section 211 to places including burial grounds which are treated as sacred by a community.

2. The section speaks of "any trespass". Trespass in this context is therefore wider than criminal trespass as defined in section 342.

PRACTICE

1. Prove :

- (A) (i) that the place in question was either a place of worship or a place of burial.
(ii) that the accused committed trespass therein.
(iii) that he did so intending to wound the feelings of some person or to insult the religion of some person or with the knowledge that the feelings of some person would be likely to be wounded thereby or that the religion of some person would be likely to be insulted thereby.
- or (B) :
- (i) the existence of a human corpse.
(ii) that the accused offered an indignity thereto.
(iii) that the accused, in offering the indignity intended or knew, etc., as in A(iii) above.
- or (C) :
- (i) that the persons were assembled for performing funeral ceremonies.
(ii) that the accused caused disturbance to such persons when assembled.
(iii) that he did so intending thereby, or knowing, etc., as in (iii) above.

2. Procedure.—As for section 210.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....
with the intention of wounding the feelings of.....[or of insulting the religion of.....] [or with the knowledge that the feelings of..... are likely to be wounded] [or that the religion of..... is likely to be insulted thereby] committed a trespass in a place of worship, to wit....., [or on a place of burial, to wit.....] and thereby committed an offence punishable under section 213 of the Penal Code.

CHAPTER XVII**OFFENCES RELATING TO ORDEAL, WITCHCRAFT AND JUJU**

214. Whoever presides or is present at any unlawful trial by ordeal shall be punished—

- (a) with imprisonment which may extend to ten years or with fine or with both; and
(b) if such trial results in the death of any party to the proceeding shall be punished with death.¹

Explanation.—The trial by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful.

COMMENT

Nigerian Criminal Code (Cap. 42) section 208.

Unlawful trial by ordeal is defined in the Nigerian Criminal Code as the trial by the ordeal of sasswood, esere bean or other poison, boiling oil, fire, immersion in water or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding. (section 207 Nigerian Criminal Code).

1. Prove :

- (a) that an unlawful trial by ordeal took place.
(b) that the accused presided or was present at the trial.

2. Procedure.—No warrant is required for an arrest. The offence is not bailable and not compoundable. And offence under paragraph (a) of the section may be tried by a Chief Magistrate. An offence under paragraph (b) may only be tried by the High Court. No native court has jurisdiction over this offence by virtue of the Second Schedule to N.R.L.N. 208. 1957.

215. The Governor in Council may by order declare the worship or Unlawful juju. invocation of any juju to be unlawful.

COMMENT

Nigeria Criminal Code (Cap. 42) subsection (2) of section 207.

Examples of action by the Governor under section 207 of the Nigerian Criminal Code may be found by reference to :

- The Prohibited Juju (MAM) Order, 1940,² and
The Prohibited Juju (NYAMBUAN) Order, 1939.

Offences relating to witchcraft and juju. **216.** Whoever—

- (a) by his statements or actions represents himself to be a witch or to have the power of witchcraft; or
(b) accuses or threatens to accuse any person with being a witch or with having the power of witchcraft; or
(c) makes or sells or uses, or has in his possession or represents himself to be in possession of any juju, drug or charm which is inten-

1. The law on this point was discussed in a straightforward case on appeal in the Federal Supreme Court. See case F.S.C. 236/1962—The Queen v. Lullidinyiku Mbanga.

2. The Mam order was revoked by the Prohibition of the MAM JUJU (Revocation) Order, 1961 (N.N.L.N. 33 of 1961).

ded to be used or reported to possess the power to prevent or delay any person from doing an act which such person has a legal right to do, or to compel any person to do an act which such person has a legal right to refrain from doing, or which is alleged or reported to possess the power of causing any natural phenomenon or any disease or epidemic; or

- (d) presides at or is present at or takes part in the worship or invocation of any juju which has been declared unlawful under the provisions of section 215; or
- (e) is in possession of or has control over any human remains which are used or are intended to be used in connection with the worship or invocation of any juju; or
- (f) makes or uses or assists in making or using, or has in his possession anything whatsoever the making, use or possession of which has been declared unlawful under the provisions of section 215,

shall be punished with imprisonment which may extend to two years or with fine or with both.

COMMENT

Nigerian Criminal Code (Cap. 42) section 210.

This section deals comprehensively with witchcraft and juju and re-enacts the existing law in Nigeria on the subject.

PRACTICE

1. Procedure.—No warrant is required for an arrest. The offence is bailable but not compoundable and may be tried by a magistrate of the first grade or by a native court of grade A or above. Other grades of native courts are prohibited from hearing cases under this section by virtue of the Second Schedule to N.R.L.N. 208/1957.

217. Whoever knowingly has in his possession any fetish or charm which is pretended or reputed to possess power to protect a person in the committing of any offence shall be punished with imprisonment which may extend to five years or with fine or with both.

COMMENT

Nigerian Criminal Code (Cap. 42) section 213.

Practice and procedure as for section 216.

218. Whoever knowingly eats or receives for the purpose of eating any part of a human corpse shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Nigerian Criminal Code (Cap. 42) subsection (2) of section 242.

The section differs from the Nigerian Criminal Code in that knowledge that the flesh is a part of a human corpse is a necessary ingredient of the offence.

PRACTICE

1. Prove :

- (a) that the accused ate, or received for the purpose of eating, a part of a human corpse.
- (b) that he did so knowingly.

2. Procedure.—No warrant is required for an arrest. The offence is bailable not compoundable and may be tried by a magistrate of the first grade or by a native court of grade B or above.

219. Whoever receives or has in his possession a human head or skull within six months of the same having been separated from the body or skeleton with the intention that such head or skull shall be possessed by any person as a trophy, juju or charm shall be punished with imprisonment which may extend to five years or with fine or with both.

Explanation.—Where it is proved that a person received or had in his possession such human head or skull proof that he received or had such human head or skull in his possession for a lawful purpose shall lie on that person.

COMMENT

Nigerian Criminal Code (Cap. 42) section 329A.

Note that the onus of proving lawful possession lies on the accused.

PRACTICE

1. Prove.

- (a) that the accused received or had in his possession a human head or skull.
- (b) that the human head or skull had been separated from the body or skeleton within six months of the accused receiving it.
- (c) that the accused received the human head or skull with the intention that he should possess it himself as a trophy, juju or charm or transfer it to another person with a like object.

2. Procedure.—As for section 218.

CHAPTER XVIII—OFFENCES AFFECTING THE HUMAN BODY

OFFENCES AFFECTING LIFE
GENERAL COMMENT

1. Substantive Law.—A major re-arrangement of the law of culpable homicide as presented by the Sudan and Pakistan Codes was found to be necessary in the Northern Region to meet the objections of the Moslem jurists trained in the *Maliki* School who had for many years been accustomed to classify homicide as particularly of two kinds—deliberate (or '*amd*') and accidental (or '*khata'*'). There had also been confusion over the use of the English terms murder and manslaughter and it was decided therefore to eliminate all reference to these terms and to classify all culpable homicide as either culpable homicide punishable with death or culpable homicide not punishable with death. Hence also the definition of culpable homicide in section 220 includes the causing of death by a rash or negligent act (cf. section 304A of the Pakistan Penal Code and section 256 of the Sudan Penal Code). (Further difficulty was also experienced in gaining acceptance of the principle that certain types of culpable homicide should be punished with a lesser penalty than death because of mitigating circumstances surrounding the commission of the offence. Agreement on section 222 was reached only after the *Maliki* jurists had accepted the *Hanafi* principle of *Shib al'amd* which admits the principle of mitigation in prescribed circumstances. Section 222 therefore finally emerges as substantively section 249 of the Sudan Penal Code with the addition of the exceptions at paragraphs 6 and 7. Paragraph 6 incorporates the provisions of English law contained in section 1 (i) of the Infanticide Act of 1938 and paragraph 7 provides for the case of causing death by a rash or negligent act.

In preparing the Penal Code Bill a particular difficulty arose over the question of provocation (see section 222 (1)) which is not usually admitted as a defence in *Maliki* law. This principle was however finally admitted upon demonstration that in some exceptional cases the *Maliki* texts did, in fact, admit such a proposition.

2. The law of homicide contained in this Code may be summarised as follows :

A. Homicide is the killing of a human being by a human being. It may be either :

- (a) Non-criminal; or
- (b) Criminal homicide.

B. Non-criminal homicide includes several cases falling under section 222 and also generally the causing of death by accident which, although possibly giving rise to civil actions, is not punishable as a crime.

C. Criminal homicide includes :

- (i) culpable homicide not punishable with death (section 222); and
- (ii) culpable homicide punishable with death (section 221).

D. Non-criminal may be divided into two classes :

- (i) Excusable homicide—this class includes the following cases :
 - (a) where the death caused is caused by accident, or misfortune and without criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution (section 48).
 - (b) where the death is caused by a child or a person of unsound mind or a person involuntarily intoxicated in the circumstances set out in sections 50, 51 and 52.
 - (c) where the death is caused unintentionally by an act done in good faith for the benefit of the person killed.
 - (i) when he, or if a minor or lunatic, his guardian, has expressly or impliedly consented to such an act (sections 54 and 56); or
 - (ii) where it is impossible for the person killed to signify his consent or where he is incapable of giving consent and has no guardian from whom it is possible to obtain consent in time for the thing to be done with benefit.

All the above cases are dealt with in Chapter II of the Code.

- (ii) Justifiable homicide. This class includes cases where the death is caused—
 - (a) by a person who is bound, or by mistake of fact in good faith believes himself bound by law to cause the death (section 45);
 - (b) by a judge acting judicially in the exercise of any power which is, or which in good faith he believes to be, given him by law, (section 46);
 - (c) by a person acting in pursuance of the judgment or order of a court of justice (section 47);
 - (d) by a person who is justified or who by reason of mistake of fact in good faith believes himself to be justified by law (section 45);
 - (e) by a person acting without any criminal intention to cause injury and in good faith for the purpose of preventing or avoiding other injury to person or property (section 49).

E. Criminal homicide. Culpable homicide is the causing of death by doing :

- (i) an act with the intention of causing death;
- (ii) an act with the intention of causing such bodily injury as is likely to cause death;
- (iii) an act with the knowledge that the act is likely to cause death; or
- (iv) a rash or negligent act.

Without one or other of these elements an act, though it may be in its nature criminal and may occasion death, will not amount to the offence of culpable homicide.

3. Culpable homicide is then classified in the Code as culpable homicide punishable with death (section 221), or culpable homicide not punishable with death in any case proved under section 220 which does not come within section 221 after consideration by the court of the exceptions stated in section 222.

4. General comments on practice in homicide cases.—In the Sudan, courts experienced difficulties in homicide trials in discovering where the onus of proof lay in order to establish in favour of an accused person the benefit of one or more of the exceptions contained in section 222 of the Penal Code (cf. section 229 of the Sudan Penal Code). The following notes extracted from the Sudan Criminal Court Circular No. 3 may therefore be of value to courts in the Northern Region applying the new Code :

- (i) the prosecution has to prove the offence of culpable homicide punishable with death. Before the court may convict, it is to be satisfied on the whole of the evidence, including any explanation by the accused, that :
 - (a) the accused caused death either intending to do so or with the knowledge that death was the probable consequence of his act; and
 - (b) the mitigating circumstances which constitute any of the exceptions do not exist since the absence of such circumstances is an essential part of the proof in a case of culpable homicide punishable with death.
- (ii) the prosecution has to prove beyond reasonable doubt that the accused caused death either intending to do so or with the knowledge that death was the probable consequence of his act. Once the court is satisfied beyond reasonable doubt that the accused caused death either intending to do so or with the knowledge that death was the probable consequence, the court must then consider the mitigating circumstances referred to in (i) (b) above. The common mistake is to suppose that the accused must prove beyond any reasonable doubt that he is entitled to the benefit of one or more of the subsections. It is sufficient in order to be acquitted of culpable homicide punishable with death for the accused, or for the evidence itself without the aid of the accused, to raise such a possibility of the existence of circumstances entitling him to the benefit of a subsection that the court feels it cannot safely disregard it. Of course if the possibility is so far fetched or so unlikely that the court cannot swallow it and considers that it is safe to disregard it then the accused is not entitled to benefit. It will be observed that it is not always necessary in order to obtain the benefit of a subsection for the accused to plead it specifically.
- (iii) to sum up—if after the whole of the evidence including any explanation by the accused has been reviewed and weighed by the court, the court is left in reasonable

doubt, not merely with a far fetched possibility as to whether the facts and circumstances existed and are such as to satisfy all the requirements of an exception then the accused is entitled to the benefit of that exception although he may not have raised that specific exception in his defence for consideration by the court.

N.B.—Wherever the defence is raised or the facts themselves raise the defence that—

- (a) the killing was completely justified in the lawful exercise of the right of self-defence and thereby no offence at all has been committed (section 59 of the Penal Code) the onus of satisfying the court that the killing was not an offence lies squarely on the shoulders of the accused;
- (b) the accused was insane and therefore entitled to a special finding that he did the offence complained of but due to insanity is not guilty, similarly the onus of so satisfying the court is on the accused.

5. Charges in Homicide Cases.—The following note will be of assistance in the framing of charges in homicide cases and is taken from the Sudan Criminal Court Circular No. 22 :

- (i) Some homicide cases are clearly going to end either in a conviction for murder or in an acquittal. These are for instance cases of premeditated homicide without grave and sudden provocation in which the accused denies that he was the killer. In this case there should be one charge of culpable homicide punishable with death standing alone but in the great majority of homicide cases there is a serious question whether the killing is culpable homicide punishable with death or culpable homicide not punishable with death. In such cases the usual practice should be to charge the accused with culpable homicide punishable with death and in the alternative with culpable homicide not punishable with death. The finding on such a charge should be either—

- (a) guilty of culpable homicide punishable with death; or
- (b) not guilty of culpable homicide punishable with death but guilty of culpable homicide not punishable with death; or
- (c) not guilty of either offence.

- (ii) In a homicide case where the deceased has died at some time after his injury this should be shown by framing the charge somewhat as follows :

“that you did cause the death of the deceased at the General Hospital, Zaria, on October 14th by stabbing him with a knife in the chest at Funtua on September 20th”

- (iii) It often happens that several persons are accused of being criminally responsible for the death of one person; then, with the exception of anyone against whom there may be evidence that he alone caused the death and who should be charged directly with homicide, all the others should be charged either :

- (a) under the abetment chapter (chapter V); or
- (b) under the joint acts chapter (chapter IV); or
- (c) as being a member of an unlawful assembly as a result of the common object of which the killing was committed (section 108 of the Penal Code).

Which of the above charges is applicable depends on the circumstances but it may be said that the usual one is the charge of abetting and the others should only be used when the case is clearly one intended to be covered by them. For instance if several persons attack a man with sticks intending to kill him and use their sticks on him and he dies from the cumulative effect of the stick blows then they should all be charged under section 85 of the Penal Code.

6. Proof of Death.—In homicide cases, the fact of the death of the deceased should be proved if possible by calling a witness who saw the corpse of the deceased and could identify him. (Sudan Criminal Court Circular No. 22).

CHAPTER XVIII

OFFENCES AFFECTING THE HUMAN BODY

Offences affecting Life

Culpable homicide defined.

220. Whoever causes death—

- (a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
- (b) by doing an act with the knowledge that he is likely by such act to cause death; or
- (c) by doing a rash or negligent act, commits the offence of culpable homicide.

ILLUSTRATIONS

(a) A lays sticks and turf over a pit with the intention of thereby causing death or with the knowledge that death is likely 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.

(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.

(c) A by shooting at a fowl with intent to kill and steal 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, but he may be guilty of culpable homicide not punishable with death if, in shooting at the fowl, he acted rashly or negligently.

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, although the child may not have breathed or been completely born.

COMMENT

cf. Pakistan Penal Code section 299.

Sudan Penal Code section 246.

(1) See general notes on culpable homicide above and note especially the addition of the causing of death by a rash or negligent act at paragraph (c).

(cf. Pakistan Penal Code section 304A. Sudan Penal Code section 256).

(2) By virtue of section 24 the word “act” may also extend to an omission. A legal omission can therefore amount to the offence of culpable homicide if a person dies as a result of an omission on the part of another to perform a duty tending to preserve life, e.g., the failure on the part of a parent to provide food and clothing for a child or the failure by a doctor to provide reasonable skill and care in the performance of an operation on a patient.

(3) The word “intention” does not imply that it must necessarily be proved that the accused had some forethought to kill the deceased. The presumption of the law is that a person intends the natural and foreseeable consequences of this act.

(4) Paragraph (a) deals with the case where an actual intention can be proved.

Paragraph (b) deals with the case where an accused is shown constructively to have only an intention by reason of his knowledge of the likely result of his act. Note the definitions of "likely" and "probable" in section 19.

If a person intentionally commits an offence and consequences beyond his immediate purpose result it is for the court to determine how far he can be held to have had the knowledge that the consequences of his act could cause death.

(5) Paragraph (c) provides for the offence known in English law as manslaughter by negligence. Under this paragraph the death must be caused by a rash or negligent act; there is no intention on the part of the accused to cause death and no knowledge that the act done in all probability will cause death. A rash act is done over-hastily and without forethought. Committing a rash act is criminal because an accused, knowing the act to be dangerous and that he may thereby cause an injury, nevertheless has done it with indifference to the consequences. Negligence is an omission to do something which a reasonable man would do guided by the considerations which ordinarily regulate human conduct or the doing of something which a prudent and reasonable man would do. To be criminal the act must be the result of a higher degree of negligence that can be settled by the mere award of damages to the injured person and the negligence must be such as to show a disregard for life and the safety of others which would amount to a crime against the public at large and which would therefore merit punishment.

(6) In considering whether particular circumstances amount to the offence of culpable homicide, a court should consider in sequence all the possibilities presented by paragraphs (a), (b) and (c) of the section. In the case of *Abdulbaki Iyatawa v. Katsina Native Authority*, the Northern High Court held on appeal that death was not the probable consequence of a heavy throw to the ground in the course of a fight and that the appellant had no intention to kill the deceased. The offence was nevertheless culpable homicide because the appellant had acted rashly and negligently.¹

Explanation (1) to the section assumes that the bodily injury was inflicted with the intention of causing death or the knowledge that it would be likely to cause death. Where there is no such intention or knowledge the offence is not culpable homicide under paragraph (a) of the section.

Explanation 2.—When an injury is inflicted with the intention of causing death or with the knowledge that death would be likely to result from the injury, it is not a defence to say that had proper medical treatment been available the injured person would not have died.

Explanation 3.—The causing of the death of a child in a mother's womb is not homicide but is punishable under section 235 or 236.

221. Except in the circumstances mentioned in section 222 culpable homicide shall be punished with death—

- Culpable homicide punishable with death.
- (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 or had reason to know 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 of any bodily injury, is a question of fact.

ILLUSTRATIONS

(a) In Illustrations (a) and (b) to section 220, if A's act is done with the intention of causing death the offence is culpable homicide punishable with death. If it is done with the knowledge that death is likely to be thereby caused, the offence may or may not be punishable with death according to whether death was the probable consequence or only a likely consequence of A's act.

1. *Abdulbaki Iyatawa v. Katsina N.A.* 1961 N.N.C.N. 12.

(b) 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 culpable homicide punishable with death, although the blow might not have been sufficient to cause the death of a person in a 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 culpable homicide punishable with death unless he intended to cause death or such bodily injury as would probably cause death.

(c) A fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of culpable homicide punishable with death, although he may not have had a premeditated design to kill any particular individual.

COMMENT

Sudan Penal Code section 248.

cf. Pakistan Penal Code section 300.

(1) Section 221 deals with the offence known in English law as murder.

(2) The Code follows the Sudan precedent in establishing a distinction between an act likely to cause death and an act which would probably cause death. See the definitions of "probable" and "likely" in section 19. The effect of this distinction is that where the court is not satisfied that the doer of the act knew or had reason to know that death would be the probable consequence of the act it cannot bring in a verdict of guilty under this section.

(3) Note that the court must first be satisfied that culpable homicide as defined in section 220 has been committed. The court should then consider whether the circumstances in which it was committed constitute an offence under section 221.

(4) In an as yet unreported case, the Federal Supreme Court observed that, in view of the nice distinction in the Code between a "likely" and "probable" consequence of an act, a court must be especially careful to consider any weapon used in a homicide because a decision between the two words might often depend upon the nature of the weapon. In this case, the lower court had failed to see for itself a mortar used in a fight or to consider its size and weight.¹

PRACTICE

(1) Prove :

(a) that the death of a human being has actually taken place.

(b) that such death has been caused by the accused. Where there is no evidence to prove that the accused had anything to do with the death of the deceased no conviction can stand and where the medical evidence does not show that the deceased met with a violent death no charge of culpable homicide punishable with death can be brought.

(c) that the act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as :

(i) the accused knew or had reason to know that death would be the probable and not only the likely consequence of his act; or

(ii) that the accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act was intended to cause.

(2) The mere fact that the bodily injury caused resulted in death in the ordinary course of nature does not necessarily mean that the accused intended to cause such bodily injury.

There must be a finding that the act that caused the death was done either with the intention of causing death or causing bodily injury sufficient in the ordinary course of nature to cause death. The finding that the accused inflicted an injury that was merely likely to cause death will not amount to the offence of culpable homicide punishable with death. The intention or knowledge with which the act which caused death was committed is not constructive nor can it be presumed in law but is a matter of fact to be found by the court.

1. *Umaru Gwandu v. Gwandu N.A.* F.S.C. 161 1962.

3. Punishment :

(a) The Code provides that a person found guilty under this section shall be punished with death. Before the commencement of this Code it was the practice in Moslem courts to allow the relatives of the deceased person the option of compounding the death sentence for intentional killing. If the relatives of the deceased forgave the blood the accused would be required to pay compensation at a rate fixed by native law and custom. When this took place it was usual for the court in addition to pass the *haddi* sentence of one year's imprisonment and one hundred lashes upon the accused and it was frequently also the practice to impose an additional prison sentence in the exercise of the *siyasa* powers of the Chief (or Imam). The death sentence imposed by this section may therefore be considered as a codification of the *siyasa* power of the ruler which is held in the texts of Moslem jurists to extend to the passing of the death sentence irrespective of the wishes of the relatives of the deceased. The *siyasa* powers of the ruler now vest ultimately in the Government and it is considered essential in the interests of public security in present day conditions that when an offence under this section is proved a court should have no discretion in passing the death sentence. This view entirely agrees with English law on the same subject. It will be remembered that the Crown also possesses the power of pardon and it is provided in the Criminal Procedure Code that wherever a sentence of death is passed by a court the committee advising the Governor on the exercise of the prerogative of mercy shall consider the case and recommend whether a death sentence should be carried out or commuted to a lesser sentence. In order that the wishes of the relatives of the deceased are not overlooked it is expressly provided by section 393 of the Criminal Procedure Code that a native court when passing a death sentence shall always record the wishes of the relative of the deceased in the proceedings before they are forwarded for consideration by the committee advising upon the exercise of the prerogative of mercy.

(b) By virtue of section 270 of the Criminal Procedure Code, no court may pass a sentence of death upon woman found by the court to be pregnant or upon a person found to be under 17 years of age. Procedure to be followed by the court in such cases is contained in sections 271 and 272 of the Criminal Procedure Code.

4. Procedure.—No warrant is required for the arrest of an accused person. The offence is not bailable and not compoundable and may only be tried in the High Court or in a native court of grade A.

A court may not accept a plea of guilty by an accused person charged under this section. (See section 187 of the Criminal Procedure Code). This provision is included in order to ensure that a court takes into consideration all the evidence in a case involving a charge which carries the death penalty because it is highly probable in view of the complexity of the law of homicide that an accused person will not understand the significance of the distinction between a charge under this section and a charge of committing culpable homicide not punishable with death under this Code.

5. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of at did commit culpable homicide punishable with death in that you caused the death of AB by doing an act (*state nature of the act*) with the intention of causing his death [or with the knowledge that his death would be the probable consequence of your act] and thereby committed an offence punishable under Section 222 of the Penal Code.

222. (1) Culpable homicide is not punishable with death if the offender whilst deprived of the power of self control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

When culpable homicide is not punishable with death.

Explanation.—Whether the provocation was grave and sudden enough

to prevent the offence from amounting to culpable homicide punishable with death is a question of fact.

ILLUSTRATION

(a) A, under the influence of passion excited by grave and sudden provocation given by Z, intentionally kills the child of Z. This is culpable homicide punishable with death, 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 a pistol 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 committed culpable homicide not punishable with death.

(c) Z gives grave and sudden provocation to B who is thereby excited to violent rage. A a bystander intending to take 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 punishable with death but A is guilty of culpable homicide punishable with death.

(2) Culpable homicide is not punishable with death if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the powers given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

(3) Culpable homicide is not punishable with death if the offender, being a public servant acting for the advancement of public 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 believes 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 punishable with death 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 cases which party first provokes the other or commits the first assault.

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

(6) Culpable homicide is not punishable with death where a woman intentionally causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child.

(7) Culpable homicide is not punishable with death when a person causes the death of another by doing any rash or negligent act.

COMMENT

cf. Pakistan Penal Code section 300.
Sudan Penal Code section 249.

(1) Note that this section does not define all the circumstances in which the offence of culpable homicide is not punishable with death. The section as originally drafted in India

was intended to provide for specific exceptions to the general proposition defining murder contained in section 300 of the Pakistan Penal Code and here reproduced in a modified form in section 221 of the Northern Regional Penal Code as the crime of culpable homicide punishable with death. The Pakistan Penal Code is more logically arranged in that section 300 of that Code contains both the definition of murder and the exceptions thereto. It is clear therefore that section 222 of the Northern Regional Penal Code should be read in conjunction with section 221. The correct approach to a homicide case is for the court to:

- (i) consider whether culpable homicide has been committed (section 220);
- (ii) consider whether the case falls within the ambit of section 221 and, if it does,
- (iii) consider whether any of the exceptions given in section 222 apply to the case.

The effect of this process will be that the court will be enabled to bring in a clear logical finding and can decide whether, assuming that culpable homicide has been proved, the offence should be punished with death under section 221. This method of approach to a homicide case was referred to and approved by the Federal Supreme Court in the case of *Stephen Oji v. The Queen*.¹

(2) (a) Subsection (1) provides that proof of grave and sudden provocation will afford grounds for not passing a sentence of death for the offence of culpable homicide. Note that if the court finds that an accused committed the act whilst deprived of the power of self-control, this in no sense amounts to an acquittal of the offence of culpable homicide. The accused should nevertheless still be found guilty of culpable homicide punishable in these circumstances under section 224.

(b) Under this subsection provocation must be grave and sudden and must by its gravity and suddenness deprive the accused of the power of self-control. It must be definitely shown not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action but that that feeling had an adequate cause. In the case of *Mancini v. the Director of Public Prosecutions*,² Lord Simon, Lord Chancellor of Great Britain, laid down "It is not all provocation that will reduce the crime of murder to manslaughter. Provocation, to have that result, must be such as temporarily deprives the person provoked of the power of self-control as the result of which he commits the unlawful act which causes death. The test to be applied is that of the effect of the provocation on a reasonable man so that an unusually excitable or pugnacious individual is not entitled to rely on provocation which would not have led an ordinary person to act as he did. In applying the test, it is of particular importance:

- (i) to consider whether a sufficient interval has elapsed since the provocation to allow a reasonable man time to cool;
- (ii) to take into account the instrument with which the homicide was effected, for to resort in the heat of passion induced by provocation to a simple blow is a very different thing from making use of a deadly instrument like a concealed knife, and the mode of resentment must bear a reasonable relationship to the provocation if the offence is to be reduced to manslaughter."

In another case,³ Lord Simon said "The whole doctrine relating to provocation depends on the fact that it causes, or may cause, a sudden and temporary loss of self-control whereby malice, which is the foundation of an intention to kill or to inflict grievous bodily harm, is negated. Consequently, where the provocation inspires the actual intention to kill, or to inflict grievous bodily harm, the doctrine that provocation may reduce murder to manslaughter seldom applies; only one very special exception has been recognised, that is, the actual finding of a spouse in the act of adultery." It is significant that the only case quoted in *Maliki* texts permitting provocation to be taken into account in homicide cases refers to the special exception mentioned by Lord Simon.

(c) In considering a question of provocation, reference should be made to the exceptions contained in the proviso to section 38 of the Code, which prescribes the circumstances in which the presence of provocation does not modify the nature of an offence or mitigate the

1. *Stephen Oji v. The Queen* 1961 N.R.N.L.R. 93 and 1961 All N.R. 262.

2. *Mancini v. D.P.P.* (1942) A.C. 1.9

3. *Holmes v. D.P.P.* (1946) 2 All E.R. 124

4. *The Queen v. Hamman Mandara* (F.S.C. 108/1962).

penalty. Similar provisions are to be found in section 300 of the Pakistan Penal Code.

(d) In an as yet unreported case, *The Queen v. Hamman Mandara*⁴ the Federal Supreme Court upheld a decision of the Northern High Court that where the deceased was alleged to have called the appellant a "useless fellow," such a reference did not constitute provocation sufficient to reduce the offence. The Court went on to say that no authority exists that words of this sort have ever been held to constitute provocation and, in any event, the accused action was entirely disproportionate. In the case of *Momman Kusu v. Sokoto Native Authority*,¹ the Federal Supreme Court held that there was no provocation where a husband killed a person in a rage believing the firm belief of his wife that she was ill and suffering because the deceased had cast a spell upon her. The law does not accept this sort of belief as an excuse. In *Stephen Oji v. The Queen*² the Federal Supreme Court upheld the judgment of Hurley C. J. in the Northern High Court on the issue of provocation arising out of a statement by the deceased that the accused was a thief. The Chief Justice in this case said that such words did not amount to provocation grave enough to reduce the offence of the accused. But in a later case, *Ajelofu Edache v. The Queen*,³ the Federal Supreme Court held that circumstances could exist when provocation by words alone can be sufficient to invoke the aid of Section 222 (1). This was the position under the Criminal Code formerly applicable in Northern Nigeria.⁴ In *Ajelofu's* case, there was, in fact, other provocation offered by the deceased, the wife of the accused, but the words used by the wife were that the accused was a slave. Provocation was extensively discussed by Hurley C.J. in the case of *The Queen v. Ngba Haaba*⁵ where the High Court held—

- (i) for section 222 (1) to have effect, the appellant must have been deprived of his power of self control by grave and sudden provocation;
- (ii) for a man to find his wife in adultery with another man is provocation sufficient to reduce the charge so long as the appellant lost his self control;
- (iii) in this case, the appellant did not immediately lose his self control, since he called his brother to see what had occurred.
- (iv) the appellant was subsequently attacked by the deceased, the adulterer, and this attack combined with the circumstances of the adultery caused him to lose his self control, and constituted sufficient provocation to reduce the offence.

Grave and sudden provocation can therefore be built up over a period of time and be constituted of a number of elements and the sum total of the circumstances must be considered in determining the effect of Section 222 (1) at the moment of the loss of self control.

(3) (a) Subsection (2). The authors of the Indian Penal Code explained that this subsection was necessary because a person exercising his right of private defence is not usually in a situation in which he has time to weigh up the niceties of his legal position. Since the law permits the killing of a person in self-defence in specified circumstances (sections 65 and 66) and the causing of harm short of death in other cases, there are many occasions when an act falls on the wrong side of what is really an arbitrary line of distinction.

(b) In the application of this subsection it is essential that the person causing hurt in the *bona fide* exercise of the right of private defence should act without any intention of doing more harm than is necessary for the purpose of such defence. The onus of proving private defence is on the accused. Where the accused sets up the principle of self-defence the question to consider is whether the accused had any reasonable apprehension that he would be hurt and particularly in a case where he has caused death whether he was under any reasonable apprehension of grievous hurt or death to himself. It is the apprehension that is the important point and not the actual injuries suffered by him. An accused who is the aggressor cannot claim the right of private defence against the rescuer of his victim.

(c) Note especially that a finding involving this subsection does not amount to an acquittal because the accused has committed the offence of culpable homicide since he has abused

1. *Momman Kusu v. Sokoto N.A.* (F.S.C. 276/22).

2. *Stephen Oji v. The Queen* 1961 N.R.N.L.R. 93.

3. *Ajelofu Edache v. The Queen* 1962 N.N.L.R. 56.

4. *The Queen v. Akpakpan* 1 F.S.C. 1.

5. *The Queen v. Ngba Haaba* 1961 N.N.L.N. 14.

his right of self-defence. He should therefore be punished in such circumstances under section 224.

(4) Subsection (3). This subsection protects the public servant or a person aiding a public servant acting in the advancement of public justice if either of them exceeds the powers given to them by law and causes death. It gives protection only so long as the public servant acts in good faith. If his act is illegal and done in bad faith or if he glaringly exceeds the powers given to him by law the exception will not protect him. The successful pleading of the defence contained in this subsection may result in the acquittal of the public servant.

(5) Subsection (4). This subsection requires three things :

- (i) sudden fight;
- (ii) absence of premeditation; and
- (iii) no undue advantage.

The word "sudden" implies that the fight should not have been pre-arranged. Being merely involved in a fight does not entitle an accused to invoke this subsection; to bring in the subsection the fight must be unpremeditated. If, in any sudden quarrel, blows pass without any intention to kill and in the course of the scuffle after the parties are heated by the contest, one kills the other with a deadly weapon this subsection may well have effect. The lapse of time between the quarrel and the fight which ensues is therefore a very important consideration. If there are intervals and sufficient time for passion to subside and for reason to interpose itself the killing may be culpable homicide punishable with death. The fight must not only be sudden but the party assulted must be on equal footing from the point of view of defence at least at the beginning of the fight. The word "fight" is used to convey something more than a mere verbal quarrel and it must be remembered that it take two to make a fight.

(5) In the case of *Stephen Oji v. The Queen*,¹ the Federal Supreme Court held that a party who in the course of a fight possesses himself of the weapon with which the other was armed at the beginning of the fight, and immediately uses it, cannot be said to have taken undue advantage within the meaning of the subsection. Particularly so in this case as there was no finding by the lower court that the deceased had made no genuine attempt to use the weapon. In such circumstances, there must at least be a doubt whether the appellant had taken undue advantage.¹¹ Additionally in this case, the appellant could not be said to have acted in a cruel or unusual manner. The person entitled to the benefit of the subsection is the person actuated solely by the natural aggressiveness which the heat of passion in a sudden fight might be expected to inspire and a person acting in a cruel or unusual manner is deprived of the benefit of the subsection because he shows by his actions that he is not actuated solely by natural aggressiveness. "Acting in a cruel manner" means acting in a manner which indicated a delight in causing pain for its own sake. "Acting in an unusual manner" means acting in a manner which indicated some other intrusive motive. In either case the formation of the intention actually present in the killer's mind is sufficient in the eyes of the law to require that such a killing should be punished by death.¹ In an earlier case on the subsection² the Northern High Court on appeal held that although an appellant had used a knife in a sudden fight against an unarmed opponent, this was not an undue advantage as the knife was already in his hand for an innocent purpose at the moment the sudden quarrel arose. This judgment presumes that normally where a man uses a deadly weapon against an unarmed opponent this will be an undue advantage. The distinction drawn here is that the accused was already holding the knife for another purpose when the sudden passion overtook him and he struck the fatal blow without premeditation. Had he picked up the knife subsequent to the onset of the quarrel, the situation might have been entirely different. The law here requires two things—first, that there should be provocation and, secondly, that the fatal blow should be clearly traced to the influence of the passion arising from the provocation.³

1. *The Queen v. Oji* 1961 N.R.L.R. 93 and 1961. All N.R. 262.

2. *Musa Arandum v. Bauchi* N.A. 1961 N.R.L.R. 50.

3. p. 742 *Ratanlal—Law of Crimes* 19th edition.

(6) Subsection (5). This subsection represents a departure from English law. It must be found that the person was killed with a full knowledge of the facts, was determined to suffer death or to take the risk of death and that he continued in his determination up to the moment of his death. Examples of cases in which this section has been invoked in India are :

- (i) a soldier who at the request of a wounded comrade puts that comrade out of pain.
- (ii) a doctor who applies laudanum to a person suffering agonies from an incurable complaint.

Culpable homicide involving this subsection is punishable under section 224.

(7) Subsection (6) enacts the provision contained in subsection (i) of section (1) of the Infanticide Act of 1938 of the Imperial Parliament. This exception to the general law of homicide is also recognised by Moslem law where such cases are dealt with under the rules governing insanity. The operation of the subsection does not involve an acquittal and culpable homicide coming within the subsection is punishable under section 224.

223. 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.

Culpable homicide by causing death of person other than person whose death was intended.

COMMENT

Pakistan Penal Code section 301.

Sudan Penal Code section 250.

This section provides that if the killing takes place in the course of doing an act which a person intended or knew to be likely to cause death the case is to be treated as if the real intention had been actually carried out.¹

224. Whoever commits culpable homicide not punishable with death, shall be punished with imprisonment for life or for any less term or with fine or with both.

Culpable homicide not punishable with death.

COMMENT

Pakistan Penal Code section 304.

Sudan Penal Code section 253.

This section provides the punishment for all cases of culpable homicide not punishable under section 221.

PRACTICE

1. Prove :

- (a) the death of the person in question.
- (b) that such death was caused by the act of the accused.
- (c) that the accused intended by such act to cause death or that he intended by such act to cause such bodily injury as was likely to cause death or that he knew that such act would be likely to cause death or that he caused the death by a rash or negligent act.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not bailable and not compoundable and can only be tried in the High Court or in a native court of grade A.

3. Charge.—I [] hereby charge you [] as follows :

That you on or about the.....day of.....at.....committed culpable homicide not punishable with death in causing the death of AB by causing him such bodily injury as was likely to cause his death [or by doing an act which you knew was likely to cause him death or by doing a rash or negligent act] and thereby committed an offence punishable under Section 224 of the Penal Code.

1. See *Musa Arandum v. Bauchi* N.A. 1961 N.N.C.N. 1.

225. 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, shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

226. 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 any greater punishment or by any act done in committing such an offence, shall be punished with imprisonment for a term which may extend to ten years or with fine or with both.

COMMENT

Sudan Penal Code sections 254 and 255.

Section 225 provides for the situation where death has been caused when the intention was to cause hurt or grievous hurt (See sections 240 and 241 for definition of hurt or grievous hurt) and where culpable homicide under paragraphs (a) and (b) of section 220 cannot be proved due to lack of evidence of intention or knowledge of the likely consequences of the act. Sections 225 and 226 are included in the Code to provide a heavy maximum penalty for persons who in the course of committing an offence cause the death of a person in circumstances not amounting to culpable homicide.

PRACTICE

1. Prove :

- (a) that a human being has died.
- (b) that the death was caused by the act of the accused.
- (c) that the act does not amount to the offence of culpable homicide.
- (d) (i) under section 225, that the intention of the accused in doing the act was to cause hurt or grievous hurt;
- (ii) under section 226, that the accused caused the death of the person by doing an act which constituted an offence punishable with imprisonment for one year or with any greater punishment or by an act done in committing such an offence.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not bailable and not compoundable and may only be tried in the High Court or by a native court of grade A.

3. Charge :

- (a) Under section 225 :

I hereby charge you as follows :
That you on or about the day of at caused the death of by doing an act with the intention of causing hurt [or grievous hurt] to the said and thereby committed an offence punishable under Section 225 of the Penal Code.

- (b) Under section 226 :

I hereby charge you as follows :
That you on or about the day of at caused the death of by doing an act which constitutes the offence of punishable with imprisonment for under section of the Penal Code (or other Ordinance or Law) [or by doing an act in the commission of the offence of punishable with imprisonment for under section of the Penal Code (or other Ordinance or Law)] and thereby committed an offence punishable under Section 226 of the Penal Code.

(4) Note that a court may convict under either of these sections in a case where an accused was charged under section 221 or section 224 (see section 217 of the Criminal Procedure Code).

227. 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, shall be punished with death.

COMMENT

Pakistan Penal Code section 305.

Sudan Penal Code section 257.

- (1) The suicide must actually be committed.
- (2) It is not necessary to show that an accused was responsible for the safety of the deceased as parent or guardian, etc.
- (3) Section 228 covers the case of abetment of suicide in general. This section provides for specific cases where a person actively aids another to commit suicide who because of age or infirmity is not fully responsible for his actions.

PRACTICE

1. Prove :

- (a) the commission of suicide by a person.
- (b) that the person who committed suicide was under 18 years of age or was insane or delirious or an idiot or intoxicated.
- (c) that the accused abetted the commission of suicide.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not bailable and not compoundable and may only be tried in the High Court or by a native court of grade A.

3. Charge :—I [] hereby charge you [] as follows :

That you on or about the day of at abetted the commission of suicide by AB, a person [in a state of (specify the state) or [under 18 years of age etc.] and thereby committed an offence punishable under Section 227 of the Penal Code.

228. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Abetment of suicide.

COMMENT

Pakistan Penal Code section 306.

Sudan Penal Code section 258.

Abetment of suicide is an offence confined to the case of a person who aids or abets the commission of suicide by the hand of the person who himself commits the suicide. When another person at the request of or with the consent of the suicide has actually killed that person he is guilty of homicide by consent. (see subsection (5) of section 222).

PRACTICE

1. Prove :

- (a) the commission of suicide by a person; and
- (b) that the accused abetted the commission thereof.

2. Procedure.—As for section 227.

3. Charge : I [] hereby charge you [] as follows :

That on or about the day of at one AB committed suicide and the you abetted its commission by (specify the act) and thereby committed an offence punishable under Section 228 of the Penal Code.

229. (1) Whoever does any act not resulting in death with such intention or knowledge and in such circumstances that if he by that act caused death, he would be guilty of culpable homicide punishable with death shall be punished with imprisonment for life or for any less term or with fine or with both.

Attempts to commit culpable homicide.

(2) When any person being under sentence of imprisonment for life commits an offence under this section, he shall, 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 culpable homicide punishable with death. 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 kill Z, buys a gun and loads it. A had not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section.

(d) A, intending to kill 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.

COMMENT

Pakistan Penal Code section 307.

Sudan Penal Code section 259.

(1) See section 95 for attempts in general.

(2) It is not necessary that hurt should be caused by the act constituting the attempt to commit culpable homicide (cf. paragraph (1) of section 307 of the Pakistan Penal Code).

PRACTICE

1. Prove :

(a) that the death of a human being was attempted.

(b) that such attempt was the act of the accused;
and

(c) that such act was done with the intention of causing death or that the accused knew, or had reason to know, that death would be the probable cause and not only the likely consequence of the act or of any bodily injury which the act was intended to cause.

2. Procedure.—As for section 227.

3. Charge.—I [] hereby charge you [] as

follows :

That you, on or about the day of at did an act, to wit with such intention [or knowledge] and under such circumstances that if by that act you had caused the death of AB you would have been guilty of culpable homicide punishable with death and that you thereby committed an offence punishable under Section 229 of the Penal Code.

4. Punishment.—Note that by virtue of subsection (2) of this section if a life convict commits an offence under this section he must be sentenced to death if he causes hurt in the making of the attempt. A note to section 20 explains that life imprisonment is, so far as the court is concerned, imprisonment for the remainder of the convict's natural life. If therefore provision were not made in this section for passing a death sentence it would be theoretically impossible for a court to pass an effective sentence upon a life convict who committed this offence.

230. 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 culpable homicide not punishable with death, shall be punished—

(a) with imprisonment for a term which may extend to three years or with fine or with both; or

(b) if hurt is caused to any person by such act with imprisonment which may extend to seven years or with fine or with both.

COMMENT

Pakistan Penal Code section 308.

Sudan Penal Code section 260.

(1) This section is complimentary to section 229.

(2) Note paragraph (b) which provides for an enhanced punishment if hurt is caused in the attempt.

PRACTICE

1. Procedure.—As for section 227.

2. Charge.—I [] hereby charge you [] as follows :

That you on or about the day of at did an act, to wit with such intention [or knowledge] and under such circumstances that if by that act you had caused the death of AB you would have been guilty of culpable homicide punishable with death and that you thereby committed an offence under Section 230 of the Penal Code.

231. Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Attempt to commit suicide.

COMMENT

Pakistan Penal Code section 309

Sudan Penal Code section 261.

PRACTICE

1. Prove :

(a) that the act of the accused amounted to an attempt to commit suicide.

(b) that an act was done towards the committing of suicide.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable but not compoundable and may be tried in the High Court or by a native court of grade A.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at attempted to commit suicide and did an act, to wit towards the commission of it thereby committing an offence punishable under Section 231 of the Penal Code.

Causing Miscarriage, Injuries to Unborn Children, Exposure of Infants, Cruelty to Children and Concealment of Births

232. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

Explanation.—A woman, who causes herself to miscarry, is within the meaning of this section.

COMMENT

Pakistan Penal Code section 312.

Sudan Penal Code section 262.

(1) This section requires two essentials :

(a) voluntarily causing the woman to miscarry;

(b) the miscarriage should not have been caused in good faith for the purpose of saving the life of the woman.

- (2) The offender may be the woman herself or any other person.
- (3) The stage to which pregnancy is advanced is immaterial.
- (4) If it appears that the woman was not with child at all an accused must be acquitted.

PRACTICE

1. Prove :

- (a) that the woman was with child.
- (b) that the accused did some act likely to cause a miscarriage.
- (c) that the accused did so voluntarily.
- (d) that the woman miscarried in consequence.
- (e) that the miscarriage was not caused in good faith in order to save the life of the woman.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may only be tried in the High Court or by a native court of grade A.

3. **Charge.**—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....
voluntarily caused (Name of Woman) then being with child to miscarry, such miscarriage not being caused by you in good faith for the purpose of saving the life of the saidand thereby committed an offence punishable under section 232 of the Penal Code.

233. Whoever with intent to cause the miscarriage of a woman whether with child or not does any act which causes the death of such woman, shall be punished—

- (a) with imprisonment for a term which may extend to fourteen years and shall also be liable to fine; and
- (b) if the act is done without the consent of the woman, with imprisonment for life or for any less term and shall also be liable to fine.

Explanation.—It is not essential for an offence under this section that the offender should know that the act is likely to cause death.

COMMENT

Pakistan Penal Code section 314.
Sudan Penal Code section 264.

- (1) Note that in this section it is immaterial whether the woman was with child or not. This species of homicide may be committed involuntarily by a person who does not intend to cause or think it likely that he will cause death by the act which he does.
- (2) The consent of the woman freely and intelligently given is allowed to mitigate the punishment.

PRACTICE

1. Prove :

- (a) that the woman was with child.
- (b) that the accused did an act to cause a miscarriage.
- (c) that he did so with that intention.
- (d) that such act caused the death of the woman; and
- (e) if the case comes under paragraph (b) that such act was done by the accused without the consent of the woman.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is not bailable and not compoundable, and may only be tried in the High Court or by a native court of grade A.

3. **Charge.**—I [] hereby charge you [] as follows:

That you, on or about the.....day of.....at.....in order to cause a miscarriage to.....(name of woman).....did a certain act to wit,.....which caused the death of the said.....and thereby committed an offence punishable under Section 233 of the Penal Code.

234. Whoever uses force to any woman and thereby unintentionally causes her to miscarry, shall be punished—

- (a) with imprisonment for a term which may extend to three years or with fine or with both; and
- (b) if the offender knew that the woman was with child, he shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

COMMENT

Sudan Penal Code section 265.

- (1) For definition of "force" see section 262.
- (2) In this section it is the use of force which is punished. The fact that a miscarriage is thereby caused is a factor to be taken into account in assessing the punishment. The use of criminal force with the complication of a miscarriage is punishable under section 265.
- (3) Note that the section uses word "force" and not "criminal force" (cf. sections 262 and 263).

PRACTICE

1. Prove :

- (i) that the accused used force to a woman.
- (ii) that as a result the woman miscarried.
- (iii) that the accused did not intend to cause her to miscarry.
- (iv) for paragraph (b) of the section the accused must have known that the woman was with child.

2. **Procedure.**—As for section 232.

3. **Charge.**—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....used force to....
(name of woman).....[knowing that she was with child] and thereby unintentionally caused her to miscarry and thereby committed an offence punishable under Section 234 of the Penal Code.

COMMENT

235. 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, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both,

Pakistan Penal Code section 315.
Sudan Penal Code section 266.

PRACTICE

1. Prove :

- (a) that the woman was with child.
- (b) that the accused did an act before the child was born calculated to prevent the child from being born alive or to cause it to die after its birth.
- (c) that such act was done by the accused with that intention.
- (d) that such act was done not in good faith for the purpose of saving the mother's life.
- (e) that the child was born dead or died after its birth.
- (f) that such death was caused by the above-mentioned act of the accused.

2. Procedure.—As for section 233.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about theday of.....at.....did an act to wit,to XY before the birth of her child with the intention of thereby preventing that child from being born alive [or causing it to die after its birth] and by that act did prevent that child from being born alive [or caused it to die after its birth] and the said act was not done in good faith for the purpose of saving the life of the mother and that you thereby committed an offence punishable under Section 235 of the Penal Code.

236. 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 caused the death of a quick unborn child shall be punished with imprisonment for life or for an less term and shall also be liable to fine.

Causing death of quick unborn child by act amounting to culpable homicide.

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.

COMMENT

Pakistan Penal Code section 316.
Sudan Penal Code section 267.

(1) This section punishes offences against children before birth in cases where the pregnancy has advanced beyond the stage of quickening and where the death is caused in the quickening and before the birth of the child.

(2) If a person strikes a pregnant woman and thereby causes the death of her quick unborn child he will be guilty of the offence here defined if the blow was intended by him to cause the women's death or was one which he knew or had reason to believe to be likely to cause it, or if the blow was delivered rashly or negligently.

PRACTICE

1. Prove :

- (a) that the woman was quick with child.
- (b) that the accused did an act to cause the death of such child.
- (c) that the circumstances under which such act was done were such as to make the accused guilty of culpable homicide if death had been caused; and
- (d) that the act did cause the death of the quick unborn child.

2. Procedure.—As for section 233.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....did an act, to wit,under circumstances to wit,.....that if you thereby had caused death you would have been guilty of culpable homicide and did by such act cause the death of the quick unborn child of XY and that you thereby committed an offence punishable under Section 236 of the Penal Code.

237. Whoever being the father or mother or having the care of a child under the age of twelve years exposes or leaves such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Abandonment of child under twelve years.

Explanation.—This section does not prevent the trial of the offender for culpable homicide if the child dies in consequence of the exposure or abandonment.

COMMENT

Pakistan Penal Code section 317.
Sudan Penal Code section 268.

This section applies where a child is exposed and no death results. If however death follows the charge should be framed either under section 221 or section 224. The offence is complete notwithstanding that no actual danger or risk of danger arises to the child.

PRACTICE

1. Prove :

- (a) that the child is under twelve years of age.
- (b) that the accused is the father or mother or the person having the care of the child.
- (c) that the accused exposed or left such child in the place in question.
- (d) that he exposed or left the child with the intention of wholly abandoning it.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may only be tried in the High Court or by a native court of grade A.

3. Charge.—I [] hereby charge you [] as follows :

That you being the father [or the mother or having the care] of a certain child under the age of twelve years, to wit.....of the age of.....years did expose, or leave the said child in a certain place, to wit,.....with the intention of wholly abandoning the said child and thereby committed an offence punishable under Section 237 of the Penal Code.

238. Whoever having the charge or care of a child under the age of fifteen years or being in a position of authority over him wilfully illtreats or neglects him in such a way as to cause him unnecessary suffering, shall be punished—

- (a) with imprisonment for a term which may extend to two years or with fine or with both; and
- (b) if the illtreatment or neglect results in serious injury to the health of such child, the offender shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

COMMENT

Sudan Penal Code section 269.
This section contains an alternative to prosecution under Part VII of the Children and Young Persons' Law (N. R. No. 28 of 1958).

PRACTICE

1. Prove :

- (i) that a child of under fifteen years of age has been ill-treated or neglected.
 - (ii) that the child suffered unnecessarily as a result.
 - (iii) that the accused had charge or care of the child.
 - (iv) that the accused caused the ill-treatment or neglect.
 - (v) that he did so wilfully;
- and if the prosecution is under paragraph (b) of the section :
- (vi) that the ill-treatment or neglect resulted in serious injury to the health of the child.
- 2. Procedure.**—A warrant is required for the arrest of an accused. The offence is not compoundable. Under paragraph (a) of the section the offence may be tried by any court.

Under paragraph (b) of the section the offence is to be tried by a magistrate of the first grade or by a native court of grade C or above. An offence under paragraph (b) is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at having the charge or care of the child.....

the said child being under fifteen years of age [or being in a position of authority over the child.....] wilfully ill-treated [or neglected] him and thereby caused him unnecessary suffering and thereby committed an offence punishable under Section 238 of the Penal Code.

239.—Whoever, by secretly burying or otherwise disposing of the 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, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 318.

Sudan Penal Code section 270.

It must be proved that the child was dead at the time of the disposal.

PRACTICE

1. Prove :

- (a) the birth of the child.
- (b) that the child died either before, during or after its birth.
- (c) that the accused buried or otherwise disposed of the dead body.
- (d) that the burial or disposal of the body was done in secret.
- (e) that the accused thereby intentionally concealed or endeavoured to conceal the birth of the child.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable and not compoundable and is triable by any court.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at by secretly burying the dead body of a child....., the child of AB, intentionally concealed [or endeavoured to conceal] the birth of the said child and thereby committed an offence punishable under Section 239 of the Penal Code.

HURT

240. Whoever causes bodily pain, disease or infirmity to any person
Hurt defined. is said to cause hurt.

COMMENT

Pakistan Penal Code section 319.

Sudan Penal Code section 271.

(1) Many of the offences which fall under the definition of "hurt" will also fall under "assault".

(2) Harm so slight that no person of ordinary sense and temper would complain of it is excluded by section 58.

Grievous hurt defined. 241. The following kinds of hurt only are designated as grievous—

- (a) emasculation;

- (b) permanent deprivation of the sight of an eye, of the hearing of an ear or the power or speech;
- (c) deprivation of any member or joint;
- (d) destruction or permanent impairing of the powers of any member or joint;
- (e) permanent disfiguration of the head or face;
- (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 twenty days in severe bodily pain or unable to follow his ordinary pursuits.

COMMENT

Pakistan Penal Code section 320.

Sudan Penal Code section 272.

(1) The term "emasculation" in paragraph (a) means the deprivation of a male of his masculine vigour, e.g., castration.

(2) The term "disfiguration" in paragraph (e) means the infliction upon a person of some external injury which detracts from his personal appearance.

(3) In paragraph (g) the fact that a man has been in hospital for twenty days is not in itself sufficient: it must be proved that he was unable to follow his ordinary pursuits. The inability must continue for twenty full days to constitute grievous hurt.

(4) In a case where an illegal injection was administered, this fact did not constitute grievous hurt because the person was incapacitated for sixteen days only. The accused could however be properly convicted of the lesser charge of causing hurt although charged with grievous hurt (S. 218 of the Criminal Procedure Code) ¹.

(5) Note section 225 which provides for the offence of causing death when the intention was to cause hurt or grievous hurt only.

242. 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.

243. 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 voluntarily 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 twenty days. A has voluntarily caused grievous hurt.

COMMENT

Pakistan Penal Code sections 321 and 322.

Sudan Penal Code sections 273 and 274.

(1) A court dealing with a charge of voluntarily causing grievous hurt must consider and decide not only whether grievous hurt has been caused but if it has been caused whether

1. 1962 N.N.C.N. 1. The Queen v. Iyima Adcka.

the accused, intended or knew it to be likely that he was causing grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under section 247.

(2) Note the explanation to section 243.

244. 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 be punished with imprisonment for a term which may extend to one month or with fine which may extend to ten pounds or with both.

245. 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 be punished with imprisonment for a term which may extend to four years or with fine which may extend to fifty pounds or with both.

COMMENT

Pakistan Penal Code sections 344 and 335.

Sudan Penal Code sections 275 and 276.

(1) See section 38 for definition of "provocation".

(2) Both these sections may be treated as provisos to sections 246 and 247.

PRACTICE

1. Prove :

- that the accused caused hurt or grievous hurt (i.e. bodily pain, disease or infirmity) to a person.
- that he did so with the intention or knowledge of causing hurt or grievous hurt.
- that he did so on grave and sudden provocation.
- that he neither intended nor knew himself likely to cause hurt to any person other than the person who gave the provocation.

2. Procedure.—A warrant is required for the arrest of an accused person under section 244. No warrant is required for an arrest under section 245. The offences are bailable and compoundable and may be tried by any court. Note that an offence under section 245 is compoundable only with the leave of the court (see appendix C to the Criminal Procedure Code).

3. Charge.—It is not necessary to charge otherwise than under section 246. It is for the court to consider whether the facts show such a degree of provocation as would justify the application of these sections to the case.

246. Whoever, except in the provided for by in section 244, voluntarily causes hurt, shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 323.

Sudan Penal Code section 277.

(1) This is a general section for the punishment of voluntarily causing hurt. Sections 248, 249, 250, 251, 252 and 253 punish the same offence committed under certain aggravating circumstances.

(2) Note that grave and sudden provocation may not be pleaded as defence to charges under section 249, 250 and 251, 252 and 253.

PRACTICE

1. Prove :

- that the accused by his act caused bodily pain, disease or infirmity to the complainant.
- that he did so intentionally or with the knowledge that it was likely to cause the hurt, etc.

Note that the intent to cause hurt may be presumed from the nature of the hurt caused and the circumstances under which it was caused.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....
voluntarily caused hurt to AB and thereby committed an offence punishable under Section 246.

247. Whoever, except in the case provided for by section 245, voluntarily causes grievous hurt, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 325.

Sudan Penal Code section 278.

PRACTICE

1. Prove :

- that the accused caused hurt of any of the kinds described in section 241.
- that the accused intended or knew that he was likely to cause grievous hurt of any kind so described.
- that the accused did so voluntarily.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable and compoundable with leave of the court and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....
voluntarily caused grievous hurt to....., and thereby committed an offence punishable under Section 247 of the Penal Code.

248. (1) Whoever, except in the case provided for by section 244, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting or any instrument, which 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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

(2) Whoever, except in the case provided for by section 245, voluntarily causes grievous hurt by any of the means mentioned in subsection (1) shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 324.
Sudan Penal Code section 279.

Both subsections of this section admit the defence of grave and sudden provocation and therefore makes it possible to punish these offences under sections 244 and 245 where provocation is proved.

PRACTICE

1. Prove :

- (a) that the accused caused by his act bodily pain, disease or infirmity to the complainant.
- (b) that he did so intentionally or with the knowledge that the act would cause hurt, etc.
- (c) that the act was unprovoked.
- (d) that the accused caused the bodily harm etc., by means of an instrument for shooting, stabbing or cutting or by an instrument which used as a weapon is likely to cause death; or by means of fire, etc.; or by means of any poison, etc; or by means of any substance which itself is deleterious to the human body to inhale, etc.; or by means of any animal.

2. Procedure.—No warrant is required for an arrest. The offence is compoundable with leave of the court. The offence in subsection (1) may be tried by any court. If the hurt be grievous hurt under subsection (2) the offence may only be tried by the High Court or by a native court of grade A or above. An offence under subsection (2) is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows:
That you, on or about theday of.....at..... voluntarily caused hurt to XY by means ofwhich is an instrument for shooting [or stabbing etc.] and thereby committed an offence punishable under Section 248 of the Penal Code.

249. Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug or thing with intent to cause hurt to that 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 be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Causing hurt by means of poison with intent to commit an offence.

COMMENT

Pakistan Penal Code section 328.
Sudan Penal Code section 280.

This section differs from sections 244—248 in that the offence is complete even if no hurt is caused providing that it is proved that poison was administered.

PRACTICE

1. Prove :

- (a) that the substance in question is a poison or any stupefying intoxicating or unwholesome drug, etc.
- (b) that the accused administered or caused the complainant to take such substance.
- (c) that he did as above with intent to cause or knowing it to be likely that he would thereby cause hurt or that the accused intended to commit or facilitate the commission of an offence.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is not bailable and not compoundable and may only be tried in the High Court or by a native court of grade A.

3. Charge.—I [] hereby charge you [] as follows:
That you, on or about the.....day of.....at..... administered to [or caused to be taken by] AB a certain poison [or a certain stupefying, intoxicating or unwholesome drug] to wit....., with intent to cause [or knowing it to be likely that you will thereby cause] hurt to the said AB [or with intent to facilitate the commission of the offence of.....upon the said AB] and thereby committed an offence punishable under Section 249 of the Penal Code.

250. (1) Whoever voluntarily causes hurt for the purpose of extorting from the person hurt or from any person interested in the person hurt any property or document of title or of constraining the person hurt or any person interested in the person hurt to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

(2) Whoever for the like purpose voluntarily causes grievous hurt, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 327.
Sudan Penal Code section 281.

PRACTICE

1. Prove :

- (a) that the accused caused hurt.
- (b) that the accused caused such hurt in order to extort from the sufferer or a person interested in him some property, document or title or valuable security; or that the accused caused such hurt in order to constrain the sufferer or a person interested in him to do something illegal or to facilitate the commission of an offence.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not bailable or compoundable. An offence under subsection (1) may be tried by a Chief Magistrate or by a native court of A Limited or above. An offence under subsection (2) may only be tried in the High Court or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows:
That you, on or about the.....day of.....at..... voluntarily caused hurt to AB for the purpose of extorting from the said AB [or from a certain person interested in the said AB] to wit....., a certain property, to wit....., and thereby committed an offence punishable under Section 250 of the Penal Code

251. (1) Whoever voluntarily causes hurt for the purpose of extorting from the person hurt or any person interested in the person hurt any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of constraining the person hurt or any person interested in the person hurt 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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Voluntarily causing hurt to extort confession or to compel restoration of property.

(2) Whoever for the like purpose voluntarily causes grievous hurt, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 330.

Sudan Penal Code section 282.

The offence which this section is intended to cover is that of inducing a person by causing him hurt to make a statement or confession referring to an offence or misconduct. It is immaterial whether or not an offence has actually been committed. The prime object of this section is to prevent torture by the police.

PRACTICE

1. Prove :

- (a) that the accused caused hurt.
- (b) that the accused caused such hurt in order to extort from the sufferer or a person interested in him a confession or some information; and
- (c) that such confession or information was required as possibly leading to the detection of an offence or of some misconduct.

or prove :

- (i) as in (a) above.
- (ii) that the accused caused such hurt in order to constrain the sufferer or a person interested in him to restore or to cause restoration of some property, document of title or valuable security, etc.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable. The offence under subsection (1) may be tried by a Chief Magistrate or a native court of grade C or above. An offence under subsection (2) may be tried by a Chief Magistrate or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at voluntarily caused hurt to AB for the purpose of extorting from the said AB [or from a certain person interested in the said AB to wit.....] a certain confession [or information] to wit....., which might lead to the detection of the offence of..... (Specify the person in respect of whom and the place where the offence was committed) and thereby committed an offence punishable under Section 251 of the Penal Code.

252. (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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

(2) Whoever in the like circumstances with the like intent or for like reason voluntarily causes grievous hurt to any person being a public servant, shall be punished with imprisonment or a term which may extend to ten years and shall also be liable to fine.

Voluntarily causing hurt or grievous hurt to deter public servant from his duty.

COMMENT

Pakistan Penal Code sections 332 and 333.

Sudan Penal Code section 283.

In India, it was held that the protection given by this section was not confined to public servants but also extended to persons acting in good faith under the direction of public servants. It remains to be seen whether courts in Northern Nigeria will give the same interpretation to the section.

PRACTICE

1. Prove :

- (a) that the accused caused hurt.
- (b) that the person who was hurt was a public servant.
- (c) that such public servant was then discharging his duty as such.

or prove :

- (i) (a) and (b) as above and further—
- (ii) that the accused did so with the intent to prevent or deter the public servant or other public servant from his duty or that he did so in consequence of something done or attempted to be done, by some public servant in the lawful discharge of his duty.

2. Procedure.—No warrant is required for the arrest of an accused. An offence under subsection (1) is bailable and not compoundable and may be tried by a magistrate of the first grade or a native court of grade C or above. An offence under subsection (2) may be similarly tried but is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows:

That you, on or about the day of at voluntarily caused hurt to one AB, a public servant, in the discharge of his duty as such public servant and thereby committed an offence punishable under Section 252 of the Penal Code.

253. (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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

(2) Whoever in like manner causes grievous hurt to any person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Causing hurt by act endangering life or personal safety of others.

COMMENT

Pakistan Penal Code section 336.

Sudan Penal Code section 284.

(1) See Chapter XIII under Public Nuisances for many offences likely to endanger life or to cause hurt or injury.

(2) For the words "rashly" and "negligently" see comment to section 220.

PRACTICE

1. Prove :

- (a) that the accused did the act in question.
- (b) that it was done rashly or negligently.
- (c) that it was such as to endanger life or personal safety of others.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried in any court.

Wrongful Restraint and Wrongful Confinement

254. (1) 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.

Wrongful restraint defined.

(2) The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not within the meaning of this section.

ILLUSTRATION

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

COMMENT

Pakistan Penal Code section 339.
Sudan Penal Code section 285.

(1) Wrongful restraint means the keeping of a person within a place where he wishes to be and has a right to be.

(2) The obstruction must be voluntary.

(3) In India, the words "so as to prevent" were interpreted to mean that the obstruction must be successful in preventing the person from proceeding. In other words the words "so as to prevent" were not considered to require merely an intention to prevent on the part of the accused: the intention had to be successful executed.

255. Whoever wrongfully 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.

Wrongful confinement defined.

ILLUSTRATION

(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 the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

COMMENT

Pakistan Penal Code section 340.
Sudan Penal Code section 286.

(1) Wrongful confinement is a development of wrongful restraint and involves the keeping of a person within limits from which he wants to go and has a right to go.

(2) Malice is not an essential ingredient of this offence.

(3) The time during which a person is wrongfully confined is immaterial.

256. Whoever wrongfully restrains any person, shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to thirty pounds or with both.

Wrongful restraint.

COMMENT

Pakistan Penal Code section 341.
Sudan Penal Code section 287.

1. Prove :

(a) that the accused obstructed a person.

(b) that such obstruction prevented the person from proceeding in a direction in which he had a right to proceed.

(c) that an accused caused such obstruction voluntarily. Note that the obstructor must intend or know or have reason to believe it to be likely that the mens adopted would cause the obstruction of the complainant.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable and compoundable by leave of the court. The offence may be tried in any court.

Wrongful confinement.

257. Whoever wrongfully confines any person, shall be punished—

(a) with imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both; and

(b) if the wrongful confinement continues for three days or more with imprisonment for a term which may extend to three years or with fine or with both.

COMMENT

Pakistan Penal Code section 342.

Sudan Penal Code section 228.

PRACTICE

1. Prove :

(a) that the accused obstructed the complainant.

(b) that the obstruction was voluntary.

(c) that the effect of the obstruction was the restraining of that person from proceeding beyond a certain limit.

(d) that the restraint was wrongful.

2. Procedure.—As for section 256.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at wrongfully confined AB and thereby committed an offence punishable under Section 257 of the Penal Code. Note for a charge under paragraph (b) of the section amend the above charge as follows : For "confined AB" read "confined AB for days".

258. Whoever keeps any person in wrongful confinement knowing that a warrant or order or writ for the production or liberation of that person has been duly issued, shall be punished with imprisonment for a term which may extend to two years in addition to any term of imprisonment to which he may be liable under any other section of this chapter.

Wrongful confinement after warrant or order or writ issued for production or liberation.

COMMENT

Pakistan Penal Code section 345.
Sudan Penal Code section 289.

There must be knowledge on the part of the accused that the warrant or order or writ has issued.

PRACTICE

1. Prove :

(a) that the accused kept a person in confinement.

- (b) that the confinement was wrongful.
 (c) that a warrant, order or writ of liberation had been duly issued.
 (d) that the accused knew of the warrant, order or writ when he kept the person wrongfully confined.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is bailable and not compoundable and may be tried by a Chief Magistrate or a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :
 That you, on or about.....day of.....at.....wrongfully confined AB knowing at the time of such wrongful confinement that a warrant [or order or writ] for the liberation of the said AB had been duly issued and thereby committed an offence punishable under Section 258 of the Penal Code.

259. 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 herein before mentioned, shall be punished with imprisonment for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement in secret.

COMMENT

Pakistan Penal Code section 346.
 Sudan Penal Code section 290.

PRACTICE

1. Prove :

- (a) as for section 258 and further—
 (b) that such confinement was secret against—
 (i) any person interested in the captive; or
 (ii) a public servant; or
 (iii) discovery of the place of confinement.

2. Procedure.—As for section 258 except that the offence is compoundable with leave of the court.

260. 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 anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Wrongful confinement to extort property or constrain to illegal act.

COMMENT

Pakistan Penal Code section 347.
 Sudan Penal Code section 291.

PRACTICE

1. Prove :

- (i) Points (a) to (d) as those in section 257 and further—
 (ii) that such confinement was for the purpose of :
 (a) extorting property or a valuable security; or

- (b) constraining the doing of an illegal thing; or
 (c) giving information which might facilitate the commission of an offence.

2. Procedure.—As for section 258. The offence may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....wrongfully confined AB for the purpose of extorting from the said AB [or from a person interested in the said AB, to wit CD] a certain property [or security etc.] to witand thereby committed an offence punishable under Section 260 of the Penal Code.

261. 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, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Wrongful confinement to extort confession or compel restoration of property.

COMMENT

Pakistan Penal Code section 348.
 Sudan Penal Code section 291.

PRACTICE

1. Prove :

- (i) Points (a) to (d) as those for section 257 and further—
 (ii) that such confinement was for the purpose—
 (a) of extorting a confession or some information, etc. or
 (b) of constraining the restoration of some property or valuable security, etc.

2. Procedure.—As for section 260.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about.....day of.....at.....wrongfully confined one AB for the purpose of extorting from the said AB [or from one CD in whom the said AB was interested] 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 to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security] and thereby committed an offence punishable under Section 261 of the Penal Code.

Criminal Force and Assault

262. 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 where the person causing any effect above-mentioned, 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 part 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 his pace. A has caused changed 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 Z, a woman;

(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.

In all the above cases, A has used force to Z.

COMMENT

Pakistan Penal Code section 350.

Sudan Penal Code section 293.

The term "force" contemplates the use of force to a person and not to a thing.

263. Whoever intentionally uses force to any person without that person's consent—

(a) while preparing to commit any offence; or

(b) in the course of committing any offence; or

(c) 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.

COMMENT

Pakistan Penal Code section 350.

Sudan Penal Code section 294.

(1) The term "criminal force" includes what in English Law is called battery.

(2) The use of force must be intentional.

(3) See section 39 as to the meaning of "consent".

264. 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 he who makes that gesture or preparation 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 the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or 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 untie the lead 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 Z. 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.

COMMENT

Pakistan Penal Code section 351.

Sudan Penal Code section 295.

In a case where there is no actual personal violence, the threat is an assault only if it is shown that there exists the means of carrying the threat into effect. An idle threat is not an assault; see the explanation to the section.

265. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished—

(a) with imprisonment for a term which may extend to one year or with fine or with both; and

(b) if grievous hurt is caused to any person by such assault or criminal force with imprisonment which may extend to three years or with fine or with both.

266. Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to twenty pounds or with both.

COMMENT

Pakistan Penal Code section 352.

Sudan Penal Code sections 296 and 297.

See section 38 for "provocation" and also Comment to subsection (1) of section 222 for "grave and sudden provocation".

PRACTICE

1. Prove :

(a) that the accused made a gesture or preparation to use criminal force.

(b) that the same was committed in the presence of the complainant.

(c) that he intended or knew that it was likely that such assault, etc., would cause the complainant to apprehend that criminal force would be used.

(d) that such assault, etc. caused the complainant to apprehend that criminal force would be used.

(e) that the accused received no grave or sudden provocation from the complainant.

Note.—To substantiate a charge of assault on a particular person it is not enough to prove that the words used or the preparation made by the accused were calculated to cause that person to apprehend that criminal force would be used if he proceeded in a certain course of conduct; there must be evidence to show that the accused was about to use criminal force to the complainant then and there.

or prove :

- (a) that the accused used force to the complainant.
- (b) that he did so intentionally.
- (c) that he used such force without the complainant's consent.
- (d) that he did so in order to commit an offence or that he thereby intended to cause or knew that he would thereby be likely to cause injury, fear or annoyance to the complainant.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is bailable and compoundable and may be tried by any court.

267. 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 shall be punished with imprisonment for a term which may extend to three years or with fine or with both,

Assault or criminal force to deter public servant from discharge of his duty.

COMMENT

Pakistan Penal Code section 353.
Sudan Penal Code section 298.

The public servant must be acting in the execution of his duty as a public servant. He must be lawfully discharging a duty imposed upon him by law.¹ In India, this section was strictly interpreted and did not cover an act done in good faith under cover of his office by a public servant.

PRACTICE

1. Prove :

- (a) that the person assaulted etc. was a public servant.
- (b) that the accused assaulted or used criminal force to the public servant.
- (c) that when the accused assaulted, etc., him the public servant was acting in the execution of his duty as a public servant ; or that the assault, etc., was committed with the intent to prevent or deter such public servant from discharging his duty as such ; or that the assault was committed in consequence of something done or attempted to be done by a public servant in the lawful discharge of his duty.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is bailable but not compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., assaulted [or used criminal force to] AB, a public servant, to wit....., in the execution of his duty as such public servant [or with intent to prevent or deter the said AB from discharging his duty as such public servant ; or in consequence of something done or attempted to be done by the said AB in the lawful discharge of his duty], and thereby committed an offence punishable under section 267 of the Penal Code.

268. 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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both,

Assault or criminal force to woman with intent to outrage modesty.

¹ Sarkin Kinkiba v. Zaria Native Authority. 1962 N.N.L.R. 53.

COMMENT

Pakistan Penal Code Section 354.
Sudan Penal Code Section 299.

(1) An indecent assault upon a woman is punishable under this section. The offence under this section is less serious than the offence of rape under section 282.

(2) Woman means a female human being of any age (section 4).

PRACTICE

1. Prove :

- (a) that the person assaulted, etc., was a female.
- (b) that the accused assaulted or used criminal force to her.
- (c) that he intended thereby to outrage her modesty ; or that he knew it to be likely that he would thereby outrage her modesty.

Note.—A charge under this section is one very easily made and very difficult to rebut and when such a charge is made it is necessary for a court to see that it supported by independent evidence besides that of the woman herself or corroborated by her conduct and the surrounding circumstances of the case.

2. Procedure.—As for section 267.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., assaulted [or used criminal force to] AB, a woman, intending to outrage or knowing it to be likely that you would thereby outrage] the modesty of the said AB by such assault [or criminal force], and thereby committed an offence punishable under Section 268 of the Penal Code.

269. 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, shall be punished with imprisonment for a term which may extend to three years or with fine or with both,

Assault or criminal force in attempt to commit theft of property carried by a person.

COMMENT

Pakistan Penal Code section 356.
Sudan Penal Code section 300.

This section applies only to cases where there has been an attempt to commit theft and not to cases in which the theft has actual been committed.

PRACTICE

1. Prove :

- (a) the assault or use of criminal force by the accused.
- (b) that the person assaulted, etc., at the time was wearing or carrying the property in question.
- (c) that the accused committed the assault, etc., in attempting to commit the theft of the property in question.

2. Procedure.—As for section 267.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., [or used criminal force] to AB in attempting to commit theft of certain property, to wit....., which the said AB was then wearing [or carrying] and thereby committed an offence punishable under Section 269 of the Penal Code.

270. Whoever assaults or uses criminal force to any person in attempting wrongfully to confine that person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both,

Assault or criminal force in attempt wrongfully to confine a person.

COMMENT

Pakistan Penal Code section 357.
Sudan Penal Code section 301.

PRACTICE

1. Prove :

- (a) the assault or use of criminal force by the accused.
(b) that he did so in an attempt wrongfully to confine the person assaulted, etc.

2. Procedure.—As for section 267.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at assaulted [or used criminal force to] AB in attempting wrongfully to confine the said AB, and thereby committed an offence punishable under Section 270 of the Penal Code.

Kidnapping, Abduction and Forced Labour

271. Whoever takes or entices any person, under fourteen years of age if a male or under sixteen years of age if a female, or any person of unsound mind out of the keeping of the lawful guardian of such person without the consent of such guardian or conveys any such person beyond the limits of the Northern Region without the consent of someone legally authorised to consent to such removal, is said to kidnap such person,

Kidnapping defined.

Explanation.—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such person and authorised to consent to the taking.

COMMENT

Pakistan Penal Code section 361.
Sudan Penal Code section 302.

- (1) Kidnapping is an offence irrespective of any intent with which it is committed.
(2) The offence may only be committed in respect of either a minor or a person of unsound mind. To kidnap a grown-up person is not an offence under this section.
(3) The consent of a minor is immaterial.

272. Whoever by force compels or by any deceitful means induces any person to go from any place, is said to abduct that person.

Abduction defined.

COMMENT

Pakistan Penal Code section 362.
Sudan Penal Code section 303.

- (1) This section requires two essentials :
(a) forceable compulsion or inducement by deceitful means;
(b) the object of such compulsion or inducement must be the going of a person from any place.

(2) Where no force or deceit is practised on the person abducted, a conviction cannot stand under this section.

“Abduction” differs from “kidnapping from guardianship”.

“Kidnapping from guardianship” is committed only in respect of a minor or person of unsound mind; “abduction” in respect of any person. In “kidnapping” the person kidnapped is removed out of lawful guardianship; in “abduction” this is not necessary. In “kidnapping” a minor or a person of unsound mind is simply taken away or enticed to go; in “abduction” force, compulsion or deceitful means are used. In “kidnapping” consent of the person enticed is immaterial. In “abduction” consent of the person moved condones the offence.

273. Whoever kidnaps or abducts any person shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Punishment for kidnapping.

COMMENT

Pakistan Penal Code section 363.
Sudan Penal Code section 304.

PRACTICE

1. Prove (for kidnapping) :

- (a) that the person in question was at the time of the offence a minor under fourteen years of age (if a male) or under sixteen years of age (if a female); or that such person was of unsound mind.
(b) that the minor or person of unsound mind was, at the time, lawfully entrusted to the keeping of a guardian.
(c) that the accused took or enticed the minor or person of unsound mind out of the keeping of the guardian.
(d) that he so took or enticed, etc., without the consent of the guardian.

and prove (for abduction) :

- (i) that the accused used force on a person; and
(ii) that such person was thereby compelled to go from a place; or
(iii) that the accused induced a person to go from a place; and
(iv) that he did so by deceitful means.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is bailable and not compoundable, and may be tried by a magistrate of the first grade or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of at kidnapped AB [a minor under years of age or a person of unsound mind] from the lawful guardianship of CD and thereby committed an offence punishable under Section 273 of the Penal Code.

274. Whoever kidnaps or abducts any person in order that such person may be killed or may be so disposed of as to be put in danger of being killed, shall be punished with imprisonment for a term which may extend to fourteen years and shall be also liable to fine,

Kidnapping or abducting in order to commit culpable homicide.

COMMENT

Pakistan Penal Code section 364.
Sudan Penal Code section 305.

This section is wider than the Pakistan and Sudan equivalents in that the kidnapping or abduction must be in order to commit a culpable homicide (cf. the Sudan and Pakistan Penal Codes where an intent to commit murder is required).

PRACTICE

1. Prove :

- (a) the kidnapping by the accused,
 (b) that the accused so kidnapped the person in question in order :
 (i) that such person might be killed ; or
 (ii) that such person might be so disposed of as to be put in danger of being killed.

or prove in a case of abduction :

- (a) that the accused compelled the person to go from the place in question,
 (b) that he so compelled that person by means of force ; or that he induced the person to do so by deceitful means.
 (c) that he so abducted the person in question in order that :
 (i) the person might be killed ; or
 (ii) such person might be so disposed of as to be put in danger or being killed.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not bailable and not compoundable and may be tried in the High Court or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows:
 That you, on or about the day of at kidnapped [or abducted] AB in order that the said AB might be killed [or might be so disposed of as to be put in danger of being killed] and thereby committed an offence punishable under Section 274 of the Penal Code.

275. Whoever, by any means whatsoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

Procurator of
 minor girl.

COMMENT

Pakistan Penal Code section 366A.

1. This section and section 276 are taken from the Pakistan Penal Code : in India, these sections were added to the Penal Code to give effect to certain articles of an International Convention for the Suppression of Traffic in Women and Children signed in Paris in 1910.

2. In the case of *Ellison Ibo v. Zaria N.A.*,¹ the High Court held that a conviction under this section was wrong where a girl was procured for the purpose of sexual intercourse with the procurer.

PRACTICE

1. Prove :

- (a) that the accused enticed a girl.
 (b) that the girl was under 18 years of age.
 (c) that the girl was enticed to go from a place or to do an act.
 (d) that the accused did as above with intent that the girl might be, or knowing it is likely that she would be forced or seduced to illicit intercourse with another person.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a Chief Magistrate or by a native court of grade A Limited or above.

3. Charge.— I [] hereby charge you [] as follows:
 That you, on or about the day of at induced AB a girl of under eighteen years of age to go from (specify the name of the place) [or to do the following act, to wit] with intent that the said AB may be [or knowing that it is likely that the said AB may be] forced [or seduced] to illicit intercourse with (name the person) and thereby committed an offence punishable under Section 275 of the Penal Code.

1. *Ellison Ibo V Zaria N.A.* (1962 N.N.C.N. 30)

276. Whoever imports into the Northern Region from any country outside Nigeria any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

Importation of
 girl from foreign
 country.

COMMENT

Pakistan Penal Code section 366B.

PRACTICE

1. Prove :

- (a) that the accused imported a girl into the Northern Region.
 (b) that the girl was imported from any country outside the Federation of Nigeria.
 (c) that the girl was under the age of 21 years.
 (d) that the accused imported the girl with intent that she might be or knowing it to be likely that she would be forced or seduced to illicit intercourse with some person.

2. Procedure.—As for section 275.

3. Charge.—I [] hereby charge you [] as follows :
 That you, on or about the day of at imported into the Northern Region from (specify the name of the country) a country outside the Federation of Nigeria, AB, a girl under the age of twenty-one years, with intent that she might be [or knowing it to be likely that she will be] forced [or seduced] to illicit intercourse with another person, to wit and thereby committed an offence punishable under Section 276 of the Penal Code.

277. Whoever knowing that any person has been kidnapped or has been abducted wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person.

Concealing or
 keeping in confine-
 ment kidnapped or
 abducted person.

COMMENT

Pakistan Penal Code section 368.

Sudan Penal Code section 309.

This section punishes the subsequent abetment of kidnapping or abduction.

PRACTICE

1. Prove :

- (a) that the person in question has been kidnapped or abducted.
 (b) that the accused knew of the kidnapping or abduction.
 (c) that he having such knowledge wrongfully concealed or kept the person kidnapped or abducted in confinement.

Note.—Prove also the intention or knowledge with which the accused concealed or kept the person in confinement or prove the purpose for which he did so.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may be tried by a court of such grade as that by which the kidnapping or abduction could be tried.

278. Whoever buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person under the age of eighteen years with intent that such person shall be employed or used for the purpose of prostitution or for any unlawful or immoral purposes or knowing it to be likely that such minor will be employed or used for any such purpose, shall be

Buying or selling
 minor for immoral
 purpose.

punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

COMMENT

Pakistan Penal Code sections 372 and 373.

Sudan Penal Code section 310.

- (1) The section applies equally to either males or females.
- (2) The section applies to either married or unmarried girls.
- (3) It is necessary to prove that the accused intended that the person shall be employed for an immoral purpose. The mere possibility that a person may be so used is not sufficient.
- (4) The section as drafted punishes all parties to such a transaction, e.g., both the buyer and the seller.

PRACTICE

1. Prove :

- (a) that the person in question was under eighteen years of age at the time of the offence.
- (b) that the accused bought, sold, let to hire or otherwise disposed of the person.
- (c) that he did so with the intent that the person should be employed or used at any age for the purpose of prostitution or for illicit intercourse with any person or for any unlawful or immoral purpose or with knowledge that it was likely that the person would be so employed or used.

2. Procedure.—As for section 275.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., sold [or to hire, or disposed of] a person under the age of eighteen years, to wit....., with intent that such person should at any age be employed or used for the purpose of prostitution [or for illicit intercourse with a person, to wit....., or for any unlawful and immoral purpose, viz. (state the purpose) or knowing it to be likely that such minor would be employed or used for any such purpose], and thereby committed an offence punishable under Section 372 of the Penal Code.

279. Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Buying or disposing of slave.

COMMENT

Pakistan Penal Code sections 370 and 371.

This section punishes trafficking in slaves and also the detention of a person as a slave against his will.

PRACTICE

1. Prove :

- (a) that the accused imported, etc., the person in question as a slave or that the accused accepted, received or detained the person in question as a slave.
- (b) that he did so against the will of that person.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may be tried by the High Court or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of..... at..... imported [or exported or removed, etc.] a person, to wit....., as a slave, [or accepted

received, or detained against his will a person, to wit....., as a slave] and thereby committed an offence punishable under Section 279 of the Penal Code.

280. Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

Unlawful compulsory labour.

COMMENT

Pakistan Penal Code section 374.

Sudan Penal Code section 311.

This section punishes the exacting of unlawful compulsory labour. For the law on compulsory labour see Chapter VI of the Labour Code (Cap. 90). Section III of the Labour Code provides for a maximum penalty of a fine of £500 or imprisonment for two years or both for an offence similar to that prescribed in this section.

PRACTICE

1. Prove :

- (a) that the accused compelled the person in question to labour.
- (b) that such compulsion was unlawful.
- (c) that the accused did so against the will of that person.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is bailable and compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., unlawfully compelled AB to labour against his will, and thereby committed an offence punishable under Section 280 of the Penal Code.

281. Whoever, in order to gratify the passions of another person, procures, entices or leads away, even with her consent, any woman or girl for immoral purpose shall be punished with imprisonment which may extend to seven years and shall also be liable to fine.

Traffic in women.

COMMENT

Sudan Penal Code section 315A.

- (1) This section is an extension of section 275 and punishes pimping. The woman may be of any age. Her consent is immaterial.
- (2) The specific intent of the accused must be proved. Mere knowledge is not sufficient.

PRACTICE

1. Prove :

- (a) that the accused procured, enticed or led away a woman.
- (b) that he did so in order to gratify the passions of another person.
- (c) that the woman was procured, etc, for immoral purposes.

2. Procedure.—As for section 278.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of..... at..... in order to gratify the passions of AB procured [or enticed or led away] a woman XY for immoral purposes and thereby committed an offence under Section 281 of the Penal Code.

Rape and Unnatural and Indecent Offences against the Person

- 282.** (1) A man is said to commit rape who, save in the case referred to in subsection (2), has sexual intercourse with a woman in any of the following circumstances—
- Rape defined.
- against her will;
 - without her consent;
 - with her consent, when her consent has been obtained by putting her in fear of death or of hurt.
 - with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 - with or without her consent, when she is under fourteen years of age or of unsound mind.
- (2) Sexual intercourse by a man with his own wife is not rape, if she has attained to puberty.

Explanation.—Mere penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

- 283.** Whoever commits rape, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.
- Punishment for rape.

COMMENT

Pakistan Penal Code sections 375 and 376.
Sudan Penal Code sections 316 and 317.

- In the definition of rape, the first paragraph operates where the woman is in possession of her senses and therefore capable of consenting; the second, where she is insensible or so imbecile that she is incapable of consenting; the third and fourth where there is consent but it is not such consent as to excuse the offender because in the one case it is extorted and in the other it is obtained by deception; and the fifth, where the intercourse is with a girl so young that consent is immaterial.
- In India, the presumption of English law against the possibility of the offence of rape being committed by a boy under the age of fourteen years has no application.
- See section 39 for invalid consents.
- Evidence of penetration is necessary to prove rape. Where a doctor reported a small rupture and did not specify what part of the girl's body was ruptured, the High Court refused to accept the statement as sufficient evidence of penetration of the vagina.

PRACTICE

1. Prove :

- that the accused had sexual intercourse with the woman in question.
- that the act was done in circumstances falling under any one of the five paragraphs in section 282 (1).
- that the woman was not the wife of the accused; or if she was his wife that she had not attained puberty.
- that there was penetration.

2. Note.—It is a well-established practice in England and in India that in cases of rape, the evidence of the complainant should be corroborated; no law says that corroboration is necessary but a court should always bear in mind the advisability of not convicting without corroboration of the evidence of the woman raped.

1. 1962 N.N.C.N. 30. Ellison Ibo v. Zaria Native Authority.

3. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and is not compoundable and may be tried in the High Court or a native court of grade A Limited or above.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed rape on AB and thereby committed an offence punishable under Section 283 of the Penal Code.

284. Whoever has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Unnatural offences.

Explanation.—Mere penetration is sufficient to constitute the carnal intercourse necessary to offence described in this section.

COMMENT

Pakistan Penal Code section 377.
Sudan Penal Code section 318.

PRACTICE

1. Prove :

- that the accused had carnal intercourse with a man, woman or animal.
- that such intercourse was against the order of nature.
- that the accused did the act voluntarily.
- that there was penetration.

Note.—It is unsafe to convict on the uncorroborated testimony of the person on whom the offence is said to have been committed unless for any reason that testimony is entitled to special weight. A charge of an attempt to commit sodomy is very easily brought and very difficult to refute and the evidence in support of such a charge has to be very convincing in order to convict the accused.

2. Procedure.—As for section 283.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., had carnal intercourse against the order of nature with a certain man [or woman], to wit..... [or with an animal, to wit (*specify the kind of animal*)], and thereby committed an offence punishable under section 284 of the Penal Code.

285. Whoever commits an act of gross indecency upon the person of another without his consent or by the use of force or threats compels a person to join with him in the commission of such act, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine:

Provided that a consent given by a person below the age of sixteen years to such an act when done by his teacher, guardian or any person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section.

COMMENT

Sudan Penal Code section 319.

- This section is an extension of section 268 which is limited to assault on women.
- Proof of consent on the part of the person the subject of the grossly indecent act is a defence.

(3) Note that the proviso to the section widens the definition of invalid consents contained in section 39. The minimum age of sixteen years is introduced to protect a person from indecent acts by schoolmasters, guardians or any person responsible for the care and education of the person the subject of the act.

(4) An act of gross indecency punishable under this section must be distinguished from an unnatural offence punished under section 284. Consent is only material in a case under section 284 in order to show the guilt of both parties.

(5) What is an act of gross indecency is a question of fact to be decided by the court.

PRACTICE

1. Prove :

- (a) that the accused committed an act of gross indecency upon the person of another; and
 (b) that that other person did not consent to the act; or
 (c) that he compelled that person by the use of force or threats to join him in the commission of the grossly indecent act.

2. **Note**—If a defence of consent is raised the court must consider the proviso to the section.

3. **Procedure**.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may be tried by a Chief Magistrate or by a native court of grade A Limited or above.

4. **Charge**.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed an act of gross indecency upon the person of AB without the consent of the said AB [or by the use of force or threats compelled the said AB to join with you in the commission of the act of gross indecency] and thereby committed an offence punishable under Section 285 of the Penal Code.

CHAPTER XIX

OFFENCES AGAINST PROPERTY

Theft

286. (1) 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 take it is said to commit theft.

(2) Whoever dishonestly abstracts, diverts, consumes or uses any electricity or electric current 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 effected¹ by the same act which effects the severance may be 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 express 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 take it, he has committed theft.

(b) A puts a bait for dogs in his pocket and thus induces Z's dogs 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 a box of treasure. He drives the camel in a certain direction in order that he may dishonestly take the treasure. As soon as the camel begins to move, A has committed theft of the treasure.

(d) Z going on a journey entrusts jewellery to A till Z shall return. A carries the jewellery 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.

(e) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession and if A dishonestly removes it A commits theft.

(f) A finds a ring lying on the road not in the possession of any person. A by taking it commits no theft, though he may commit criminal misappropriation of property.

(g) A sees a ring belonging 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

1. The word "effected" substituted for "affected" by section 5 of the Penal Code (Amendment) Law, 1960, (N.R. No. 19 of 1960).

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.

(h) A delivers a jewel to Z a jeweller to be re-set. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the jewel as a security, enters the shop openly, takes his jewel by force out of Z's hand and carries 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.

(i) If A owes money to Z for re-setting the jewel and if Z retains the jewel lawfully as a security for the debt and A takes the jewel out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft inasmuch as he takes it dishonestly.

(j) A takes an article belonging to Z out of Z's possession without Z's consent with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(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 express consent with the intention of returning it after use. Here, it is probable that A may have conceived that he had Z's implied consent to use 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 authorised 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 to be such property as she has not authority from Z to give. 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.

287. Whoever commits theft shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Punishment for theft.

COMMENT

Pakistan Penal Code sections 378 and 379.

Sudan Penal Code section 320 and 321.

(1) Intention is the gist of the offence.

(2) It is not necessary that the taking should be permanent or with an intention to appropriate the thing taken.

(3) It is immaterial whether the intention of the theft was or was not to profit from the crime.

(4) If a person takes another man's property believing through a mistake of fact and in ignorance of the law that he has a right to take it, he is not guilty of theft because there was no dishonest intention.

(5) A person can be convicted of stealing his own property if he takes it dishonestly from another. See Illustration 1.

(6) See definition of movable property under section 12.

(7) No definition is given in the Code of the word "possession" but see section 20 which deals with property in the possession of a person's wife, clerk or servant.

(8) Proof that the goods stolen belong to some person is an essential ingredient of the offence of theft and it is up to the prosecution to adduce this evidence. In the case of *Audu Pankshin v. Jos N.A.* (1962 N.N.C.N. 33) the lower court wrongly accepted as evidence that property alleged to be stolen was the property of a Native Authority because the accused did not deny a statement that this was so.

PRACTICE

1. Prove :

(a) that the property in question is movable property.

(b) that the property was in the possession of a person.

(c) that the accused moved the property whilst in the possession of that person.

(d) that he did so without the consent of that person.

(e) that he did so in order to take the property out of the possession of that person;

(f) that he did so with intent to cause wrongful gain to himself or wrongful loss to that person.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed the theft of (*specify the thing*) by taking it out of the possession of AB, and thereby committed an offence punishable under Section 286 of the Penal Code.

4. Note.—The person accused of theft may be convicted of criminal misappropriation (section 309) criminal breach of trust (section 312) or cheating (section 322) and *vice versa*. See section 217 of the Criminal Procedure Code.

288. 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 railway carriage, lorry, omnibus or aircraft used for the conveyance of passengers or goods, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Theft in dwelling house, etc.

COMMENT

Pakistan Penal Code section 380.

Sudan Penal Code section 322.

The object of this section is to give greater security to property deposited in a house than to property on the person of the party whom it is stolen. Theft from a person in a dwelling house is simple theft under section 287.

PRACTICE

1. Prove :

(a) Points (a) to (f) as for section 287 and further—

(b) that such property was at the time of the theft in a building, tent or vessel.

(c) that the building, tent, or vessel was then being used as a dwelling place or for the custody of property.

or (d) above and further that the property was at the time of the theft in a railway carriage, lorry, omnibus or aircraft used for the conveyance of passengers or good.

2. Procedure.—as for section 287.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed in a building [*or tent, or vessel*] used as a human dwelling [*or for the custody of property*] the theft of (*specify the thing*), belonging to AB and thereby committed an offence punishable under Section 288 of the Penal Code.

4. Note.—Amend charge suitably for theft from railway carriage, lorry, etc.

289. 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 be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Theft by clerk or servant of property in possession of master.

COMMENT

Pakistan Penal Code section 381.

Sudan Penal Code section 323.

(1) This section provides for a severe punishment when a clerk or a servant has committed theft because such a person has greater opportunities of committing this offence ow-

ing to the confidence reposed in him by his master. Note that when the possession is with the master this section applies; when it is with the servant section 314 applies.

(2) "A clerk or servant is a person bound by a contract of service express or implied to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as a clerk or servant to transact." (Stephen's Digest of Criminal Law Article 335).

PRACTICE

1. Prove:

- (a) Points (a) to (f) as for section 287 and further—
 (b) that the accused was at the time a clerk or servant and was employed in that capacity by the person in whose possession the stolen property was.

2. Procedure.—As for section 287.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., being a servant [or clerk or employed in the capacity of a clerk or servant] of AB, committed theft by stealing property, to wit....., in the possession of the said AB, and thereby committed an offence punishable under Section 289 of the Penal Code.

290. 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 commit such theft or in order to effect his escape after the committing of such theft or in order to retain property taken by such theft, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Theft after preparing to cause death, hurt or restraint in order to commit theft.

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 Z 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.

COMMENT

Pakistan Penal Code section 382.

Sudan Penal Code section 324.

1. Mere possession by a thief of a knife, etc., would not of itself justify invoking this section. There must be some evidence that the accused made preparation for causing one or more of the results mentioned.

2. If hurt is actually caused when a theft is committed, the offence is punishable under section 298 as robbery. In robbery there is always injury: in this section the requirement is that preparation is made to cause injury.

PRACTICE

1. Prove.—Points (a) to (f) as in section 286; and further—(g) that the accused, when committing the theft, made preparation to cause death, hurt, or restraint, or fear of death, hurt or restraint.

(h) that he did as above in order (i) to commit the theft; or (ii) to effect his escape after committing the theft; or (iii) to retain property taken by the theft.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a Chief Magistrate or a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., committed the theft of....., the property of AB, after having made preparation for causing death [or hurt or restraint] by (Specify the mode of preparation made) in order to commit the said theft and that you thereby committed an offence punishable under Section 290 of the Penal Code.

Extortion

291. 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 signed or sealed which may be converted into a valuable security, commits extortion.

Extortion defined

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 will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send men to pull up Z's crops unless Z will sign and deliver 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.

(e) A, not pretending to be a judicial officer, usurps the functions of a court by unlawfully using his position in the community to force Z to pay a fine to him under threat of injury. A has committed extortion.

292. Whoever commits extortion shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Punishment for extortion.

COMMENT

Pakistan Penal Code sections 383 and 384.

Sudan Penal Code sections 325 and 326.

(1) The essential difference between theft and extortion is that in extortion property is obtained with the consent of the person suffering the loss; albeit that the consent was forced.

(2) Immovable property may be the subject of extortion.

(3) See section 31 for a definition of the word "injury". The effect of injury required in this section must be to a person and not merely to property.

PRACTICE

1. Prove :

- (a) that the accused put the complainant in fear of some injury.
 (b) that the injury was either to the complainant or to some other person.
 (c) that the accused acted intentionally.
 (d) that the accused thereby induced the person to deliver to some person some property or valuable security or something signed or sealed which was convertible into a valuable security.
 (e) that the accused acted dishonestly.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of, at, committed extortion by putting AB in fear of a certain injury, to wit, and thereby dishonestly induced the said AB to deliver to you a certain property, to wit, and that you thereby committed an offence punishable under Section 292 of the Penal Code.

293. Whoever in order to commit extortion puts any person in fear or attempts to put any person in fear of any injury to that person or to any other, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Putting person in fear of injury in order to commit extortion.

COMMENT

Pakistan Penal Code section 385.

Sudan Penal Code section 327.

In this section the offence of extortion as defined in section 291 is incomplete because there has been no delivery of property.

PRACTICE

1. Prove :

- (a) that the accused put the complainant in fear or attempted to put him in fear.
(b) that the fear was regarding some injury.
(c) that the accused did so intending to commit extortion.

2. Procedure.—As for section 292.

294. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Extortion by putting a person in fear of death or grievous hurt.

COMMENT

Pakistan Penal Code section 386.

Sudan Penal Code section 328.

PRACTICE

1. Prove :

The same points as those required for section 292 but prove in point (a) that the fear was of death or grievous hurt.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried in the High Court or by a native court of grade A Limited or above.

295. 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 may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Extortion by threat of accusation of an offence punishable with death.

COMMENT

Pakistan Penal Code section 388.

Sudan Penal Code section 331.

It is immaterial whether the person against whom the accusation is threatened is innocent or guilty if the accused intended to extort property.

PRACTICE

1. Prove :

The same points as those required for section 292 showing that the fear was occasioned by a threat of an accusation of having committed or having attempted to commit or having induced someone else to commit an offence punishable with death or with imprisonment for a term which may extend to ten years.

2. Procedure.—As for section 294.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the day of, at committed extortion by putting AB in fear of an accusation against him [or, against.....] of having committed [or attempted to commit] an offence punishable with death [or with imprisonment for a term which may extend to ten years] to wit, the offence of (*specify the name of the offence*), and thereby dishonestly induced the said AB to deliver to you (*mention the thing or property*) ; and that you thereby committed an offence punishable under Section 295 of the Penal Code.

Robbery and Brigandage

Robbery defined **296.** (1) In all robbery there is either theft or extortion.

(2) Theft is robbery if, in order to commit 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.

(3) Extortion is robbery, if the offender at the time of committing the extortion is in the presence of the person put in fear and commits the extortion by putting that person 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 commit that theft has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the road, shows a pistol and demands Z's purse. 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. Z in consequence 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 fifty pounds." 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.

COMMENT

Pakistan Penal Code section 390.

Sudan Penal Code section 332.

(1) Robbery is a special and aggravated form of theft or extortion. The distinguishing element of robbery is the presence of either an act of violence or an imminent fear of violence in the committing of the theft or extortion.

(2) For definitions of "hurt" and "wrongful restraint" see sections 240 and 256.

297. 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.

Brigandage defined.

COMMENT

Pakistan Penal Code section 391.

Sudan Penal Code section 333.

Brigandage is robbery committed by five or more persons. Abettors who are present and aiding when the crime is committed are counted in that number.

Punishment for robbery. **298.** Whoever commits robbery shall be punished—

- (a) with imprisonment for a term which may extend to ten years and shall also be liable to fine; and
- (b) if the robbery is committed—
 - (i) between sunset and sunrise on the highway; or
 - (ii) between sunset and sunrise from a person sleeping or having lain down to sleep in the open air, with imprisonment for a term which may extend to fourteen years and shall also be liable to fine; and
- (c) if the robbery is committed by any person armed with any dangerous or offensive weapon or instrument to imprisonment for life or any less term and shall also be liable to fine.

COMMENT

Pakistan Penal Code sections 392 and 398.

Sudan Penal Code section 334.

This section follows the Sudan Penal Code in providing a more severe punishment in paragraph (b) of the section for robbery committed between sunset and sunrise from a person sleeping in the open air.

PRACTICE

1. Prove :

- (a) that the accused committed theft. (See section 287 for the points to be proved.)
- (b) that he caused or attempted to cause to some person :
 - (i) death, hurt or wrongful restraint; or
 - (ii) fear of instant death or instant hurt or instant wrongful restraint.
- (c) that he did as above :
 - (i) in committing theft; or
 - (ii) in order to commit theft; or
 - (iii) in carrying away or attempting to carry away the property obtained by that theft;

- (d) that he acted as in (b) above voluntarily.
- or prove :
- (a) that the accused committed extortion. (See section 292 for the points to be proved).
 - (b) that he was at the time of committing it in the presence of the person so put in fear; and
 - (c) that he committed it by putting that person or some other person in fear of instant death or of instant hurt or of instant wrongful restraint.
 - (d) that he thereby induced the person to deliver up then and there the thing extorted.

2. Procedure.—No warrant is required for an arrest. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. Note.—If the offence is committed on the highway or from a person sleeping in the open air between sunset and sunrise such facts must be proved and a more severe penalty is provided in such cases under paragraph (b) of section 298. Similarly if the robbery is committed by any person armed with any dangerous or offensive weapon, etc., a more severe penalty is provided by paragraph (c).

4. Note.—A sentence of imprisonment must be passed on a conviction under this section.

5. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., robbed (state the name), and thereby committed an offence punishable under Section 298 of the Penal Code.

299. Whoever attempts to commit robbery shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Punishment for attempted robbery.

COMMENT

Pakistan Penal Code section 393.

Sudan Penal Code section 335.

PRACTICE

1. Prove :

that the accused attempted to commit robbery. Note for the points required to be proved for robbery see section 298. For what constitutes an attempt see section 95.

2. Procedure.—As for section 298.

3. Note.—A sentence of imprisonment must be passed in the case of a conviction under this section.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., did an act, to wit....., and which amounted to an attempt to rob AB, and thereby committed an offence punishable under Section 299 of the Penal Code.

COMMENT

300. 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 be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Voluntarily causing hurt in committing robbery.

Pakistan Penal Code section 394.

Sudan Penal Code section 336.

This section is by way of a widening of section 298, providing a more severe punishment for robbery when hurt has been caused.

PRACTICE

1. Prove :

- (a) that the accused or someone jointly concerned with him committed or attempted to commit robbery (see sections 298 and 299).
 (b) that the accused or some other person voluntarily caused hurt in doing so.

2. Procedure.—As for section 298.

3. Note.—A sentence of imprisonment must be passed in the case of a conviction under this section.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed, [(or attempted to commit) (or were jointly with XY concerned in committing or attempting to commit)] robbery of the property of AB, and that as such you [or XY] voluntarily caused hurt to AB [or.....], and that you thereby committed an offence punishable under Section 300 of the Penal Code.

301. Whoever commits brigandage shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Brigandage.

COMMENT

Pakistan Penal Code section 395.
 Sudan Penal Code section 337.
 See section 297.

PRACTICE

1. Prove :

- (a) that robbery was committed or attempted (see sections 298 and 299).
 (b) that five or more persons committed or attempted to commit robbery.
 (c) that such persons were acting conjointly.

2. Procedure.—As for section 298 except that the case may only be tried in the High Court or by a native court of grade A Limited or above.

3. Note.—A sentence of imprisonment must be passed in the event of a conviction under this section.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., committed brigandage, an offence punishable under Section 301 of the Penal Code.

302. If any one of five or more persons, who are conjointly committing brigandage, commits culpable homicide punishable with death in so committing brigandage, every one of these persons shall be punished with death.

Brigandage with culpable homicide.

COMMENT

Pakistan Penal Code section 396
 Sudan Penal Code section 338.

(1) This section provides that a death sentence shall be passed upon a person taking part in brigandage in the course of which someone is killed in circumstances amounting to the offence of culpable homicide punishable with death even though there is nothing to show that he himself committed the killing or that he abetted it.

(2) The first essential of this offence is that the brigandage is the joint act of the persons concerned: the second is that the killing took place in the course of committing the brigandage.

PRACTICE

1. Prove :

- (a) that an act of brigandage has been committed.
 (b) that one of the accused committed the offence of culpable homicide punishable with death.
 (c) that culpable homicide was committed during the course of committing brigandage.

2. Procedure.—As for section 298 except that the offence may only be tried in the High Court or a native court of grade A, and that bail may not be granted.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., committed brigandage, and that, in the commission of such brigandage, the offence of culpable homicide punishable with death was committed by one of your number, and that you thereby committed an offence punishable under Section 302 of the Penal Code.

303. 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, the imprisonment with which such offender shall be punished shall not be less than seven years.

Robbery or brigandage with attempt to cause death or grievous hurt.

COMMENT

Pakistan Penal Code section 397.
 Sudan Penal Code section 339.

(1) In India, a wide interpretation is put upon the words "uses any deadly weapon" and the section covers the case of a person who displays the deadly weapon to frighten his victims or their neighbours or who makes use of any deadly weapon for similar purposes. The operation of the section in India is not confined to cases where the weapon was actually used for causing injury or attempting to cause injury.

(2) For "grievous hurt" see section 241.

PRACTICE

1. Prove :

- (a) the commission of robbery or brigandage.
 (b) that the accused used a deadly weapon; or caused grievous hurt or attempted to cause death or grievous hurt.
 (c) that the above acts were done in the course of committing robbery or brigandage.

2. Procedure.—As for section 301.

3. Note.—A sentence of not less than seven years imprisonment must be passed for an offence under this section. The charge should be for the substantive offence of robbery or brigandage and the following clause should be added:

"and that at the time of committing the said robbery [or brigandage] you used a deadly weapon to wit (*mention the deadly weapon*) [or caused grievous hurt to AB, or attempted to cause death or grievous hurt to AB] and thereby committed an offence under Section 303 of the Penal Code."

304. Whoever makes any preparation for committing brigandage, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Making preparation to commit brigandage.

COMMENT

Pakistan Penal Code section 399.

Sudan Penal Code section 340.

(1) This is the only section in the Code which punishes preparation to commit an offence. It is ordinarily not an offence to make preparation for committing a crime until the stage of preparation is passed and that of an attempt has been reached.

(2) The first essential to prove preparation is that the prosecution must show that there were persons who had conceived a plan to commit brigandage. Once the conspiracy is proved then any subsequent step taken with the intent of carrying out the brigandage will amount to preparation.

PRACTICE

1. Prove :

(a) that the act of the accused amounted to preparation.

(b) that it was a preparation to commit brigandage.

2. Procedure.—As for section 304.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., made preparation, to wit....., for committing brigandage, and thereby committed an offence punishable under Section 303 of the Penal Code.

305. Whoever belongs to a gang of persons associated for the purpose of habitually committing brigandage, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Belonging to gang of brigands.

COMMENT

Pakistan Penal Code section 400.

Sudan Penal Code section 341.

(1) It is sufficient for a conviction under this section to establish that the accused belongs to a gang whose business is the habitual committing of brigandage. It is not necessary to prove that the accused belonging to the gang actually took part in any act of brigandage.

The word "belongs" implies more than a casual association. The association must be for a sufficiently long time to justify the court in inferring that the accused has identified himself with the gang to the extent that he knows that the purpose of the gang is habitually to commit brigandage.

(2) Once it is proved that a gang has been formed for the purpose of habitually committing brigandage, all persons who thereafter join the gang in committing an act of brigandage are caught by this section.

PRACTICE

1. Prove :

(a) that the accused belongs to the gang in question.

(b) that members of the gang were associated for the purpose of habitually committing brigandage.

2. Procedure.—As for section 302.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....belonged to a gang of persons associated for the purpose of habitually committing brigandage, and thereby committed an offence punishable under Section 305 of the Penal Code.

4. Note.—Among the points to be considered by a court in passing sentence upon an accused convicted under this section are the following :

(a) how long has the accused belonged to the gang ?

- (b) what cases of brigandage have been committed by the gang since the accused joined it ?
- (c) in how many of the cases did the accused actually take part ?
- (d) what was the character of the case, e.g., was it accompanied with culpable homicide, grievous hurt, etc. ?

306. Whoever belongs to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery and not being a gang of brigands, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Belonging to gang of thieves.

COMMENT

Pakistan Penal Code section 400.

Sudan Penal Code section 342.

(1) This section is an extension of section 305 and similar considerations apply.

(2) The minimum number of five persons required for brigandage does not apply to a gang of thieves.

PRACTICE

1. Prove :

(a) that there exists a gang of thieves.

(b) that those persons were associated for the purpose of committing theft or robbery.

(c) that theft or robbery was to be committed habitually.

(d) that the accused was a member of the gang.

2. Procedure. As for section 298.

3. Note that a sentence of imprisonment must be passed for a conviction under this section.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., belonged to a [wandering] gang of persons associated for the purpose of habitually committing theft [or robbery], and that you thereby committed an offence punishable under Section 306 of the Penal Code.

307. Whoever is one of five or more persons assembled for the purpose of committing brigandage, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Assembling for purpose of committing brigandage.

COMMENT

Pakistan Penal Code section 402.

Sudan Penal Code section 343.

(1) This section applies to mere assembly without proof of other preparation. Where there is evidence of further preparation it is more suitable to proceed under section 304.

(2) Note that the assembly of five or more persons referred to in this section is also an unlawful assembly under section 100.

PRACTICE

1. Prove :

(a) that five or more persons were assembled.

(b) that they were assembled for the purpose of committing brigandage.

(c) that the accused was one of the persons.

2. Procedure.—As for section 306.

3. A sentence of imprisonment must be passed for a conviction under this section.

4. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., were one of five [or more] persons assembled for the purpose of committing brigandage, and that you thereby committed an offence punishable under Section 307 of the Penal Code.

Criminal Misappropriation

308. Whoever dishonestly misappropriates or converts to his own use any movable property, commits criminal misappropriation.

Criminal mis-appropriation defined.

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.—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.—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 of discovering the owner or before he has used reasonable means to discover and give notice to the owner and has kept the property 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 coin on the road, not knowing to whom the coin belongs. A picks up the coin. 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.

309. Whoever commits criminal misappropriation shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Punishment for criminal misappropriation.

COMMENT

Pakistan Penal Code section 403.

Sudan Penal Code sections 344 and 345.

(1) In theft the object of the offender always is to take property which is in the possession of a person out of that person's possession and the offence is complete as soon as the offender has moved the property with the intention of taking it dishonestly. In criminal misappropriation the offender is already in possession of the property and is either lawfully in possession e.g., because he has found it; or his possession, if not strictly lawful, is not criminal e.g., if he has acquired it by mistake. Possession has therefore always been innocently come by and the offence is not complete until there has been a charge of intention or until an accused is aware of some new fact which makes his continued retention of the property wrongful and fraudulent.

(2) Note the first Explanation which punishes a temporary dishonest misappropriation.

(3) There can be no criminal misappropriation of abandoned property. Property must have an owner to render a person guilty of misappropriating it.

PRACTICE

1. Prove :

(a) that the property in question is movable property.

(b) that the accused misappropriated it or converted it to his own use.

(c) that he did so dishonestly.

2. Note.—On a charge of criminal misappropriation it is sufficient for the prosecution to establish that some of the property mentioned in the charge has been misappropriated by the accused even though it may be uncertain what is the exact amount so misappropriated.

3. When a case comes under this section, it should be ascertained whether the person accused had reasonable belief that the owner could be found by evidence of his previous acquaintance with the ownership of the particular chattel, the place where it is found, or the nature of the marks upon it.

4. Procedure.—A warrant is required for the arrest of an accused person. The offence is bailable but not compoundable and may be tried by any court.

5. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., dishonestly misappropriated [or converted to your own use] certain property,....., belonging to AB, and thereby committed an offence punishable under Section 309 of the Penal Code.

310. 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 be punished—

Criminal misappropriation of property possessed by deceased person at the time of his death.

- (a) with imprisonment for a term which may extend to three years and shall also be liable to fine; and
- (b) if the offender at the time of such person's death was employed by him as a clerk or servant, with imprisonment for a term which may extend to seven years and shall also be liable to fine.

COMMENT

Pakistan Penal Code section 404.

Sudan Penal Code section 346.

This section gives especial protection to the property of a deceased person in the period between the death and the appointment of lawful personal representatives.

PRACTICE

1. Prove :

- (a) that the property in question is movable property.
- (b) that it was in the possession of the deceased person at the time of his death.
- (c) that it was not thereafter in the possession of any person legally entitled to its possession.
- (d) that the accused misappropriated or converted it to his own use.
- (e) that he did so dishonestly.
- (f) that he knew of the circumstances mentioned in (b) and (c) above.

For a conviction under paragraph (b) of the section prove further that the accused was at the time of the owner's death employed by him as a clerk or servant.

2. Procedure.—As in section 309, except that an offence under paragraph (b) is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., dishonestly misappropriated [or converted to your own use] certain property, to wit..... knowing that such property was in the possession of AB, a deceased person, at the time of the said AB's decease, and had not since been in the possession of any person legally entitled to such possession; and that you thereby committed an offence punishable under Section 310 of the Penal Code.

Criminal Breach of Trust

311. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.

Criminal breach of trust defined.

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 storage. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A residing in Kaduna is agent for Z residing at Zaria. 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 directions 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 pay mallam 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.

312. Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both,

Punishment for criminal breach of trust.

COMMENT

Pakistan Penal Code sections 405 and 406.

Sudan Penal Code sections 347 and 348.

(1) Section 311 is a development of the offence of criminal misappropriation. The essential ingredient is that it must be shown that the misappropriation was done by a person in whom confidence had been placed as to the custody or management of the property misappropriated. Proof of a trust of some kind is always necessary. Where there is no trust a criminal misappropriation can only be punished under section 309.

(2) Breach of trust is not the same thing as breach of contract. In all the cases given in the illustrations to section 311, in which a person is said to have committed criminal breach of trust, the property misappropriated is the property of another person or property of which the offender was not the beneficial owner.

(3) It is necessary to prove the dishonest intent. All breach of trust is not necessarily a criminal offence. It may be done intentionally without being dishonest. See section 16 for the meaning of "dishonest."

(4) "Dominion over property" means in this context power or control over property.

PRACTICE

1. Prove :

- (a) that the accused was entrusted with property or with dominion over it.
- (b) that he :
 - (i) misappropriated it; or
 - (ii) converted it to his own use.
 - (iii) used it: or
 - (iv) disposed of it.

- (c) that he did so in violation of :
 (i) any direction of law prescribing the mode in which such trust was to be discharged; or
 (ii) any legal contract expressed or implied which he had made concerning the trust; or
 (iii) that he intentionally allowed some other persons to do as above.
 (d) that he acted as in (b) dishonestly.

2. Procedure.—As in section 310, except that the offence is not normally bailable.

3 Charge.—I [] hereby charge you [] as follows :
 That you, on or about the.....day of....., at....., being entrusted with certain property, to wit....., committed criminal breach of trust; and that you thereby committed an offence punishable under Section 312 of the Penal Code.

313. Whoever, being entrusted with property as a carrier, wharfinger or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Criminal breach of trust by carrier, etc.

COMMENT

Pakistan Penal Code section 407.
 Sudan Penal Code section 349.

(1) A carrier is a person who undertakes the transport of goods which are the property of other persons from one place to another for hire.

(2) A wharfinger is a person who keeps a wharf on which goods are laid for the purpose of shipment or for loading from ships.

(3) A warehouse keeper is a person who keeps a store, etc., in which to house or deposit goods.

PRACTICE

1. Prove :

- (a) that the accused is a carrier, wharfinger or warehouse keeper.
 (b) that in such a capacity he was entrusted with the property in question.
 (c) that he committed criminal breach of trust in respect of it (see section 312).

2. Procedure.—As for section 309, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :
 That you, on or about the.....day of....., at....., being entrusted with the carriage of a property, to wit....., as a carrier [or wharfinger, or warehouse-keeper] committed criminal breach of trust in respect of such property; you thereby committed an offence punishable under Section 313 of the Penal Code.

314. Whoever, being a clerk or servant or employed as a clerk or servant 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 be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Criminal breach of trust by clerk or servant.

COMMENT

Pakistan Penal Code section 408.
 Sudan Penal Code section 350.

(1) cf. section 289 which punishes theft by a clerk or servant.

(2) The offence is committed even where the act of the accused is to cause only a temporary wrongful loss to his master.

(3) The property in respect of which the breach of trust has occurred must have been entrusted to the accused in his capacity of clerk or servant; if it was not so entrusted an accused can only be convicted under section 312.

PRACTICE

1. Prove :

- (a) that the accused was the clerk or servant of the person reposing trust in him.
 (b) that he was in such capacity entrusted with the property in question or with dominion over it.
 (c) that he committed criminal breach of trust in respect of it.

2. Procedure.—As for section 310, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :
 That you, on or about the.....day of....., at....., being a servant in the employment of AB, and in such capacity entrusted with [or with dominion over] certain property, to wit....., committed criminal breach of trust in respect of the said property, and thereby committed an offence punishable under Section 314 of the Penal Code.

315. Whoever, being in any manner entrusted with property or with any dominion over property in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Criminal breach of trust by public servant or by banker, merchant or agent.

COMMENT

Pakistan Penal Code section 409.
 Sudan Penal Code section 351.

(1) In respect of offences by public servants it is not necessary to show that the property was that of the Government or of his employer. The offence can be committed in respect of any property entrusted to the public servant in his capacity as such (e.g., money deposited in court by parties to a civil case).

(2) All persons working in banks are not necessarily bankers. In India it was held that "banker" included a cashier.

(3) A broker is an agent employed by a person to make a binding contract with another. A factor is an agent employed to handle goods or merchandise consigned or delivered to him by or for his principal. The factor is entrusted with the possession and disposal of property. A broker is employed to contract about property without being put into possession of it.

(4) "Legal practitioner" was inserted in the Code in preference to "attorney" which appears in the corresponding section in the Sudan and Pakistan Codes. "Agent" may however be said to cover "attorney", when used in its wider sense.

PRACTICE

1. Prove :

- (a) that the accused was either a public servant or a banker or a merchant or a factor or a broker or a legal practitioner, or an agent.
 (b) that he was in such capacity entrusted with the property in question or with dominion over it.
 (c) that he committed criminal breach of trust in respect of it (see section 312).

2. Procedure.—As for section 312 except that the case may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. Charge.—As for section 314.

Receiving Stolen Property

316. 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 has been committed, is stolen property, whether the transfer has been made or misappropriation or breach of trust has been committed within the Northern Region 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.

Stolen property defined.

317. Whoever dishonestly receives or retains any stolen property knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

Dishonestly receiving stolen property.

COMMENT

Pakistan Penal Code sections 410 and 411.

Sudan Penal Code sections 352 and 353.

(1) For definitions of "theft" see section 286, "extortion" section 291, "robbery" section 296, "criminal misappropriation" section 308, "criminal breach of trust" section 211. Note that property obtained by "cheating" (section 320) is not classified as stolen property.

(2) To constitute an offence under section 317 dishonest possession of stolen property must also be coupled with knowledge or at least reasonable belief that the property was stolen. However if an accused person cannot account for the possession of recently stolen property it is reasonable for a court to presume guilty knowledge. The question of what is or is not recently stolen property must be considered with reference to the nature of the property. The raising of a presumption of guilty possession of recently stolen goods does not mean that the burden of proof is shifted to the accused so that he must prove positively that he is an innocent purchaser. It is sufficient to rebut the presumption if he gives an explanation of his possession which raises a doubt in the mind of the court as to his guilt.

(3) A presumption of theft or receiving stolen property where the property is found in the possession of an accused person can only arise where the property found was recently stolen. Section 148 (a) of the Evidence Ordinance provides that the fact that an accused is found in possession of recently stolen property raises a presumption that he stole the property or received it knowing that it was stolen. It is vital, therefore, that the court should elicit the date of the theft and the date that the property was found in the accused's possession. The presumption is rebuttable and if the accused gives a reasonable explanation of his possession of the property, he should be acquitted if there is no other evidence against him!

PRACTICE

1. Prove :

- that the property in question is stolen property.
- that the accused received or retained such property.
- that he did so dishonestly.
- that he knew or had reason to believe that the property was stolen property.

Note.—A person cannot be convicted under section 317 in respect of property for which he himself has been convicted of the principal offence.

2. Procedure.—No warrant is required for the arrest of an accused person. The offence is not normally bailable and not compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

- M. Ibrahim Bigidun v. Kano N.A. 1961 N.N.C.N. 11.

That you, on or about the.....day of.....at....., dishonestly received [or retained] stolen property, to wit....., belong to one AB, knowing [or having reason to believe the same to be stolen property], and that you thereby committed an offence punishable under Section 317 of the Penal Code.

318. 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 be punished with imprisonment for life or any less term and shall also be liable to fine.

Dishonestly receiving property stolen in the commission of brigandage.

COMMENT

Pakistan Penal Code section 412.

Sudan Penal Code section 354.

PRACTICE

1. Prove :

- that the property in question was stolen property.
- that the possession of such property was transferred as a result of an act of brigandage.
- that the accused received or retained the stolen property.
- that he did so dishonestly.
- that he knew or had reason to believe the circumstances stated in (b).

or, prove :

- that the property in question was stolen property.
- that the accused received it.
- that he received it from a person who belonged to or had belonged to a gang of brigands.
- that he did as in (c) dishonestly.
- that he knew or had reason to believe that the person from whom he received the property belonged to or had belonged to a gang of brigands.
- that he knew or had reason to believe that the property was stolen property.

2. Procedure.—As for section 317 except that the offence may only be tried in the High Court or by a native court of grade A Limited, or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at....., dishonestly received [or retained] stolen property, to wit....., belonging to one AB, knowing or having reason to believe that the possession of the same had been transferred by the commission of brigandage; and thereby committed an offence punishable under Section 318 of the Penal Code.

319. 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 be punished with imprisonment for a term which may extend to five years or with fine or with both.

Assisting in concealment of stolen property.

COMMENT

Pakistan Penal Code section 414.

Sudan Penal Code section 356.

This section is intended to punish intermediaries engaged in the disposal of stolen property who are not caught by sections 317 and 318 in that their action may not amount to the possession of the stolen property required by those sections,

PRACTICE

1. Prove :

- (a) that the property in question is stolen property.
 (b) that the accused assisted in concealing or disposing of or making away with the property.
 (c) that he did so voluntarily.
 (d) that he knew or had reason to believe that the property stolen property.

2. Procedure.—As for section 317.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of....., at....., voluntarily assisted in concealing [or disposing of or making away with] property, to wit....., which you knew [or had reason to believe] to be stolen property, and that you thereby committed an offence punishable under Section 319 of the Penal Code.

Having possession of this reasonably suspected of being stolen.

319A. Whoever knowingly has in his possession or under his control anything which is reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of a court of justice as to how he came by the same shall be punished with imprisonment which may extend to six months or with fine or with both.

COMMENT

Nigeria Criminal Code Section 430.

1. This section was inserted by Section 6 of the Penal Code (Amendment) Law, 1960 (N.R. No. 19 of 1960).

2. This section is exceptional in that the prosecution is only required to show that it is reasonably suspected that something in the possession of the accused is stolen property for the burden of proof to shift to the defence to show that he came by the thing honestly. The prosecution is not required to prove that the property was stolen or unlawfully acquired by the accused but the High Court have interpreted the requirement of reasonable suspicion strictly and there must be evidence sufficiently strong to form a suspicion that the goods were stolen. The best of evidence of this would be evidence that the goods were stolen. The point in question appears to have been wrongly reported in the Case Notes in that it is there stated as essential that evidence be brought that the goods were stolen. This I think, is not an accurate resume of the High Court's judgment in this case.¹

3. The words "to the satisfaction of a court" can only be sensibly interpreted to mean that the explanation proffered must satisfy the court that the accused came by the property honestly.

PRACTICE

1. Prove :

- (a) that the accused had in his possession or under his control something suspected of having been stolen or unlawfully obtained.
 (b) that the suspicion was reasonable.
 (c) The burden of proof then shifts to the defence which must satisfy the court that the accused came by the property lawfully or be convicted.

2. —Procedure : No warrant is required for the arrest of an accused person. The offence is bailable, not compoundable and triable by any court with criminal jurisdiction.

3. Charge:— I [] hereby charge you [] as follows :
 That you, on or about the.....day of.....at.....were in possession of [or, had under your control]....., a thing reasonably suspected of having been stolen [or, unlawfully obtained] and thereby committed an offence under Section 319A of the Penal Code.

1. 1962 N.N.C.N, 2 James Gboruku and Another v. Commissioner of Police.

Cheating

Cheating defined. **320.** 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; or
 (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do 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 fact is a deception within the meaning of this section.

ILLUSTRATIONS

(a) A, by falsely pretending to be in the Government service, 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 Z and thereby dishonestly induces Z 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 cotton 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 cotton 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 conveys a house 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.

COMMENT

Pakistan Penal Code section 415.

Sudan Penal Code section 357.

(1) The definition of the offence of cheating embraces some cases in which no transfer of property is caused as a result of the deception and some in which a transfer does occur; for these cases generally provision is made in section 323. For the cases in which property is transferred a more specific provision is made in section 325.

The original authors of the Indian Penal Code said "We propose to make it cheating to obtain property by deception in all cases where property is fraudulently obtained. In the definition of cheating in section 320 there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced to deliver any property to any person or to consent that any person shall retain any property. In order to constitute the offence of cheating the person who induces another to do this class of act must do so fraudulently or dishonestly. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In order to constitute the offence of cheating with regard to this class of acts the person who induces another to do them must intentionally induce him to do them. In the first class of acts the inducement must be fraudulent or dishonest. In the second class of acts the inducement must be intentional." Ratanlal Law of Crimes p. 1058.

(3) The distinction between breach of contract and cheating depends upon the intention of the accused at the time of the alleged inducement which may be judged by his subsequent act but of which the subsequent act is not the sole criterion. Mere breach of contract does not normally give rise to a criminal prosecution, but see section 381 for an exceptional case.

(4) The offence of cheating must be committed by the wrongful obtaining of a consent. The difference between this offence and that of extortion is that in extortion the consent is obtained by intimidation and in cheating the consent is obtained by deception.

(5) Cheating is a complete offence by itself and is not a form of criminal breach of trust. A person who tricks another into delivering property to him bears no resemblance to a trustee in the ordinary accepted meaning of that term.

(6) Note the difference between "fraudulently" and "dishonestly" See sections 16 and 17.

(7) Note that under Illustration (f) and (g) deception as to a future event is criminal.

(8) In a case on section 325, the High Court held that there could be no conviction for cheating unless there was evidence that the accused had deceived someone into handing over property. Evidence of successful deception is necessary.¹

321. 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.

Cheating by personation defined.

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 merchant 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.

COMMENT

Pakistan Penal Code section 416.

Sudan Penal Code section 358.

(1) To personate means to pretend to be a particular person.

(2) cf. section 132 for impersonation of a public servant.

(3) A witness in a court falsely giving evidence under another man's name should be charged with giving false evidence under section 158 rather than impersonation under this section.]]

322. Whoever cheats shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Punishment for cheating.

1. Habin Tudun Wada and Another V Kano N.A.-1962 N.N.C.N. 41,

COMMENT

Pakistan Penal Code section 417.

Sudan Penal Code section 359.

PRACTICE

1. Prove :

- that the person deceived delivered to someone or consented that some person shall retain certain property.
 - that the person deceived was induced by the accused to do as above.
 - that the person acted upon the inducement in consequence of his having been deceived by the accused.
 - that the accused acted fraudulently or dishonestly when so inducing that person.
- or prove :
- that the person deceived did, or omitted to do something which he was not bound to do or omit to do.
 - and (c) as above.
 - that the accused so induced that person intentionally.
 - that the act or omission caused or was likely to cause damage or harm to that person in body, mind, reputation or property.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable but not compoundable and may be tried by a magistrate of the third grade or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of, at,
(set out the manner in which the cheating was committed), and thereby committed cheating,
an offence punishable under Section 322 of the Penal Code.

323. 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 be punished with imprisonment for a term which may extend to five years or with fine or with both.

Cheating person whose interest offender is bound to protect.

COMMENT

Pakistan Penal Code section 418.

Sudan Penal Code section 360.

This section applies to cases of cheating when the accused is in a special position of trust in relation to the person cheated, e.g. a guardian cheating his ward, a legal practitioner his client or a bank manager his customer.

PRACTICE

1. Prove :

- that the accused cheated some person (see section 322).
- that he was under a legal obligation to protect the interests of that person.
- that the cheating was related to the legal obligation.
- that the accused knew that he was likely to cause wrongful loss to such person.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the day of, at,
cheated XY by doing an act, to wit, with the knowledge that you were thereby likely to cause wrongful loss to the said XY whose interest in the transaction to which the cheating related you were bound by law [or a legal contract] to protect, and that you thereby committed an offence punishable under Section 323 of the Penal Code.

324. Whoever cheats by personation shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Cheating by personation.

COMMENT

Pakistan Penal Code section 419.
Sudan Penal Code section 361.

PRACTICE

1. Prove :

- (a) that the accused cheated the complainant.
(b) that he did so by pretending to be some other person; or by knowingly substituting one person for another; or by representing that he or some other person is a person other than the person he really is.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the third grade or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :
That you, on or about the.....day of.....at.....pretending to be (*specify the person personated*) [or knowingly substituted A for B (or represented that you or A were so and so)], and thereby committed an offence punishable under Section 324 of the Penal Code.

325. Whoever cheats and thereby fraudulently or dishonestly induces the person deceived to deliver any property to any person or to make, 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 be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Cheating and dishonestly inducing delivery of property.

COMMENT

Pakistan Penal Code section 420.
Sudan Penal Code section 362.

(1) The difference between section 359 and this section is that where no property passes as a result of the trick, the offence is simple cheating punishable under section 359 but if any property changes hands the offence is punishable under this section.

(2) For the meaning of "dishonestly" see section 16. Note that the word "fraud" is not used in this section.

(3) "Property" in this section would appear to be limited to movables.

PRACTICE

1. Prove :

The same points as those for section 322 with the modification that the latter part of this section is confined to cases of cheating where the injury caused is the delivery of property or the making, altering or destroying wholly or in part, of a valuable security, or making or destroying anything signed or sealed which is capable of being converted into a valuable security.

2. Procedure.—No warrant is required for an arrest. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or by a native court of grade A Limited, or above.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....cheated AB, by dishonestly inducing him to deliver to you (*specify the property*) which was

the property of the said AB [or to make, alter or destroy, the whole or any part of available security or anything which is signed or sealed, and which is capable of being converted into a valuable security], and that you thereby committed an offence punishable under Section 325 of the Penal Code.

Mischief

326. 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.

Mischief defined.

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 to that person and other jointly.

ILLUSTRATIONS

(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) 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 of thus causing damage to Z. A has committed mischief.

(d) A, having joint property with Z in a 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.

327. Whoever commits mischief shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Punishment for mischief.

328. Repealed by Section 7 of Penal Code (Amendment) Law, 1960 (N.R. No of 1960).

COMMENT

Pakistan Penal Code sections 425, 426 and 427.
Sudan Penal Code sections 363, 364 and 365.

(1) Mischief corresponds to malicious damage to property in English law and the provisions of the Code on the subject correspond closely with those of the Malicious Damage Act 1868. The leading characteristic of the offence is the presence of malice as distinct from fraud.

(2) Proof of either an intention to cause injury or knowledge that the act is likely to cause injury is essential to constitute the offence. There must also be some trick on the part of the accused either personally or through someone else, which leads to any of the results mentioned in the section.

(3) The intention or knowledge required by the section is a question of fact and must be proved. For this reason the fact that the result was caused by accident or by negligence may be a defence. If an act causing injury is done recklessly or negligently it is not necessarily mischief unless the result of the act was likely to be what it was and the accused is proved to have had knowledge of the likely result. Mere negligence is not mischief.

(4) Mischief must affect property. If a thing is not property it cannot be the subject of mischief whatever may be the nature of the act committed. In India, it has been held that "property" in this context means only tangible property and not, for instance, easements or other intangible rights in property.

(5) "Injury" in these sections implies physical injury. Similarly the "change" mentioned in the section implies a physical change in the property the subject of the offence.

(6) Courts should exercise caution in dealing with offences under these sections or litigants will seek to bring as cases of mischief many matters which properly should be settled as civil cases.

PRACTICE

1. Prove :

- (a) that the thing in question was property.
- (b) that the accused caused its destruction or such change therein or in the situation thereof as has destroyed or diminished its value or utility or affected it injuriously.
- (c) that the accused did so intending or knowing that he was likely to cause loss or damage to the public or to any person.
- (d) that the loss or damage was wrongful.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and compoundable when the only loss or damage caused is to a private person. The offence may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at....., you committed mischief by causing wrongful loss or damage to the property of AB and that you thereby committed an offence punishable under Section 327 of the Penal Code.

(4). Note that section 328 was repealed as redundant by section 7 of the Penal Code (Amendment) Law, 1960 (N.R.No. 19 of 1960).

329. Whoever commits mischief by killing, poisoning, maiming or rendering useless any animal or animals shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Mischief by killing or maiming animal.

COMMENT

Pakistan Penal Code section 428.
Sudan Penal Code section 366.

Mischief by injury to animals is regarded as a more serious offence on the grounds of the cruelty thereby inflicted on the animal which is additional to the loss suffered by the owner. The section has general application and it is not necessary to put a money value on the animal.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 328).
- (b) that the property injured was an animal.
- (c) that the injury was caused by killing, poisoning, maiming or rendering useless such animal.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable and compoundable when the only loss or damage caused is loss or damage to a private person. The offence may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :
That on or about the.....day of.....at.....you committed mischief by killing [or poisoning or rendering useless] any animal, to wit..... (describe it) which was the property of AB, and that you thereby committed an offence punishable under Section 329 of the Penal Code.

330. Whoever commits mischief by killing, poisoning, maiming or rendering useless any camel, horse, donkey, mule, bull, cow, or ox whatever may be the value thereof shall be punished with imprisonment for a term which may extend to five years or with fine or with both.

Mischief by killing or maiming cow, etc.

COMMENT

Pakistan Penal Code section 429.
Sudan Penal Code section 367.

This section deals with malicious damage to domestic animals and particularly to beasts of burden.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 328).
- (b) that the mischief related to a camel, horse, donkey, mule, bull, cow or ox.

2. Procedure.—As for section 329, except that the offence is not compoundable and not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed mischief by killing [or poisoning, or maiming or rendering useless] the camel of AB, and that you thereby committed an offence punishable under Section 330 of the Penal Code.

331. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any installation for the supply 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 which are the subject of ownership or for any domestic, agricultural or commercial purpose, shall be punished with imprisonment which may extend to five years or with fine or with both.

Mischief in relation to water supply

COMMENT

Pakistan Penal Code section 430.
Sudan Penal Code section 368.

(1) An act merely fouling the water supply is not punishable under this section unless some reduction of the water supply is occasioned. See section 191, under Public Nuisance, for the punishment for fouling a water supply.

(2) The water supply or installation must be property either owned by the Government or by a private person. The section would normally exclude the water of rivers, property in which vests in the public generally. In any event the water supply must be shown to have been used for watering domestic animals or for a domestic agricultural or commercial purpose.

(3) In the case of damage to an installation it is only necessary to prove that the act reduced the efficiency of the installation.

PRACTICE

1. Prove :

- (a) that the act constituted mischief (section 327).
 (b) that the mischief in question caused or was likely to cause a diminution of the supply of water or the efficiency of a water installation.
 (c) that the accused knew it.
 (d) that the diminution was in the supply of water used for :
 (i) agricultural purposes; or
 (ii) food or drink for human beings or their animals; or
 (iii) commercial purposes.

2. Procedure.—As for section 329, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :
 That on or about the..... day of..... at.....

you committed mischief by doing an act to wit..... (specify it) which caused [or which you knew to be likely to cause] a diminution of the supply of water of AB for agricultural purposes [or for food or drink, etc.], and that you thereby committed an offence punishable under Section 331 of the Penal Code.

332. Whoever commits mischief by doing any act which renders or which he knows to be likely to render any public road, bridge, navigable river or navigable channel natural or artificial impassable or less safe for travelling or conveying property, shall be punished with imprisonment for life or any less term or with fine or with both.

Mischief by injury to public road, bridge, river or channel.

COMMENT

Pakistan Penal Code section 431.
 Sudan Penal Code section 369.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 327).
 (b) that it was committed by doing an act which rendered or the accused knew it likely to render a public road, bridge, navigable river or channel impassable or less safe for travelling or conveying property.

2. Procedure.—As for section 329, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the..... day of....., at.....
 you committed mischief by doing an act to wit..... (specify it) which rendered [or which you knew to be likely to render] a public road, to wit..... (describe it) [or a bridge, navigable river or a navigable channel] impassable [or less safe for travelling or conveying property], and that you thereby committed an offence punishable under Section 332 of the Penal Code.

333. 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 be punished with imprisonment for a term which may extend to five years or with fine or with both.

Mischief by inundation or obstruction to public drainage.

COMMENT

Pakistan Penal Code section 432.
 Sudan Penal Code section 370.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 327).
 (b) that the mischief was caused by an act which caused or was likely to cause an inundation or an obstruction attended with injury to any public drainage.

2. Procedure.—As for section 329 except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the..... day of..... at.....
 you committed mischief by doing an act, to wit..... (mention it) which caused, [or which you knew to be likely to cause] inundation [or an obstruction] to a public drainage, to wit..... (describe it) attended with injury or damage, that that you thereby committed an offence punishable under Section 333 of the Penal Code.

334. 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 be punished with imprisonment for a term which may extend to five years or with fine or with both.

Mischief in relation to electricity, telegraphs and telephones.

COMMENT

Sudan Penal Code section 371.

PRACTICE

1. Prove :

- (a) that the act constituted mischief (section 327).
 (b) that the mischief rendered or was likely to render an installation for generating, storing, transmitting or distributing electricity or any telegraph or telephone installation less efficient for its intended purpose or cause or was likely to cause a diminution of a supply of electricity.
 (c) that the accused either intended or knew that his act was likely to render or cause any of the effects stated in (b) above.

2. Procedure.—As for section 329, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :—
 That on or about the..... day of..... at.....

you committed mischief by doing an act, to wit..... (specify the act), which rendered or which you knew to be likely to render an installation for generating (or storing, etc.) electricity less efficient for its intended purpose and thereby committed an offence punishable under Section 334 of the Penal Code.

4. Note.—Substitute in the charge as necessary “telephone or telegraph installation” or “which caused or which you knew to be likely to cause a diminution in the electricity supply.”

335. 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 be punished with imprisonment for a term which may extend to one year or with fine or with both.

Mischief by destroying or moving a public land mark.

COMMENT

Pakistan Penal Code section 434.
 Sudan Penal Code section 373.
 The Code punishes only offences in respect of land marks fixed by order of a public servant. Mischief in respect of private land marks can only give rise to civil actions.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 326).
 (b) that it was committed by destroying or removing a land mark or by doing any act which rendered the land mark less serviceable.
 (c) that the landmark was fixed by the authority of a public servant.

2. Procedure.—As for section 328.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of....., at.....you committed mischief by destroying [or moving, etc.] a landmark, to wit.....[describe it] which was fixed by the authority of AB, a public servant, and that you thereby committed an offence punishable under Section 335 of the Penal Code.

336. Whoever commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Mischief by fire or explosive with intent to cause damage.

COMMENT

Pakistan Penal Code section 435.

Sudan Penal Code section 374.

Mischief by fire is arson in English law.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 326).
 (b) that the mischief was caused by fire or any explosive substance.
 (c) that the accused intended or knew that he was thereby likely to cause such damage.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a magistrate of the first grade or a native court of grade C or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....of.....at.....you committed mischief by fire [or any explosive substance] intending thereby to [or knowing it to be likely that you will thereby] cause damage to property, and that you thereby committed an offence punishable under Section 336 of the Penal Code.

337. Whoever commits mischief by fire or any explosive substance intending to cause 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 as a place for the custody of property, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

Mischief by fire or explosive with intent to destroy house, etc.

COMMENT

Pakistan Penal Code section 436.

Sudan Penal Code section 375.

(1) This section requires that an accused should not only be shown to have intended or known that he would be likely to cause damage to property but additionally that his intention or knowledge was with regard to the destruction by fire of a building used for one of three purposes specifically, i.e., a human dwelling house, a place of worship or a place for the custody of property.

(2) In India, "a building used as a human dwelling house" was held to include grass and mat huts used permanently or semi-permanently by peasants but not temporary shelters. Note that in India a tent was not a building within the meaning of this section. See sections 288 and 343 where "tent" is specifically mentioned as distinct from "building".

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 326).
 (b) that the mischief was committed by fire or an explosive substance.
 (c) that it destroyed or damaged a building.
 (d) that the building was ordinarily used either as :
 (i) a place of worship; or
 (ii) a human dwelling; or
 (iii) a place for the custody of property.

2. Procedure.—As for section 336 except that the trial may only be in the High Court or a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed mischief by fire [or an explosive substance] to wit.....(describe it) intending to cause [or knowing it to be likely that you would thereby cause] the destruction of a building which was ordinarily used as a place of worship [or as a human dwelling or as a place for the custody of property] and that you thereby committed an offence punishable under Section 337 of the Penal Code.

338. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards intending to destroy or render unsafe or knowing it to be likely that he will thereby destroy or render unsafe that vessel, shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

Mischief to vessel.

COMMENT

Pakistan Penal Code section 437.

Sudan Penal Code section 376.

The insertion into the section of the word "decked" or the words "of a burden of twenty tons or upwards" is intended to exclude from the operation of the section small native boats such as dug-out canoes.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 326).
 (b) that the mischief was committed against a vessel.
 (c) that the vessel was either decked or of a burden of at least twenty tons.
 (d) that when committing the mischief the accused intended to destroy or render unsafe the vessel or that he knew it to be likely that he would destroy it or render it unsafe.

2. Procedure.—As for section 337.

3. Charge.—I [] hereby charge you [] as follows :
 That on or about the.....day of.....at.....you committed mischief [in the case of Section 339 add by fire (or any explosive substance)] to a decked vessel of AB (name it) [or to a vessel of AB of a burden of.....tons] intending [or render unsafe] the said vessel [or knowing it likely that you will thereby destroy it or render it unsafe] and that you thereby committed an offence punishable under Section 338 of the Penal Code.

339. Whoever commits or attempts to commit by fire or any explosive substance such mischief as is described in section 338 shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

Mischief by fire to vessel.

COMMENT

Pakistan Penal Code section 438.
Sudan Penal Code section 377.

PRACTICE

1. Prove :

- (a) that the accused committed or attempted to commit mischief (Section 326).
(b) that the mischief was committed or attempted by fire or any explosive substance.
(c) that it was committed or attempted to be committed to any decked vessel of a burden of twenty tons or more.
(d) that when committing the mischief the accused intended to destroy the vessel or render it unsafe or that he knew he was likely to do so.

2. Procedure.—As for section 337.

3. Charge.—As for section 338.

340. 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 be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Running vessel
aground or ashore
with intent to com-
mit theft.

COMMENT

Pakistan Penal Code section 439.
Sudan Penal Code section 378.

(1) This offence is allied to piracy and relates to the preparatory stage of running a ship aground in order to commit theft of the property contained therein.

(2) To constitute an offence under this section it is necessary to prove the intention of the accused and not merely knowledge of the likely result of running the vessel aground, e.g., a person may run a vessel aground in order to save it from sinking although he knew that the vessel would thereby be exposed to attack by thieves : in such a case he would not have committed an offence under this section.

PRACTICE

1. Prove :

- (a) that the accused ran aground or ashore a vessel.
(b) that he did so intentionally ; and
(c) that his intention was to commit theft of the property contained therein or to dishonestly misappropriate any such property or that theft or misappropriation might be committed.

2. Procedure.—As for section 337.

341. 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 be punished with imprisonment for a term which may extend to five years and shall also be liable to fine.

Mischief com-
mitted after prepa-
ration made for
causing death or
hurt.

COMMENT

Pakistan Penal Code section 440.
Sudan Penal Code section 379.

This section provides a more severe penalty for a case where mischief has been committed with the aggravating circumstance that the accused has made preparation to use force to

overcome any opposition to the carrying out of the mischief. The accused must be shown to have been prepared to cause death, hurt or wrongful restraint to a person or to use threats of putting a person in fear of death, hurt or wrongful restraint.

PRACTICE

1. Prove :

- (a) that the accused committed mischief (section 326).
(b) that in doing so he made preparation to cause death, hurt or wrongful restraint to a person ; or
(c) that in doing so he made preparation to put a person in fear of death, hurt or wrongful restraint.

2. Procedure.—As for section 336.

Criminal Trespass

342. 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 such person or with intent to commit an offence, is said to commit criminal trespass.

Criminal trespass
defined.

COMMENT

Pakistan Penal Code section 441.
Sudan Penal Code section 380.

Simple trespass is not a criminal offence. Trespass becomes criminal only when it is committed in order to commit some offence injurious to a person in possession of the property on which the trespass is committed, or in order to cause annoyance to such a person. To commit criminal trespass under this section therefore there must be :

- (a) (i) unlawful entry into or upon a property in the possession of another ;
(ii) unlawful remaining there.
(b) an intention—
(i) to commit an offence ; or
(ii) to intimidate, insult or annoy the person in possession of the property.

(2) There must be an actual entry by the person interested. Constructive entry by a servant acting on the orders of his master is not an entry within the meaning of the section, i.e., the servant and not the master in such a case would be liable for the entry.

(3) The use of force is not necessary. cf., the English law on "forcible entry".

(4) Although the first part of the section does not state that the entry must be unlawful, it is implied, e.g., a bailiff may lawfully enter a house to seize property in execution of a warrant lawfully issued by a court. Different considerations arise if the trespass is upon land the ownership of which is the subject of a dispute, and where the accused has entered with the intention of establishing a right to ownership of the property. The section is clearly intended to protect possession as distinct from title. Nevertheless, entry in the exercise of a *bona fide* claim of right will not constitute criminal trespass unless there is proof of the necessary intent to commit an offence or to intimidate, insult or annoy the person in possession.

(5) The existence of a *bona fide* claim of right ordinarily excludes the presumption of criminal intent but a person may attempt to enforce his right in a wrong way, e.g., by using unnecessary force or intending to wrongfully restrain the person in possession.

(6) The section covers both movable and immovable property; thus there can be a criminal trespass to a motor car as well as to land.

(7) The possession is clearly intended to be possession at the time of entry. Possession does not however necessarily imply that the person in possession must be present at the actual

time of the entry. An entry into an empty house in the absence of the person lawfully in possession of the house would be trespass.

(8) The section does not protect a trespasser in possession as against a party lawfully entitled to possession. The party lawfully entitled to possession has a right of private defence of his property (See section 60). The trespasser in possession cannot therefore normally bring an action for criminal trespass to defend his position unless his occupation is acquiesced in he acquires no possession within the meaning of this section. For this reason a trespasser cannot maintain an action for criminal trespass against another trespasser as he can have no better right than another trespasser.

(9) The word "annoy" should be taken to mean annoyance which would reasonably affect an ordinary person, not what would specially and exclusively annoy a particular individual.

343. 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 is entering sufficient to constitute house trespass.

COMMENT

Pakistan Penal Code section 442.

Sudan Penal Code section 381.

(1) A person merely entering the open compound of a house cannot be held to have committed house trespass since he has not actually entered a building used as a human dwelling as defined in section 337. The building must not necessarily be a permanent building and "tent" is specifically included in the section. Note also the inclusion of "railway carriage"

(2) The explanation to the section is intended to remove any ambiguity as to what constitutes an entry into a building.

(3) The entry must be illegal. No one commits an offence under this section if he enters a building by leave or licence, unless he remains there after the consent of the owner has been withdrawn.

(4) Criminal trespass within the definition contained in section 342 must be proved i.e., the intent to commit an offence or to intimidate, insult or annoy must be proved.

344. 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, tent, vessel or railway carriage which is the subject of the trespass, is said to commit lurking house trespass.

COMMENT

Pakistan Penal Code section 443.

Sudan Penal Code section 382.

(1) The three essential ingredients of this offence are :

(i) trespass ;

(ii) the trespass must be house trespass ;

(iii) the house trespass must be made in a surreptitious and secretive manner called "lurking".

(2) The word "excluded" suggests the right to keep out a person entering unlawfully. The word "eject" implies a right to remove a person who may have entered lawfully. A person having no right to exclude may acquire a right to eject as in the case of a lessee ejected for breach of condition of a lease.

(3) The offender must be have taken some active step to conceal his person. The fact that the house trespass was committed at night does not necessarily make it lurking house trespass.

345. Whoever commits lurking house trespass between sunset and sunrise, is said to commit lurking house trespass by night.

Lurking house trespass by night defined.

COMMENT

Pakistan Penal Code section 444.

Sudan Penal Code section 383.

(1) This section adds a further aggravating circumstance of the time of entering to the offence defined under section 344.

(2) Note that "night" is clarified as meaning between sunset and sunrise.

(3) A person who lawfully enters a house by day may be guilty of this offence if he wilfully remains therein after sunset, by concealing his person with the intent to commit an offence or to intimidate, insult or annoy.

346. 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 commit 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 scaling or 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 commit 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 commit the house trespass or in order to quit 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 or 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.

ILLUSTRATIONS

(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 port-hole 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 doorkeeper 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.

COMMENT

Pakistan Penal Code section 445.
Sudan Penal Code section 384.

(1) House breaking may be effected in the six ways stated in paragraphs (a) to (f) of the section. In paragraphs (a) to (c) the entry is effected by a passage which is not an ordinary means of access to the house. In paragraphs (d) to (f) the entry is effected by the use of force.

(2) "House" as defined in the section would appear also to include "tent" and "railway carriage" referred to in section 343. Explanation (2) widens the meaning of the word "building" to include out-buildings connected to the main building by a connecting passage.

347. Whoever commits house breaking between sunset and sunrise,
House breaking by night defined. is said to commit house breaking by night.

COMMENT

Pakistan Penal Code section 446.
Sudan Penal Code section 385.

This section defines the offence of house breaking by night which is burglary in English Law. The time of entry is the essence of the offence.

348. Whoever commits criminal trespass shall be punished with
Punishment for criminal trespass.. imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both.

COMMENT

Pakistan Penal Code section 447.
Sudan Penal Code section 386.

This section provides the punishment for the simple offence defined in section 342.

PRACTICE

1. Prove :

- (a) that the complainant had possession of the property in question.
(b) that the accused entered into or upon the property or that he unlawfully remained there after having lawfully entered therein or thereto.
(c) that he so entered or remained there with the intention :
(i) to commit an offence; or
(ii) to intimidate, insult or annoy the person in possession.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable and compoundable and may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of..... at..... you committed criminal trespass by entering into [or upon or by illegally remaining on] the

land (*describe it*) then in the possession of AB, and thereby committed an offence punishable under Section 348 of the Penal Code.

349. Whoever commits house trespass shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to fifty pounds or with both.
Punishment for house trespass.

COMMENT

Pakistan Penal Code section 448.
Sudan Penal Code section 387.

This section provides the punishment for the offence defined in section 343.

PRACTICE

1. Prove :

- (a) that the complainant had possession of the property in question.
(b) that the property was a building, tent or vessel used as a human dwelling or any dwelling used as a place of worship or as a place for the custody of property.
(c) that the accused entered into the building or having lawfully entered remained there.
(d) that he did so with intent to commit an offence or to intimidate, insult or annoy the person in possession.

2. Procedure.—As for section 348.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of..... at..... you committed house trespass by entering into [or unlawfully remaining on] the house in the possession of AB, with intent to commit the offence of—[or to intimidate, insult or annoy the said AB] and thereby committed an offence punishable under Section 349 of the Penal Code.

350. Whoever commits house trespass in order to commit any offence punishable with death, shall be punished with imprisonment for a term not exceeding fourteen years and shall also be liable to fine.
House trespass to commit offence punishable with death.

COMMENT

Pakistan Penal Code section 449.
Sudan Penal Code section 388.

This section only deals with an entry in which the intention to commit a capital crime falls short of an attempt. If the attempt is actually made or if the intention is carried out the accused would be additionally liable on those grounds.

PRACTICE

1. Prove :

- (a) that the accused committed house trespass.
(b) that he did so in order to commit an offence punishable with death.
2. Procedure.—No warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may only be tried by the High Court or a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of..... at..... you committed house trespass by entering into [or unlawfully remaining in] the building [or tent or vessel]

of AB, used as a human dwelling [or for the custody of property] in order to commit the offence of..... which is punishable with death, and that you thereby committed an offence punishable under Section 350 of the Penal Code.

351. Whoever commits house trespass in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term not exceeding ten years and shall also be liable to fine.

House trespass to commit offence punishable with fourteen years imprisonment.

352. Whoever commits house trespass in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

House trespass to commit offence punishable with imprisonment.

COMMENT

Pakistan Penal Code sections 450 and 451.
Sudan Penal Code sections 389 and 390.

PRACTICE

1. Prove :

- (a) that the accused committed house trespass.
(b) that he did so in order to commit an offence punishable:
(i) under section 351 with fourteen years imprisonment; or
(ii) under section 352 with any term of imprisonment.

2. Procedure.—For section 351 as for section 350. For section 352 as for section 350 except that the case may be tried by a magistrate of the third grade or by a native court of grade D or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed house trespass by entering into [or remaining] in the building of AB used as a human dwelling [or for the custody of property] in order to commit the offence of....., and that you thereby committed an offence punishable under Section 351 of the Penal Code.

353. Whoever commits lurking house trespass or house breaking, shall be punished with imprisonment for a term which may extend to two years and shall also be liable to fine.

Lurking house trespass or house breaking.

COMMENT

Pakistan Penal Code section 453.
Sudan Penal Code section 392.

This section provides the punishment for the offence defined in section 344 and 346.

PRACTICE

Prove :

- (A) In lurking house trespass :
(i) that the accused committed house trespass (section 343).
(ii) that he did so after taking precautions to conceal his trespass from another person who had a right to exclude or eject him (section 344).
(B) In house breaking :
(i) that the accused committed house trespass (section 343).
(ii) that he effected his entrance into any part of the house in any of the six ways described in section 346 or, if he entered with intent to commit offence, that he quitted in any one of the six ways described in section 346.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable but not compoundable and may be tried by a magistrate of the third grade or by a native court of grade D or above.

354. Whoever commits lurking house trespass or house breaking in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Lurking house trespass or house breaking in order to commit offence punishable with imprisonment.

COMMENT

Pakistan Penal Code section 454.
Sudan Penal Code section 393.

PRACTICE

1 Prove :

(a.) that the accused committed lurking house trespass (section 344) or house breaking (section 346).

(b) that he did so in order to commit an offence punishable with imprisonment.

2. Procedure.—As for section 353, except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed lurking house trespass by entering into [or remaining in] a building in the possession of AB, and used as a human dwelling, in order to commit the offence of....., and that you thereby committed an offence under Section 354 of the Penal Code.

355. Whoever commits lurking house trespass by night or house breaking by night, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Lurking house trespass or house breaking by night.

COMMENT

Pakistan Penal Code section 456.
Sudan Penal Code section 395.

This section provides the punishment for the offence defined in section 345 and 347.

PRACTICE

1. Prove :

- (A) In lurking house trespass at night :
(i) that the accused committed lurking house trespass (section 344).
(ii) that it was committed after sunset and before sunrise.
(B) In house breaking by night :
(i) that the accused committed house breaking (section 346).
(ii) that it was committed after sunset and before sunrise.

2. Procedure.—As for section 353.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed lurking house trespass by night [or house breaking by night] by entering into the building [or unlawfully remaining in the building] in the possession of AB, used as a human dwelling, after the hour of sunset and before the hour of sunrise, and that you thereby committed an offence punishable under Section 355 of the Penal Code.

356. Whoever commits lurking house trespass by night or house-breaking by night in order to commit any offence punishable with imprisonment, shall be punished with imprisonment for life or any less term and shall also be liable to fine.

Lurking house trespass or house breaking by night to commit offence punishable with imprisonment.

COMMENT

Pakistan Penal Code section 457.
Sudan Penal Code section 396.

PRACTICE

1. Prove :

- (a) that the accused committed either lurking house trespass (section 344) by night (section 345), or house breaking (section 346) by night (section 347).
(b) that he did so in order to commit an offence punishable with imprisonment.

2. Procedure.—As for section 353 except that the offence is not normally bailable.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you committed lurking house trespass by night [or house breaking by night] by entering into the building belonging to AB, and used as a human dwelling [or for the custody of property] after sunset and before sunrise, in order to commit the offence of.....(mention it) and that you thereby committed an offence punishable under Section 356 of the Penal Code.

357. 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 be punished with imprisonment or life or any less term and shall also be liable to fine.

Joint liability for lurking house trespass or house breaking by night where death or grievous hurt caused.

COMMENT

Pakistan Penal Code section 460.
Sudan Penal Code section 399.

(1) This section makes the offender liable to greater punishment for his conduct in committing lurking house trespass or house breaking by night if one of his confederates causes death or grievous hurt in the process of the house trespass or house breaking. It does not make all persons involved in the house trespass or house breaking jointly liable for causing the death or grievous hurt. The section applies only when it cannot be shown that the accused had any intention to commit an offence other than house breaking or house trespass. If he is shown to have had a common intention with others of causing the death or grievous hurt then this section cannot apply.

(2) The death or grievous hurt must actually be caused at the time of committing the lurking house trespass or house breaking by night.

PRACTICE

1. Prove :

- (a) that two or more persons were jointly concerned in committing lurking house trespass by night or house breaking by night.
(b) that they or some of them committed such an offence.
(c) that one of them caused or attempted to cause death or grievous hurt.
(d) that he did so whilst engaged in committing lurking house trespass by night or house breaking by night.

2. Procedure.—As for section 352 except that the offence may only be tried in the High Court or by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you were jointly concerned with PQ in committing lurking house trespass by night [or house breaking by night] by entering into the building in the possession of AB, and used as a human dwelling, and that at the time of committing such lurking house trespass by night [or house breaking by night] the said PQ, who is guilty of such offence, voluntarily caused the

death of AB [or attempted to cause death, or grievous hurt to AB] and that you thereby committed an offence punishable under Section 357 of the Penal Code.

358. 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 be punished with imprisonment for a term which may extend to two years or with fine or with both.

Breaking open receptacle containing property.

COMMENT

Pakistan Penal Code section 461.
Sudan Penal Code section 400.

The word "receptacle" signifies any place or vessel which is a receptacle for anything and includes a safe, a package, a room or part of a room. The words "closed" and "fastened" do not appear necessarily to mean "locked".

PRACTICE

1. Prove :

- (a) that there was a receptacle closed or fastened.
(b) that it contained property or that the accused believed that it contained property.
(c) that the accused broke it open or unfastened it.
(d) that he did so dishonestly or with intent to commit mischief.

2. Procedure.—No warrant is required for the arrest of an accused. The offence is bailable but not compoundable and may be tried by any court.

359. 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 break open or unfastens that receptacle shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Breaking open receptacle by person entrusted with custody.

COMMENT

Pakistan Penal Code section 462.
Sudan Penal Code section 401.

A greater punishment is provided by this section for the offence under section 358 when it is committed by a person who is in a position of trust in relation to the receptacle.

PRACTICE

1. Prove :

- (a) the points required in section 358; and
(b) that the accused was entrusted with the receptacle.
(c) that it was entrusted to him closed or fastened.
(d) that he had no authority to open it.

2. Procedure.—As for section 358.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the.....day of.....at.....being entrusted with a certain closed receptacle.....by AB, containing [or which you believed to contain] certain property, to wit....., you dishonestly [or with intent to commit mischief] broke open [or unfastened] the said receptacle, without having authority to open the same; and that you thereby committed an offence punishable under Section 359 of the Penal Code.

360. 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 be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Lurking with house breaking implement

COMMENT

Sudan Penal Code section 402.

This section prescribes the punishment for the offence of carrying house breaking implements by night in circumstances in which the offender takes steps to conceal his presence or is otherwise shown to have a criminal intent. cf. section 405 and section 409.

PRACTICE

1. Prove :

- (a) that the accused was carrying false keys or other implements.
- (b) that he was so discovered between sunset and sunrise.
- (c) that he was seeking to conceal himself or was otherwise shown to be intending to commit an offence.

2. Procedure.—As for section 358.

3. Charge.—I [] hereby charge you [] as follows :

That you on or about the.....day of.....at.....
between sunset and sunrise were carrying false keys [or specify what other implements] and were seeking to conceal yourself [or with the intention of committing an offence] and thereby committed an offence punishable under Section 360 of the Penal Code.

361. 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 be punished with imprisonment for a term which may extend to two years and shall also be liable to fine.

Fabrication of false key or instrument.

COMMENT

Sudan Penal Code section 403.

To constitute an offence under this section it is necessary to prove a criminal intention on the part of the accused. Proof of mere possession of false keys, etc., is not sufficient.

PRACTICE

1. Prove :

- (a) that the accused imitated or altered a key or fabricated an instrument.
- (b) that the accused intended to use such key or instrument for a criminal purpose.

2. Procedure.—As for section 358.

3. Charge.—I [] hereby charge you [] as follows :

That you on or about the.....day of.....at.....
imitated [or altered] a key [or fabricated an instrument] with the intention of committing an offence and thereby committed an offence punishable under Section 362 of the Penal Code

CHAPTER XX

FORGERY

362. A person is said to make a false document—
Making a false document defined.

- (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 practised upon him he does not know the contents of the document or the nature of the alteration.

363. 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.

Forgery and forged document defined.

ILLUSTRATIONS

(a) A has a letter of credit upon B for one hundred pounds written by Z. A in order to defraud B adds a cipher to the one hundred and makes the sum one thousand pounds, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A without Z's authority affixes Z's seal to a document purporting to be a conveyance of a plot from Z to A, with the intention of selling the estate to B and thereby of obtaining from B the purchase money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B payable to bearer but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of fifty pounds. A commits forgery.

(d) A leaves with B his agent a cheque on a bank signed by A without inserting the sum payable and authorises B to fill up the cheque by inserting a sum not exceeding two hundred pounds for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of three hundred pounds. B commits forgery.

(e) 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. Here, as A draws the bill 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.

(f) 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.

(g) A sells and conveys a plot to Z. A afterwards, in order to defraud Z of the plot executes a conveyance of the same plot to B dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the plot to B before he conveyed it to Z. A has committed forgery.

(h) 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.

(i) A writes a letter and signs it with B's name without B's authority certifying that A is man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(j) 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 inasmuch 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.

ILLUSTRATIONS

(a) A signs his own name to a bill of exchange intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intentions, B is also guilty of forgery.

(c) A picks up a treasury voucher payable to a different person of the same name. A endorses the voucher in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d) A purchases a house sold under execution of a decree against B. B after the seizure of the house in collusion with Z executes a lease of the house to Z at a nominal rent and for a long period and dates the lease six months prior to the seizure with intent to defraud A and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A a trader in anticipation of insolvency lodges effects with B for A's benefit and with intent to defraud his creditors; and in order to give a colour to the transaction writes a promissory note binding himself to pay to B a sum for value received and antedates the note intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery.

Explanation 2.—The making of a false document in the name of a fictitious person intending it 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, may amount 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.

364. Whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both,
Punishment for forgery.

COMMENT

Pakistan Penal Code sections 463, 464 and 465.

Sudan Penal Code sections 404, 405 and 406.

(1) Sections 362 and 363 correspond closely with the provisions of sections 1 and 2 of the Forgery Act 1913 of the Imperial Parliament. The object of forgery is ordinarily to cheat by causing a wrongful distribution of property by means of a false document. In both cheating and forgery there is deception caused or intended to be caused by false representations.

(2) The words "with the intention of causing it to be believed". The intention may be to offer the false documents as evidence in a court. The intention therefore may not necessarily be that the false document has to be believed by the person defrauded.

(3) In India, the meaning of the word "makes" was in dispute. The better authority was that "makes" should be read *ejusdem generis* with "signs, seals or executes" i.e., that making a document means signing or otherwise executing it. The other opinion is that "makes" means simply bringing into existence.

(4) The word "signs" includes a mark such as a thumb print in the case of an illiterate person.

(5) Section 362 paragraph (a). The first part of this paragraph contemplates the making, signing, sealing or executing of a document or part of a document with the intention of it being believed:

- (i) that the document had really been signed by the person purporting to sign it; or
- (ii) that it had been so signed at a time when it purports to have been signed but at which it was not.

(6) It is forgery to make a document for another without his lawful authority provided that it is so made dishonestly or fraudulently. In such cases it is essential to prove not only lack of authority but also a dishonest intention with great certainty. The reason for this caution is that mere abuse of authority does not necessarily lead to a conclusion that there is forgery. It is not forgery where an act is done under the honest belief that the party doing it had a right to do it although in fact he really had no such authority. The authority to execute a document for another must then be shown to have been assumed for the purpose of fraud.

(7) Section 362 paragraph (b) covers the case of a fraudulent alteration of a document: see illustrations (a), (c), (d) and (f) to section 363. Note that the alteration must be made subsequent to the completion of the document. The alteration must also be to a material part of the document and it is no defence to say that the alteration was merely to correct an error or was otherwise justifiable. The proper course in such a case is to make a further document. The alteration must also be unauthorised as well as fraudulent.

(8) Section 362 paragraph (c) covers those cases in which a person is made to sign or alter a deed by a trick or at a time when he is of unsound mind or drunk. See section 51 for what constitutes "unsoundness of mind" for the purpose of this section. In the case of inducing an intoxicated person to sign a document it is not necessary that the accused should have administered the intoxicant.

(9) Under Explanations (1) and (2) to section 363 and the illustrations thereto, the offence lies not in the use of a false name or the fact of signature but in the intent to use a false name or the person's own signature for a fraudulent purpose.

(10) To complete the offence of forgery in section 363 it is not necessary that the fraud should actually be committed or damage caused. Proof of the intent of the accused and of the offence of the making of a false document only are required. It follows that it is not necessary that the document in question should have been used or published. The intent proved must be:

- (a) to cause damage or injury to the public or to a person; or

- (b) to support a claim or title; or
- (c) to cause a person to part with property; or
- (d) to cause a person to enter into a contract; or
- (e) to commit fraud; or
- (f) to abet another to commit fraud.

ii. In the case of Patrick Okpalo v. Commissioner of Police, it was held on appeal before the Northern Nigerian High Court that, although no document had been produced in evidence, there could be a conviction for forgery. The document in question had, in fact, been swallowed by the accused when he was arrested. Evidence was given of the contents of the document. The High Court held that the lower court had correctly admitted evidence of the contents of the document and *per curiam* stated that in a trial for forgery, circumstances can arise where secondary evidence is admissible. A mere notice to produce will not be enough to admit such evidence and the usual principles on which secondary evidence can be admitted must be strictly observed. The most important of these principles requires an original document to be accounted for before secondary evidence can be received. For instance, it might be shown that the original was in the possession of the accused or that it is lost or destroyed or where its production is physically impossible or highly inconvenient.¹

PRACTICE

1. Prove :

- (a) (i) that the accused made, signed, sealed or executed the document in question or any part thereof; or
- (ii) that it was made by someone else.
- (b) that it was made under any of the circumstances stated in section 363.
- (c) that the accused made it dishonestly or fraudulently or with any of the specific intents enumerated in section 362.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a Chief Magistrate or a native court of grade A Limited or above.

3. **Charge.**—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you forged a certain document, to wit.....(describe it) with intent to cause damage [or injury] to AB [or to support a certain claim of title] to wit.....[or to cause AB to part with certain property,] to wit.....[or to enter into a certain contract with AB with regard to (mention the subject) or with intent to commit fraud (specify it) or that fraud may be committed by PQ (or a person unknown) and the you thereby committed an offence punishable under Section 362 of the Penal Code.

Forgery of public seals, etc. **365. Whoever forges—**

- (a) a thing which purports to be the great seal of the United Kingdom or the public seal of the Northern Region or of any government within the Federation of Nigeria or Her Majesty's privy seal or any privy signet of Her Majesty or Her Majesty's royal sign manual or the seal of the Governor or any public seal lawfully appointed to be used for authenticating an act of state in any part of Her Majesty's dominions or in any country under the protection of Her Majesty; or
- (b) a document having on it or affixed to it any such seal signet or sign manual or anything which purports to be or is intended by the person to be understood to be, any such seal, signet or sign manual, shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

1. Patrick Okpalo v. Commissioner of Police 1962 N.N.L.R. 14.

COMMENT

Nigerian Criminal Code section 467 (1).

This section codifies one of the earliest offences known to English Law : the forgery of the seals of State formerly considered as treason. The offence was also known to Roman law.

PRACTICE

1. **Prove.**—Forgery as in section 364 with reference to the Great Seal of the United Kingdom or some other seal mentioned in the section.

2. **Procedure.**—As for section 364.

3. **Charge.**—As for section 364 stating the nature of the seal and showing the intent to cause damage or injury to the public.

366. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.¹

Using as genuine a forged document.

COMMENT

Pakistan Penal Code section 471.

Sudan Penal Code section 410.

(1) Under this section not only a dishonest user of a false document but also the forger himself may be prosecuted if there is evidence of use but insufficient proof of forgery.

(2) To constitute an offence under this section there must be both knowledge and fraudulent intention. The two questions which arise are :

- (a) whether the accused knew or had reason to believe the document to be forged; and
- (b) whether he used the document fraudulently or dishonestly.

PRACTICE

1. Prove :

- (a) that the accused used a document as genuine.
- (b) that the accused knew or had reason to believe that the document was forged.
- (c) that he did so fraudulently or dishonestly.

2. **Procedure.**—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by the same court as the by which the forgery is triable.

3. **Charge.**—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you fraudulently [or dishonestly] used as genuine a certain document, to wit.....which you then knew [or had reason to believe] to be a forged document; and that you thereby committed an offence punishable under Section 366 of the Penal Code.

367. 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 be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Making or possessing counterfeit seal with intent to commit forgery.

1. This section was discussed in the case of Patrick Okpalo v. Commissioner of Police. 1962 N.N.L.R. 14. See also Note 11 to Section 364.

COMMENT

Pakistan Penal Code section 472.

Sudan Penal Code section 411.

The essence of this offence is the intention or knowledge of the accused. Mere possession although unaccounted for of counterfeit seals, etc., will raise a presumption of criminal intent or knowledge.

PRACTICE

1 Prove:

(a) that the seal, plate or other instrument in question was capable of being used for committing forgery.

(b) that the accused made or counterfeited it or had it in his possession.

(c) that he did as in (b) with intent that it should be used for committing forgery, or in the case of possession, he knew the same to be counterfeited.

(d) that the forgery was punishable under section 364.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by a Chief Magistrate or by a native court of grade A limited or above.

3. Charge.—I [] hereby charge you [] as follows:

That on or about the.....day of.....at.....you made [or counterfeited] a seal, [or plate or instrument] for making an impression, intending that the same should be used for the purpose of committing any forgery punishable under Section 364 of the Penal Code, and that you thereby committed an offence punishable under Section 367 of the Penal Code.

368. Whoever has in his possession any forged document knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Possession of forged record.

COMMENT

Pakistan Penal Code section 474.

Sudan Penal Code section 412.

The gist of this offence is possession of the forged document by the accused. Criminal intent may be inferred by the court if the accused cannot account for this possession.

PRACTICE

1. Prove:

(a) that the document was forged.

(b) that it was in possession of the accused.

(c) that he held its possession knowing it to be forged and knowing that it would be used fraudulently or dishonestly as a genuine document.

(d) that the document was one described in sections 362 and 363.

2. Procedure.—As for section 367.

369. 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 be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Counterfeiting device or mark used for authenticating documents.

COMMENT

Pakistan Penal Code section 475.

Sudan Penal Code section 413.

The first part of the section is limited to the counterfeiter and to complete an offence it is necessary to show that the accused actually committed an act of counterfeiting. The second part of the section is supplementary and punishes mere possession with criminal intent.

PRACTICE

1. Prove:

(a) that the accused counterfeited upon or in the substance of any material a device or mark.

(b) that such device or mark is used for the purpose of authenticating any document.

(c) that the accused intended to use it for the purpose of giving the appearance of authenticity to a document.

(d) that the document was forged or thereafter to be forged.

or, prove

(a) that the accused was in possession of any material or substance.

(b) that a device or mark was counterfeited upon it.

(c) that the device or mark was such as is used for the purpose of authenticating a document.

(d) that the accused intended to use it for the purpose of giving the appearance of authenticity to a document.

(e) that the document was forged or thereafter to be forged.

2. Procedure.—As for section 367.

3. Charge.—I [] hereby charge you [] as follows:

That on or about the.....day of.....at.....you counterfeited upon [or in the substance of] any material (describe the material) a device [or mark] used for the purpose of authenticating a document (describe the document) intending that such device [or mark] should be used for the purpose of giving the appearance of authenticity to some document then forged (describe the document) [or to be forged on the material] and that you thereby committed an offence punishable under Section 369 of the Penal Code.

370. 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 commits theft in respect of any document which is or purports to be a document of title or a will or commits mischief in respect to any such document, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Fraudulent cancellation or destruction of document of title.

COMMENT

Pakistan Penal Code section 477.

Sudan Penal Code section 414.

The essence of the offence of forgery is in the making of a false document and not in its destruction. This section punishes the fraudulent destruction of a document. Only in so far as the section refers to cancellation or defacement does it provide for an offence amounting to forgery.

PRACTICE

1. Prove:

(a) that the document in question is or purports to be a document of title or a will.

(b) that the accused cancelled, destroyed, defaced or secreted or attempted to cancel, destroy, deface or secrete it.

(c) that he did so fraudulently or dishonestly or with intent to commit damage or injury to the public or to any person.

2. **Procedure.**—As for section 367.

3. **Charge.**—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you fraudulently [or dishonestly, or with intent to cause damage or injury to AB (or to the public) cancelled [or destroyed, or defaced, or attempted to cancel, destroy, deface or secreted or attempted to secrete, or committed mischief in respect of] a document, which is [or purported to be] a will [or any valuable security] and that you thereby committed an offence punishable under Section 370 of the Penal Code.

371. Whoever, being a clerk, officer or servant or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud 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 wilfully and with intent to defraud 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, document of title or account, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Falsification of accounts.

COMMENT

Pakistan Penal Code section 447A.

Sudan Penal Code section 415.

(1) See section 204 of the Criminal Procedure Code.

(2) This section follows English statute law. See section 1 of the Falsification of Accounts Act 1875 of the Imperial Parliament.

(3) The section only requires falsification with an attempt to defraud. It does not require deprivation of property. "Intent to defraud" equals "fraudulently" (see section 17).

(4) The section is not intended to punish a person merely for maintaining incorrect or false accounts. It punishes a person for maintaining accounts which are not honest.

(5) The accused must be shown to have destroyed, altered or mutilated or falsified a book of account. If the merely hides it away he has not committed an offence under this section.

(6) Accounts may be falsified by committing to make an entry as much as by altering an existing entry.

PRACTICE

1. Prove :

- that the accused was a clerk, officer or servant or acted in such capacity.
- that he destroyed, altered, mutilated or falsified a book, paper, writing, valuable security, or account in question.
- that the book, paper, etc., belonged to or was in the possession of his employer, or had been received by him for or on behalf of his employer.
- that the accused did as in (b) above wilfully and fraudulently.

2. **Note.**— Instead of (b) above it may be proved that the accused made or abetted the making of any false entry in, or omitted or altered, or abetted the omission or alteration of some material particular in a form, or in a book, paper, etc.

3. **Procedure.**—As for section 367.

4. **Charge.**—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you being a clerk [or officer or servant or employed or acting in the capacity of clerk, officer or servant] wilfully and with intent to defraud, destroyed [or altered, mutilated or falsified]

any book, to wit.....[or paper, writing, valuable security, or account] which belonged to [or was in the possession of] you employer AB [or which was received by you for or on behalf of your employer the said AB] [or you wilfully and with intent to defraud, made or abetted the making of any false entry, to wit.....in (or omitted or altered the omission or alteration of any material form) any such book, etc.,] and that you thereby committed an offence punishable under Section 371 of the Penal Code.

Property and Other Marks

372. A mark used for denoting that movable property belongs to a particular person is called a property mark.

Property mark defined.

373. Whoever marks any movable property or goods or uses any case, package or other receptacle containing movable 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.

Using a false property mark defined.

374. Whoever uses any false property mark shall unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to one year or with fine or with both.

Punishment for using a false property mark.

COMMENT

Pakistan Penal Code sections 479, 481 and 482.

Sudan Penal Code sections 416, 417 and 418.

(1) Sections 372 and 380 originate from the Imperial Statute, the Merchandise Marks Act of 1887.

(2) A *bona fide* dispute as to the right to use a trade mark is a civil matter. The court has a discretion to direct that the complainant takes his case to a civil court when it is of the opinion that the dispute is *bona fide* as to the right to use a particular mark or where there has been undue delay in commencing criminal proceedings.

A trade mark is a mark for denoting that goods are manufactured by or merchandise of a particular person. A property mark is a mark used for denoting that movable property belongs to a particular person.

(4) It is not necessary to prove that the mark used by the accused was identical with that of the complainant : it is sufficient to show that they were so similar that an ordinary person might not be able to distinguish the difference.

(5) It is also not necessary to prove that any person was actually deceived by the false mark. An intent to defraud, or knowledge that it was likely that a person would be defrauded by the false mark, must be proved.

PRACTICE

1. Prove :

- that the accused marked some movable property or goods or a case, package or other receptacle containing movable property or goods.
- that he did so 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 belonged to a person to whom they did not belong.
- that he did so intentionally.

or prove :

- (a) that the accused used a case, package or other receptacle having thereon a property mark.
- (b) that he did so in a manner reasonably calculated to cause it to be believed that the property or goods contained in a receptacle so marked belonged to a person to whom they did not belong.
- (c) that he did so intentionally.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by any court.

3. Charge.— [] hereby charge you [] as follows :
That on or about the.....day of.....at.....
you used a false property mark to wit.....to denote that certain goods belonged to AB [or were the property of AB,] whose property they were not, in a manner reasonably calculated to cause it to be believed that such goods were the property of AB and that you thereby committed an offence, punishable under Section 374 of the Penal Code.

375. Whoever counterfeits any property mark used by any other person, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Counterfeiting a property mark used by another.

COMMENT

Pakistan Penal Code section 382.

Sudan Penal Code section 419

This section carries a more severe penalty because the accused has actually counterfeited a property mark.

PRACTICE

1. Prove :

- (a) that the thing in question was a property mark.
- (b) that it was so used by some other person.
- (c) that the accused counterfeited it.

2. Procedure.—As for section 374 except that it may be tried by a native court of grade A Limited or above.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you counterfeited property mark,.....used by AB, and that you thereby committed an offence punishable under Section 375 of the Penal Code.

376. 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 be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Counterfeiting a mark used by a public servant.

COMMENT

Pakistan Penal Code section 484.

Sudan Penal Code section 420.

This section prescribes the penalty for two offences :

- (a) counterfeiting the property mark of a public servant; and
- (b) using such a mark.

PRACTICE

1. Prove :

- (a) that the thing in question was a property mark.
- (b) that the mark is used by some public servant.
- (c) that it was used to denote that the property had been manufactured by a particular person or at a particular time or place, or that the property was of a particular quality, or had passed through a particular office or was entitled to some exemption.
- (d) that the accused counterfeited it.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and not compoundable and may be tried by a magistrate of the first grade or a native court of grade A limited or above except that no native court may exercise jurisdiction in respect of a Government servant and Government property marks.

377. Whoever makes or has in his possession 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 belong to a person to whom they do not belong, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

Making or possession of any instrument for counterfeiting a property mark.

COMMENT

Pakistan Penal Code section 485.

Sudan Penal Code section 421.

The purpose of the making of the instruments for counterfeiting or of their possession must be shown to be for the purpose of counterfeiting.

PRACTICE

1. Prove :

- (a) that the accused made or had in his possession the die, plate, or other instrument in question.
- (b) that such die, etc., was for the purpose of counterfeiting a property mark.
- or prove :*
- (a) that the accused had in his possession the property mark in question.
- (b) that he possessed the property mark for the purpose of denoting that any good belonged to a person to whom they did not belong.

2. Procedure.—As for section 376.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you made [or had in your possession] a certain die,.....[or plate or instrument, to wit.....] for the purpose of counterfeiting the property mark of AB, in order to denote that certain goods, to wit.....belong to the said AB to whom they do not belong and that you thereby committed an offence punishable under Section 377 of the Penal Code.

378. Whoever makes any false mark upon any case, package or other receptacle containing goods in a manner reasonably calculated to cause any public servant or any other person to believe that such receptacle contains goods which it does not contain or that it does not contain goods which it does contain or that the goods contained in such receptacle are of a nature of quality different from the real nature or quality thereof,

Making a false mark upon any receptacle containing goods.

shall, unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three years or with fine or with both.

COMMENT

Pakistan Penal Code section 487.

Sudan Penal Code section 422.

(1) An offence under this section might also be dealt with under section 374. Note that this section refers to a false mark and is therefore wider than section 374 which refers to a property mark. The section would therefore provide a punishment for persons who deceive Customs officers or other public servants by falsely marking goods with intent to defraud the Government Revenue.

(2) Note that it is a defence to show that the accused had no intent to defraud.

PRACTICE

1. Prove :

- (a) that the accused made some mark upon a case, package or other receptacle containing goods.
- (b) that the mark was a false mark.
- (c) that he did so in a manner reasonably calculated to deceive a public servant or other person into the belief :
- (i) that such receptacle contained goods which it did not contain; or
- (ii) that it did not contain goods which it did contain; or
- (iii) that the goods contained in the receptacle were of a nature or quality different from their real nature or quality.

2. Procedure.—As for section 376 except that a case may be tried by a magistrate of the third grade.

379. Whoever makes use of any such false mark in any manner prohibited by section 378 shall, unless he proves that he acted without intent to defraud be punished as if he had committed an offence against that section.

Making use of any such false mark.

COMMENT

Pakistan Penal Code section 488.

Sudan Penal Code section 423.

Section 378 deals with falsely marking a case, etc., whilst this section punishes making use of a case so marked.

PRACTICE

1. Prove :

- (a) that the accused made use of some mark upon some case, package or receptacle containing goods and that such goods or things bore a mark.
- (b) that the said mark was counterfeit.

2. Procedure.—As for section 378;

3. Charge.—See form of charge under section 378.

380. 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 be punished with imprisonment for a term which may extend to one year or with fine or with both,

Tampering with property mark.

COMMENT

Pakistan Penal Code section 489.

Sudan Penal Code section 424.

This section is intended to cover cases in which a property mark (e.g. a broad arrow on Government property) is removed to facilitate its misappropriation.

PRACTICE

1. Prove :

- (a) that the mark in question was a property mark.
- (b) that the accused altered, defaced, destroyed or removed it.
- (c) that he did so intending or knowing it to be likely that he might thereby cause injury to any person.

2. Procedure.—As for section 378.

3. Charge.—I [] hereby charge you [] as follows :—

That on or about the..... day of..... at..... you removed [or destroyed, defaced, or added] to a property mark to wit..... (describe it), intending [or knowing it to be likely], that you might thereby cause injury to AB, and that you thereby committed an offence punishable under Section 380 of the Penal Code.

[or in conducting any person or property or to guard etc.] voluntarily omitted to do so and thereby committed an offence punishable under Section 381 of the Penal Code.

CHAPTER XXI

CRIMINAL BREACH OF CONTRACTS OF SERVICE

381. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place or to act as servant to any person during a voyage or journey or to guard any person or property during the voyage or journey, voluntarily omits so to do, except in the case of illness or ill treatment, shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to five pounds or with both.

Breach of contract of service during voyage or journey.

ILLUSTRATIONS

- (a) A porter, being bound by a lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed an offence under this section.
 (b) A, by unlawful means, compels B a porter to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not essential to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient, if the contract is lawfully made with any person either expressly or impliedly by the person who is to perform the service.

ILLUSTRATION

A contracts with a village head to provide horses for a journey. The village head sub-contracts for the performance of the contract with B, a member of his village, who starts in charge of some of the horses and in the course of the journey voluntarily leaves the horses. B is guilty of an offence under this section.

COMMENT

Sudan Penal Code section 425.

This section is intended to protect travellers against desertion by their servants during a voyage or journey. Note that illness or ill-treatment are defences open to an accused.

PRACTICE

1. Prove :

- (a) that the accused was bound by lawful contract.
 (b) that the contract was :
 (i) to render his personal services in conveying or conducting any person or any property from one place to another; or
 (ii) to act as servant to any person or to guard any property during a voyage or journey.
 (c) that the accused omitted to fulfill his contract.
 (d) that he did so voluntarily.
 (e) that the accused was not ill or had not been ill-treated.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and compoundable and may be tried by any court.

3. Note.—No court can take cognizance of an offence under this section except upon the complaint of the person aggrieved by the breach of contract (see section 141 of the Criminal Procedure Code).

4. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you being bound by a lawful contract to render your personal services in conveying AB to.....

382. 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, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to ten pounds or with both.

Breach of contract to attend on and supply wants of helpless person.

COMMENT

Pakistan Penal Code section 491

Sudan Penal Code section 426.

- (1) The servant referred to in this section must be one specially retained for the supervision of the helpless person, *i.e.*, not a general servant.
 (2) The fact that such a servant is not in sole charge of the helpless person is immaterial.
 (3) It is not necessary that the contract should be with the helpless person or his representatives. The principal of a lunatic asylum or a doctor in a hospital may have a contract with the Government, native authority or a person to take care of helpless people in his charge and would be liable under this section for a voluntary omission.

PRACTICE

1. Prove :

- (a) that the accused entered into a contract to attend on or supply the wants of a person.
 (b) that the contract was legal.
 (c) that the person was then helpless or incapable of providing for his own safety or supplying his own wants.
 (d) that the helplessness or incapacity arose from :
 (i) youth; or
 (ii) unsoundness of mind; or
 (iii) disease; or
 (iv) bodily weakness.
 (e) that the accused omitted to attend on such person or to supply his wants.
 (f) that he did so voluntarily.

2. Procedure.—As for section 381.

3. Note.—No court can take cognizance of an offence under this section except upon the complaint of some person aggrieved by the breach of contract (see section 141 of the Criminal Procedure Code).

CHAPTER XXII

OFFENCES RELATING TO MARRIAGE AND INCEST

383. 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 be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Deceitfully inducing belief in lawful marriage.

COMMENT

Pakistan Penal Code section 493.

Sudan Penal Code section 428.

This offence is also punishable as rape under section 282.

PRACTICE

1. Prove :

- (a) that the accused cohabited with the complainant.
- (b) that he was not legally married to her.
- (c) that she had consented to the cohabitation believing that she had been lawfully married to him.
- (d) that this belief was induced by deceit on the part of the accused.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried by the High Court or by a native court of grade B or above.

Note.—A court shall not take cognizance of an offence under this section except upon a complaint made by an aggrieved person but where the person aggrieved is a woman who according to the customs and manners of the country ought not to appear in public or where the person is under the age of eighteen or is an idiot or a lunatic who from sickness is unable to make a complaint, some other person may, with the leave of the court, make a complaint on her behalf. (section 141 of the Criminal Procedure Code).

384. (1) Whoever having a husband or wife living marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Marrying again during life-time of husband or wife.

(2) This section shall not extend—

(a) to any person whose marriage with such husband or wife has been legally dissolved; nor

(b) to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife at the time of the subsequent marriage shall have been continually absent from such person for the space of seven years and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

COMMENT

Pakistan Penal Code section 494.

Sudan Penal Code section 429.

(1) This section punishes the offence of bigamy and in the Northern Region applies chiefly to christians recognising monogamous marriage and to marriages contracted under the Marriage Ordinance (Cap. 128).

(2) The section makes no reference to intention, knowledge, fraud or deceit but makes the mere contracting of the second marriage a crime.

(3) The voidability of the second marriage depends upon the validity of the first and upon the fact that the second marriage would have been valid except for the existence of the first marriage. The validity of a marriage in the Northern Region depends upon :

(a) The religion of the parties and the native law and custom, if any, governing the marriage;

(b) the domicile of the parties; and

(c) the nature of the ceremony by which the marriage was established.

(4) The word "marriage" does not refer to a valid marriage. It means "married by some form of marriage known or recognised". The second marriage may in fact be invalid either because it is bigamous or for some other reason.

(5) In Moslem law polygamy is permissible but a moslem is limited to four wives so that a marriage to a fifth may be punishable if his earlier four marriages were still extant. A moslem wife can commit an offence under this section by contracting a second marriage at time when the first is still valid. Note also that in Moslem law apostasy from Islam by a husband married to a moslem wife operates as a complete and immediate dissolution of the marriage.

(6) Subsection (2) provides two defences :

(a) a valid divorce dissolving the first marriage; and

(b) proof that the spouse had been continuously absent and that the accused had not heard of his spouse for seven years. This exception does not place on an accused person the obligation to make enquiries. The reason of the presumption of death arising from seven years continuous absence is sufficient to negative criminality providing that the accused has made a full disclosure of the facts to his second spouse.

PRACTICE

1. Prove :

- (a) that the accused had already been married.
- (b) that such marriage was legal.
- (c) that the person with whom he was married was still alive.
- (d) that the accused married another person.
- (e) that the subsequent marriage was void by reason of its taking place during the life of the first consort.

2. Procedure.—As for section 384. See the procedural note to section 383 regarding cognizance by a court.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at....., you having a wife [or husband] to wit.....living, married again AB, which marriage is void by reason of its taking place during the life time of such wife [or husband], wit....., and that you thereby committed an offence punishable under Section 384 of the Penal Code.

385. Whoever commits the offence defined in section 384 having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.

Re-marriage with concealment of former marriage.

COMMENT

Pakistan Penal Code section 495.
Sudan Penal Code section 430.

This is an aggravated form of the offence prescribed under section 384.

PRACTICE

1. Prove :

- (a) the points requiring proof for an offence under section 384.
(b) that the accused had before his second marriage concealed from his spouse the fact of his previous marriage.

2. Procedure.—As for section 384.

3. Note.—No court shall take cognizance of this offence except upon a complaint made by some person aggrieved by such an offence.

4. Charge.—As for section 348 with the addition of the element of concealment.

386. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married knowing that he is not thereby lawfully married, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Marriage ceremony fraudulently gone through without lawful marriage.

COMMENT

Pakistan Penal Code section 496.
Sudan Penal Code section 431.

(1) The essence of an offence under this section is deception whether of a party to the marriage or of a third person. There must be a dishonest or fraudulent purpose behind the mock marriage.

(2) Section 383 only affect the man; an offence under this section may be committed by either party to the marriage. Section 383 requires no ceremony; for an offence under this section a ceremony is necessary.

PRACTICE

1. Prove :

- (a) that the accused went through a form of marriage.
(b) that he was then aware that it did not bind him.
(c) that he went through the form of marriage dishonestly or fraudulently.

2. Procedure.—As for section 383.

3. Note.—No court shall take cognizance of offences punishable under this section except upon the complaint made by some person aggrieved by the offence.

4. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....you dishonestly [or fraudulently] went through the ceremony of being married to AB, knowing that you were not thereby lawfully married, and that you thereby committed an offence punishable under Section 386 of the Penal Code.

387. Whoever, being a man subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom he knows or has reason to believe is not his wife, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Adultery by a man.

COMMENT

cf. Pakistan Penal Code section 497.

Sudan Penal Code section 432

(1) This section marks a noticeable departure from English Law under which adultery is not a criminal offence. It also departs from the Pakistan and Sudan Codes in two important respects :

(a) it exempts from the operation of the section any person not subject to a native law and custom in which extra marital sexual intercourse is a criminal offence; and

(b) the offence is not limited to intercourse with a woman known to be the wife of another man : any extra marital sexual intercourse is sufficient to complete the offence. i.e., the section punishes fornication.

(2) Knowledge or reasonable belief that the woman is not his wife is essential.

(3) The offence if committed by a moslem may be punished with Haddi lashing under section 68.

PRACTICE

1. Prove :

- (a) that the accused had sexual intercourse with a woman.
(b) that he knew or had reason to know that the woman was not his wife.
(c) that the sexual intercourse was not such as to amount to rape.
(d) that the accused is subject to a native law and custom in which extra marital sexual intercourse is recognised as a criminal offence.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable and compoundable by the husband of a married woman or the parent or guardian of an unmarried woman. The offence may be tried by any court.

3. Note.—In the case of a married woman the complaint must be made by the husband of the woman or, in his absence some person who had care of the woman on his behalf at the time the offence was committed. In the case of an unmarried woman the complaint must be made by her father or guardian or in his absence by some person who had care of her at the time the offence was committed (see section 142 of the Criminal Procedure Code.) This provision has the effect of requiring a complaint to be made in any prosecution of a man for adultery by the husband, father or guardian of the woman in the case. Without such a complaint there can be no prosecution at all.

4. Charge.—I [] hereby charge you [] as follows :

That on or about theday of.....at.....you being subject to a native law and custom in which extra marital sexual intercourse is recognised as a criminal offence had sexual intercourse with AB who was not and whom you knew or had reason to believe was not your wife and thereby committed an offence punishable under Section 387 of the Penal Code.

388. Whoever, being a woman subject to any native law or custom in which extra-marital sexual intercourse is recognised as a criminal offence, has sexual intercourse with a person who is not and whom she knows or has reason to believe is not her husband is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Adultery by a woman.

COMMENT

cf. Pakistan Penal Code section 498.

Sudan Penal Code section 433.

This section is the converse of section 387 and punishes a woman who is a party to illicit sexual intercourse. See the comment to section 387 which generally applies.

PRACTICE

1. Prove :

- (a) that the accused had sexual intercourse with a woman.
- (b) that she knew or had reason to know that the man was not her husband.
- (c) that she is subject to a native law and custom in which extra marital sexual intercourse is regarded as a criminal offence.

2. Procedure.—As for section 387.

3. Note.—See note to section 387 regarding requirement for complaint.

4. Charge.—As for section 387 substituting “man” for “woman” and “husband” for “wife” and *vice versa* as necessary.

389. Whoever takes or entices away any woman, who is and whom

Enticing or taking away or detaining with criminal intent a married woman.

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 any person or conceals or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 499.

Sudan Penal Code section 434.

(1) This section departs from English law which does not make it a criminal offence to seduce another man's wife.

(2) The section is not limited in its scope by any reference to native law and custom. cf. sections 387 and 388. However, in India, “illicit” intercourse was interpreted as “unlawful” intercourse. If this meaning is accepted in the Northern Region an act of unlawful sexual intercourse or an intention to commit such an act within the meaning of sections 387 and 388 would have to be proved to complete an offence under this section. Reference to sections 387 and 388 will therefore necessitate reference also to the appropriate native law and custom, if any, to which an accused is subject.

(3) The woman enticed must be married and the accused must know that she is married.

(4) The taking or enticing away must be from the husband or from some other person having care of her on his behalf. This means that the woman must have been at the time cohabiting with and under the protection of her husband i.e., not maritally separated from him judicially or by desertion.

(5) The words “conceals or detains” do not necessary imply wrongful confinement.

PRACTICE

1. Prove :

- (a) that the woman was married.
- (b) that the accused knew or had reason to believe that she was the wife of another man.
- (c) that she was at the time of the offence living under the care of her husband or someone else on his behalf.
- (d) that the accused :
 - (i) took; or
 - (ii) enticed her away from her husband or that other person; or
 - (iii) concealed; or
 - (iv) detained her.
- (e) that his intention in doing so was that she might have illicit intercourse with some man.

2. Procedure.—As for section 387.

3. Note.—For the sanction required before a court may take cognizance of an offence under this section see the note on procedure under section 387.

4. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you took away [or enticed away or concealed or detained] AB, the wife of CD whom you then knew [or had reason to believe] to be the wife of the said CD from the said CD [or from EF who had the care of the said AB on behalf of CD] with intent that the said AB might have illicit intercourse with some person (*if known, name him*); and that you thereby committed an offence punishable under Section 389 of the Penal Code.

390. Whoever being a man has sexual intercourse with a woman who

Incest.

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 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 other of her male ascendants or descendants, her brother or the son of her brother or sister or her paternal or maternal uncle to have sexual intercourse with her, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.¹

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

COMMENT

Sudan Penal Code section 435.

(1) This section codifies the law on this subject which is equally recognised by both Moslem and Christian religions.

(2) The section refers to sexual intercourse and not necessarily to marriage.

PRACTICE

1. Prove :

- (a) that the accused, either a man or woman, has had sexual intercourse with a person within the degrees prohibited by the section.
- (b) that the accused was acting voluntarily and with knowledge.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is not normally bailable and not compoundable and may be tried in the High Court or by a native court of grade A limited or above.

3. Charge.— [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you had sexual intercourse with a woman AB whom you knew or had reason to know was your daughter [or grand daughter, etc.] and thereby committed an offence punishable under Section 390 of the Penal Code.

1. Inserted “paternal or” by virtue of section 8 of the Penal Code (Amendment) Law, 1960 (N.R. No. 19 of 1960), thereby rectifying an obvious omission in the original text of the Code.

CHAPTER XXIII—DEFAMATION

391. (1) Whoever by words either spoken or reproduced by mechanical means or intended to be read or¹ by signs or by visible representations makes or publishes any imputation concerning a person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, save in the cases 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 an 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.

ILLUSTRATION

(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.

Exceptions.

(2) It is not defamation—

Imputation of truth which public good requires to be published.

(i) 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 Kaduna. 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 Zaria and had been living an upright life, A would not be protected by this exception if he raked up the facts and published them.

1. The word "or" inserted to correct error in original text by section 9 (a) of the Penal Code (Amendment) Law, 1960 (N.R. No 19 of 1960).

Public conduct of public servant.

(ii) 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;

Conduct of any person touching any public question.

(iii) 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;

ILLUSTRATION

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 meeting or informing or joining any society which invites the public support.

Publication of reports of proceedings of Courts.

(iv) to publish a substantially true report of the proceedings of a Court of Justice or of the result of any such proceedings;

Merits of case decided in Court or conduct of witnesses and others concerned.

(v) to express in good faith any opinion whatever respecting the merits of any case civil or criminal which has been decided¹ by a Court of Justice 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 at 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.

Merits of public performance.

(vi) 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.

1. The word "decided" substituted for "declared" by section 9 (b) of the Penal Code (Amendment) Law, 1960 (N.R. No. 19 of 1960).

(c) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(d) A says of a 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.

Censure passed in good faith by person having lawful authority over another.

(vii) 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 lawful authority relates;

ILLUSTRATIONS

An alkali censuring in good faith 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 inefficiency 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.

Accusation preferred in good faith to authorised person.

(viii) 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 the accusation;

ILLUSTRATIONS

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z a servant to Z's master; if A in good faith complains of the conduct of Z a child to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

(ix) 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 of any other person or for the public good;

ILLUSTRATIONS

(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 District Officer in making a report to his superior officer, 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 of Justice 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 he is giving false evidence he can be proceeded against under section 158.

Caution intended for good of person to whom conveyed or for public good.

(x) 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.

392. Whoever defames another shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Punishment for defamation.

COMMENT

Pakistan Penal Code sections 499 and 500.

Sudan Penal Code sections 436 and 437.

(1) Section 391 differs from the English law of criminal libel in two particulars:

(a) English law stipulates that the crime must have or tendency to provoke a breach of the peace: the test in the Code is that the crime causes injury to the person defamed;

and (b) English law excludes spoken words from the crime of libel; the Code makes no such distinction with regard to defamation.

(2) As other sections of the Code protect a person's personal rights and property, this section protects his personal reputation. The section defines the offence and the exceptions thereto which limit the scope of the offence by setting up the circumstances in which damage to a person's reputation may be justifiable.

(3) A Court should always bear in mind that where the harm caused is slight, section 58 operates to negative the offence.

(4) If the imputation is *prima facie* defamatory no actual harm has to be proved: if a statement is defamatory the publisher is deemed to know that it will harm the reputation of the person defamed. A statement may be defamatory by *innuendo*.

(5) The gist of the offence is in the publication of harmful information about a person. In India, it has been held that publication to a person other than the person defamed is necessary to constitute the offence.

(6) It is not necessary to prove ill will or malice.

(7) The term "publication" includes not only publication by the person who actually originated the libel but also publication by a printer or by a third person passing on the libel. "Tale bearers are as bad as tale makers". All persons taking part in the publication are equally liable. Publication may be by words, signs or visible representations.

(8) The harm caused, or intended or believed to be likely must amount to injury and the injury must be to a man's reputation, e.g., harm to property not affecting a man's reputation is insufficient.

(9) A person's estimate of himself is not his reputation. It follows that an attack upon personal esteem is not therefore defamation. Words of common abuse ("you fool," "you rogue" etc.) which convey no definite imputation harmful to one's reputation are not defamation. A definite public allegation would however be defamation (e.g., "You are a rogue, you stole my £30").

(10) The following have been held in India to be clearly defamatory:

(a) words which impute the commission of a crime to a person;

(b) words charging a person with a contagious or loathsome disease, e.g., stating that a person has a venereal disease;

(c) words imputing the efficiency, honesty or integrity of a professional man.

(11) Under Explanation I which deals with defamation of the dead, an imputation must be intended to hurt the feelings of the deceased's family or near relatives and must be such as would have harmed the reputation of the deceased if living. What are "his family and near relatives" is a question of fact depending upon the nature of the imputation and its reflection on the honour and credit of the survivors.

(12) Explanation 2 deals with defamation of a class of person. Note:

(a) the class must not be too large to cease to be distinct, e.g., to say that all lawyers are thieves is not defamation because the generalisation is too sweeping to affect any particular lawyer;

- (b) the court should consider the effect of the imputation upon individuals constituting the class. If the reputation of any individual is injured as a result of the imputation, the imputation is likely to be defamatory within the meaning of the section.
- (c) if a well defined class is defamed each and all of its members may complain. The defamation must be shown to be upon all the members of the class.
- (d) the personal reputation of a corporation or native authority is connected with its management of its property and its conduct of business. The words complained of must reflect on the management of its business and must injure the reputation of the corporation, etc., as distinct from the reputation of the individuals making up the body corporate.
- (e) before convicting a person of an offence under section 392 it is necessary for the court to consider whether an accused is entitled to the benefit of any of the ten exceptions contained in paragraph (2) of section 391. In considering the exceptions, section 37 "good faith" should also be considered.
- (f) Exceptions are :
- (i) *Publication of the truth for the public benefit.*—It must be shown that the truth extended to the imputation in full. This defence does not extend to the protection of such statements as "A says that B is engaged in corrupt practices". The fact that the accused proves that it is true that A made such a statement does not excuse him in repeating it. The accused is required to prove the truth of the whole statement published. Whether or not the publication was for the public good is a question of fact for the decision of the court.
- (ii) *Criticism of public servants.*—The law distinguishes between comment and a statement of fact. Where the comment is based on a statement of fact, the statement must be proved or the comment is unjustifiable. The comment must be made in good faith and must be limited to the conduct of a public servant or to his character as it appears in the conduct. An attack on a public servant's private character is not protected.
- (iii) *Criticism of a public question.*—This exception is designed to permit free and honest criticism of public personalities who are not public servants. The rules applying to this exception are similar to those applying to exception (ii).
- (iv) *Publication of reports of judicial proceedings.*—A factual account of proceedings before a court is protected because as a general rule it is in the public interest that there should be such publicity. The report need not be verbatim and need not state all that occurred providing that it is fair. Note the difference between a fair report and comment thereon. Comment on judicial proceedings is only protected if made in good faith and in the public interest. The protection of this exception extends only to judicial proceedings.
- (v) *Comment on cases decided in courts.*—The right of the public to discuss a case and the conduct of witnesses, etc., arises when a case has been decided and not when it is *sub judice*. Comment at the earlier stage amounts to contempt of court. Comment must be confined to the merits of the case including the conduct of witnesses and parties. The comment must be fair and honest and not invective calculated to bring the courts into contempt and injure the character of individuals.
- (vi) *Criticism of literary and dramatic productions.*—The essential requirements of this section are :
- (a) that the author must have invited public criticism either expressly or by implication. An invitation may be implied from the fact of publication.
- (b) the criticism must be directed at the merits of the performance and not at the private character of the performers.
- (c) the criticism must be made in good faith.

- (vii) *Censure passed by person in authority.*—The censure must be on the conduct of the person and within the scope of the critic's authority and must be in good faith. The accused must be in authority : the authority may be the authority conferred by law or by contract or by social relationship. See Illustrations to the section for examples of all three types of authority.
- (viii) *Accusation preferred in good faith to an authorised person.*—This exception is to ensure that an aggrieved person shall always be able freely to complain to the authorities and to seek redress. Persons in authority include officers of courts, police officers and administrative officers providing it is shown that the person to whom the accusation is addressed has authority over the person the subject of the complaint. e.g. in the case of a complaint to a court it must be shown that the court had jurisdiction over the person accused. In India, the protection of this exception has been held to apply to complaints made to Governors and Ministers of the Crown. "Accusation" means a charge or formal complaint that some person has committed an offence. The mere expression of suspicion that a person has committed a crime is not an accusation. The accusation must be made in good faith, i. e. the person making the accusation must show that he had reasonable grounds for believing it to be true and that he made it to a lawful authority.
- (ix) *Statement made in self-defence or defence of another.*—It is not necessary under this exception to justify a statement by proving that it is true. An accused must show that he honestly believed it to be true and that he published it to protect his own interest or the interest of the public. Self interest refers to the interest which a person has in his property, reputation and the like. Section 114 of the Criminal Procedure Code lays upon members of the public a duty to give information in respect of a number of matters. All such information given in good faith is privileged as it is given in the public interest. See the illustrations to the exception for further examples.
- (x) *A caution in good faith intended for the good of the person cautioned.*—See illustration (a) to exception (ix) for an example of an imputation coupled with a caution. The same rules govern the giving of a caution under this exception as hold for exception (ix). The caution must be given in good faith. Good faith implies fairness and an honest belief in the truth of the matter giving rise to the caution. There must be no undue publicity given to the implication and the accompanying caution.
- (xi) *Note.*—Absolute privilege is accorded to members of any Legislature in Nigeria in respect of speeches delivered at meetings of the Legislature. The privilege is confined to utterances in the House : repetition outside is not privileged. See the Nigeria (Constitution) Order in Council 1954 as amended.*

PRACTICE

1. Prove :

- (a) that the accused made or published an imputation.
- (b) that it concerned the complainant or some other person thereby aggrieving the complainant.
- (c) that the imputation amounts to defamation (see section 391).

2. *Procedure.*—A warrant is required for the arrest of an accused. The offence is bailable and compoundable by the person defamed and may be tried by a magistrate of the first grade or by a native court of grade C or above.

3. *Note.*—The consent of the person defamed is required for a prosecution under this section (see section 142 of the Criminal Procedure Code).

4. *Charge.*—I [] hereby charge you [] as follows :
That on or about the.....day of.....at.....you made or

* Section 77, Nigeria (Constitution) Order in Council, 1954 No. 1146 as reprinted in L. N. 52 of 1960, Federation of Nigeria Official Gazette.

published the following imputation concerning AB, to wit..... (here set out the defamatory matter) intending to harm or knowing or having reason to believe that it would harm the reputation of the said AB, and that you thereby committed an offence punishable under Section 392 of the Penal Code.

393. (1) Whoever, save as hereinafter excepted, by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any false statement of fact, intending to harm or knowing or having reason to believe that such false statement of fact will harm the reputation of any person or class of persons or of the Government authority in the Northern Region shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Explanation 1.—A statement is false unless it is substantially true and proof that a statement is substantially true shall lie on the accused.

Explanation 2.—Whether a statement is a statement of fact or a mere expression of opinion is a matter for the decision of the court.

(2) It is not an offence under this section to make or publish in good faith a false statement of fact which the accused had reasonable grounds for believing to be substantially true and proof that he had such reasonable grounds shall lie on the accused.

ILLUSTRATIONS

- (a) A newspaper publishes a false statement that the proceeds of a recent increase in a tax were shared amongst the Ministers of the Crown personally. This is a false statement of fact.
- (b) A says that Z's bakery is unhygienic. This is a statement of opinion; but if A says that he saw Z take a dead mouse out of the dough before baking this is a statement of fact.

COMMENT

Sudan Penal Code section 437A.

(1) The distinction between the offence of criminal defamation defined in section 391 and the offence of injurious falsehood defined in this section is clearly brought out in the following extract from the Law Reports of the Sudan—¹

“Criminal defamation is a breach of the law of libel and the law of libel is concerned with injuries to the reputation of individuals. The offence of injurious falsehood is concerned with not only the reputation of an individual but the reputation of any class of persons or the Government or any local authority. The words ‘class of persons’ are not to be found in the body of section [391] which refers only to a person.

“Under section [391] it is an offence to defame any person which may include a company or an association or a collection of persons as such provided and provided only that the imputation made of such a company, etc., can reasonably be expected to refer to each member of it. This has the effect of limiting the size of the class which can be defamed. The reason for this is that in accordance with the law of libel if, and only if, a defamatory statement is referable to each member of the class, etc., each member has an individual right to complain that his individual reputation has been defamed. The offence under section [391] is compoundable: that is, the individual or individuals defamed may withdraw their accusation. It is their individual reputation which is attacked and since the law is intended to protect the individual and not a group without regard to each individual it is open to each of them to proceed with the prosecution or withdraw as they may wish. An offence under section [393] is not compoundable. It is the policy of the law to protect not only a person but any class of persons or the Government or any local authority from false statements which are intended to injure their reputation, not necessarily as individuals but as bodies. The section is thus far wider in scope than section [391].¹

1. Sudan Govt. v. Abdulla Ragab (Cr. App. 2 Sudan Law Reports 1st. Series).

(2) The Sudan section has been supplemented to make it clear that the false statement must be of fact and not a mere opinion and illustrations have been added to further clarify this point. Note that the onus is upon the defence to prove that a statement is substantially true.

PRACTICE

1. Prove :

- (a) that the accused made or published a statement of fact.
 (b) that the statement was false.
 (c) that the statement concerned a person, class of persons, the Government, a native authority in the Northern Region or any local authority in the Northern Region.
 (d) that the accused intended or knew or had reason to believe that the false statement of fact would harm the reputation of the person, class of persons, etc.

The sanction of the Director of Public Prosecution is required before a prosecution may be initiated (S141 of the Criminal Procedure Code as amended by the Criminal Procedure Code (Amendment) Law, 1962 (N.N. No. 12 of 1962)).

2. Procedure.—As for section 392.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the..... day of..... at..... you made [or published] a false statement of fact to wit..... thereby intending to harm [or knowing or having reason to believe that such false statement would harm] the Government of the Northern Region [or AB or a class of persons or a native authority, etc.] and thereby committed an offence punishable under Section 393 of the Penal Code.

394. Whoever prints or engraves 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 be punished with imprisonment for a term which may extend to two years or with fine or with both.

Printing or engraving matter known to be defamatory.

COMMENT

Pakistan Penal Code section 501.

Sudan Penal Code section 438.

(1) This section makes abtment of an offence under section 392 a distinct offence under the Code.

(2) Note the distinction between the words “having good reason to believe” and the definition in section 18. “Reason to believe” required in this section must be not only sufficient but strong and such as would have probably led a reasonable man to believe that the matter was defamatory.

(3) The gist of the offence consists in printing or engraving the defamatory matter with knowledge of its nature. It is not necessary that an accused had no intention to publish the matter.

PRACTICE

1. Prove :

- (a) that the accused printed or engraved any matter.
 (b) that he did so intending or having good reason to believe that it was defamatory.
 2. Procedure.—As for section 392 except that a case may be tried by a native court of Grade A limited or above.

(3) Note that no court may take cognizance of this offence except upon a complaint made by some person aggrieved by the offence (section 142 of the Criminal Procedure Code).

4. Charge.—I [] hereby charge you [] as follows :

That on or about the..... day of..... at..... you printed or engraved some matter, to wit..... knowing or having good rea-

son to believe that the same was defamatory, and that you thereby committed an offence punishable under Section 394 of the Penal Code.

5. Note.—On a conviction under this or the next section the court may order the destruction of the copies of the thing in respect of which the conviction was made (see section 359 of the Criminal Procedure Code).

395. Whoever sells or offers for sale any printed or engraved 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 be punished with imprisonment for a term which may extend to two years or with fine or with both.

Sale of printed or engraved substance containing defamatory matter.

COMMENT

Pakistan Penal Code section 502.

Sudan Penal Code section 439.

This section is intended to punish persons who offer for sale defamatory printed matter with knowledge that it is defamatory.

PRACTICE

1. Prove :

- (a) that the accused sold or offered for sale any printed or engraved substance.
- (b) that the substance contained defamatory matter.
- (c) that he then knew that it contained defamatory matter.

2. Note.—No court may take cognizance of this offence except upon a complaint made by some person aggrieved by the offence, (section 142 of the Criminal Procedure Code).

3. Procedure.—As for section 394.

4. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you sold [or offered for sale] any printed [or engraved] substance, to wit.....containing defamatory matter knowing that it contained such matter and that you thereby committed an offence punishable under Section 395 of the Penal Code.

(5) See note to section 394 regarding power of court to order destruction of defamatory matter.

CHAPTER XXIV

CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE AND DRUNKENNESS

396. Whoever threatens another with any injury to his person, reputation or property or to the person reputation or property of anyone in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person 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.

397. Whoever commits the offence of criminal intimidation shall be punished—

Punishment for criminal intimidation.

- (a) with imprisonment for a term which may extend to two years or with fine or with both; and
- (b) 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 which may extend to seven years or to impute unchastity to a woman, with imprisonment for a term which may extend to seven years or with fine or

with both.

COMMENT

Pakistan Penal Code sections 503 and 506.

Sudan Penal Code sections 440 and 441.

- (1) See section 31 for definition of "injury".
- (2) For injuries to person see Chapter XVIII. For injuries to property Chapters XIX and XX. For injuries to reputation see sections 391 and 393.
- (3) The threat must be of the kind and made with the intent specified in the section.

PRACTICE

1. Prove :

- (a) that the accused threatened the complainant or some other person.
- (b) that the threat was of some injury to him.
- (c) that it was given to cause alarm to him or to cause him not to do or to omit to do any act which he is legally entitled to or not bound to do.

2. Procedure.—A warrant is required for the arrest of an accused. The offence is bailable. The offence under paragraph (a) is compoundable. The offence under paragraph (b) is not compoundable. The offence may be tried by any court.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you threatened AB [or CD] with injury to his person [or reputation or property] with intent to cause alarm to the said AB [or CD] (or to cause the said AB or CD to do an act to wit.....(specify it) or not to do an act, to wit.....(specify it), which he was not legally bound to do, or which he was legally entitled to do), and that you thereby committed an offence punishable under Section 396 of the Penal Code.

398. 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 be punished with imprisonment for a term which may extend to two years in addition to the punishment provided for the offence by section 397.

COMMENT

Pakistan Penal Code section 507.

Sudan Penal Code section 442.

This section is a proviso to section 397 providing a higher punishment in consequence of the offence being committed by means of an anonymous communication.

PRACTICE

1. Prove :

- (a) the points laid out for proof under section 397
(b) and that the threat was by a communication in which the true name and residence of the accused was concealed.

2. Procedure.—As for section 397 except that it may be tried by a magistrate of the first grade or a native court of Grade C or above.

399. Whoever intentionally insults and thereby gives provocation to any person intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

COMMENT

Pakistan Penal Code section 504.

Sudan Penal Code section 443.

(1) The offence stated in this section is not punishable under sections 391 and 392 as defamatory, although in English law defamatory words published to the person defamed in a manner calculated to cause a breach of the peace are punishable. The object of this section is simply to punish the offering of an insult to another which is likely to provoke reprisals and therefore a breach of the peace. The section punishes any insult which is intentional and gives provocation likely to lead to retaliation.

(2) The insult must be delivered to the person insulted.

(3) The insult need not be in words. The insult may equally be effected by an act, gesture, or sign. e.g., by pulling a man's beard or by making indecent gestures at a female. It is for the court to decide whether any particular words, etc., amount to an insult.

(4) The insult must be provocative and a breach of the peace must thereby be likely.

PRACTICE

1. Prove :

- (a) that the accused insulted some person.
(b) that he did so intentionally.
(c) that he thereby gave provocation to some person.
(d) that he then intended or knew it to be likely that the provocation given will cause the person to break the public peace or commit any other offence.

2. Procedure.—As for section 399.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you intentionally insulted AB by using the following words, to wit.....(set them out) and thereby gave provocation to the said AB [or to CD] intending [or knowing it to be likely] that such provocation would cause him to break the public peace [or to commit any other offence] and that you thereby committed an offence punishable under Section 399 of the Penal Code.

400. 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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

COMMENT

Pakistan Penal Code section 509.

Sudan Penal Code section 444.

(1) A person who insults the modesty of a woman in a public place is guilty of a public nuisance under section 200. A person who goes further than mere words or gestures may be guilty of assaulting or using criminal force to a woman under section 268. Section 400 applies to any act not otherwise punishable which outrages the modesty of a female.

(2) If the woman is a consenting party to the act her modesty cannot be outraged within the meaning of this section.

(3) If the accused simply charged with intrusion upon the privacy of a woman it must be shown that he did so with intent to outrage her modesty.

PRACTICE

1. Prove :

- (a) that the accused :
(i) uttered some word; or
(ii) made some sound; or
(iii) made some gesture; or
(iv) exposed some object; or
(v) intruded upon the privacy of a woman.
(b) that in cases (i) to (iv) above he intended that the same shall be heard or seen by a woman.
(c) that he thereby intended to insult the modesty of any woman.

2. Procedure.—As for section 399.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you (name of the accused) intending to insult the modesty of one AB, uttered the words, to wit.....[or made some sound or gesture, to wit.....or exhibited some object to wit.....], intending that the same shall be heard [or seen] by the said AB, and that you thereby committed an offence punishable under Section 400 of the Penal Code.

401. Whoever is found drunk in a public place or in any place by ^{Drunkenness in} entering which he committed a trespass, shall be punished—
public place.

- (a) with imprisonment for a term which may extend to three months or with fine which may extend to fifty pounds or with both; and
- (b) if the person so found conducts himself in such place in a disorderly manner or is incapable of taking care of himself, with imprisonment for a term of six months or with fine of one hundred pounds or with both.¹

COMMENT

Pakistan Penal Code section 510.

Sudan Penal Code section 445.

(1) This section does not punish drunkenness as such : it punishes drunkenness when aggravated by disorderly conduct in a public place or in a place where it is a trespass for him to enter.

(2) The offence applies equally to all communities but if a moslem so conducts himself he is liable to Haddi punishment under section 68.

PRACTICE

1. Prove :

- (a) that the accused was drunk.
- (b) that as such he appeared in a public place or committed trespass.
- (c) that he then conducted himself in such a manner as to cause annoyance to any person.

2. Procedure.—As for section 399.

402. Whoever being drunk in any private place there conducts himself in a disorderly manner to the annoyance of any person ^{Drunkenness in} having a right to exclude him from such place or fails to private place. leave such place when requested to do so by such person, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred pounds or with both.

COMMENT

Sudan Penal Code section 446.

(1) This section prescribes the conditions in which drunkenness in a private place is punishable.

(2) A moslem is liable to a Haddi punishment for this offence. (see section 68).

PRACTICE

1. Prove :

- (a) that the accused was drunk.
- (b) that he was drunk in a private place.
- (c) that he then conducted himself in a disorderly manner.
- (d) that he thereby annoyed the person having a right to exclude him from the place.

or prove :

- (a) and (b) above; and further;
- (c) that he failed to leave the place when requested to do so by a person having right to make the request.

2. Procedure.—As for section 399.

3. Charge.—I [] hereby charge you [] as follows :

That on or about the.....day of.....at.....you were drunk in a private place, viz.....and you then conducted yourself in a disorderly manner to the

1. Punishments increased by Section 3 and 4 of the Penal Code (Amendment) Law, 1963 (N.N. No. of) 1963

annoyance of AB, he being a person with a right to exclude you from that place [or that you failed to leave that place when requested to do so by AB a person with a right to make such request] and there by committed an offence punishable under Section 402 of the Penal Code

403. Whoever being of the Moslem faith drinks anything containing alcohol other than for a medicinal purpose shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to five pounds or with both.

Drinking alcoholic drink.

COMMENT

This section punishes the mere consumption of alcohol by a moslem and is similar to legislation on the same subject in Cyrenaica. The section is an attempt to codify Moslem law. The injunction that a moslem should not drink alcohol derives directly from the Holy Quran. The consumption of alcohol so punished must be an intentional consumption and not for medicinal purposes.

2. An interesting discussion on the question whether legislation of this kind relating to limitations upon the consumption of alcohol by or sale to a class of persons in the community is discriminatory may be found in a study of the proceedings on appeal before the Supreme Court of Libya in the case of Dinali v. D.P.P. In this case, it is clear that the Libyan Court would have held if called upon to decide the issue that the legislation was designed to protect public morals.

(3) The offence is punishable with Haddi lashing under section 68.

PRACTICE

1. Prove :

- (a) that the accused drank something containing alcohol.
- (b) that he did so intentionally.
- (c) that he did not do so for a medicinal purpose.
- (d) that he is a person of the Moslem faith.

2. Procedure.—As for section 399.

404. Whoever is convicted of an offence under section 401, 402, or ^{Effect of previous} 403 shall, if he is shown to have been convicted of an ^{convictions under} offence under any of such sections with the previous ^{sections 401 402 or} six months, be punished—
403.

- (a) with imprisonment or fine which may extend to twice the maximum imprisonment or maximum fine prescribed for the offence of which he is convicted; and
- (b) if he is shown to have been convicted of two or more such offences within the like period, then with imprisonment or fine which may extend to three times the maximum imprisonment or maximum fine aforesaid or with both.

COMMENT

Sudan Penal Code section 447.

This section simply provides for heavier penalties for a person previously convicted under sections 401, 402 and 403 again committing a similar offence within six months of the previous conviction.

CHAPTER XXV

VAGABONDS

Definitions.

405. In this chapter :

- (1) The term "idle person" shall include—
- (a) any person who being able wholly or in part to maintain himself or his family wilfully neglects or refuses to do so;
- (aa) any person, who having been convicted under section 249 or 250 of the Schedule to the Criminal Code Ordinance commits any offence which would render him liable to be convicted as an idle person.¹
- (b) any person who wanders abroad or places himself in any street or public place to get or gather alms or causes or encourages children to do so unless from age or infirmity he is unable to earn his living;
- (c) any person who has no settled home and has no ostensible means of subsistence and cannot give a satisfactory account of himself;
- (d) any common prostitute behaving in a disorderly or indecent manner in a public place or persistently importuning or soliciting persons for the purpose of prostitution;
- (e) any person playing at any game of chance for money or money's worth in any public place;
- (f) any person who in any street or place of public resort or within sight or hearing of any person therein disturbs the peace by quarrelling or attempting to quarrel or by using any insolent, scurrilous or abusive term of reproach;
- (g) any person who in any street or place of public resort or within sight or hearing of any person therein with the intention of annoying or irritating any person, sings any scurrilous or abusive songs or words whether any person be particularly addressed therein or not;
- (h) any person who in any street or place of public resort is guilty of any riotous, disorderly or insulting behaviour to the obstruction or annoyance of any person lawfully using such street or place or any place in the neighbourhood thereof; and
- (i) any person who in any private or enclosed place is guilty of any riotous, disorderly or insulting behaviour to the annoyance of any person lawfully using any place in the neighbourhood thereof.

Explanation.—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.

1. New paragraph (aa) inserted by S. 2 of the Penal Code (Amendment) Law, 1961 (N.N. No. 47 of 1961) to permit offences of similar nature committed before 30 September 1960 to be taken into account by a court.

(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 housebreaking implements with intent to commit any of the offences defined in sections 343 to 347 inclusive of this Penal 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 XVIII or XIX of this Penal Code.
- (d) any male person who knowingly lives wholly or in part on the earning 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 or who practises sodomy as a means of livelihood or as a profession.

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

COMMENT

Sudan Penal Code section 448.

Nigerian Criminal Code section 249.

(1) The Sudan definition of an idle person has been supplemented in subsection (1) by the addition of categories (d) to (i) taken from the Nigerian Criminal Code. Idle persons within the meaning of parts (f) to (i) would all in fact have committed other offences under the Code.

(2) Note a nomad cannot be convicted on the grounds simply that he has no settled home.

(3) The definition of "vagabond" and "incorrigible vagabond" exactly follow the Sudan Penal Code.

406. Whoever is convicted as being an idle person shall be punished with imprisonment for a term which may extend to one month or with fine or with both.

407. Whoever is convicted as being a vagabond shall be punished with imprisonment which may extend to one year or with fine or with both.

408. Whoever is convicted as being an incorrigible vagabond shall be punished with imprisonment which may extend to two years or with fine or with both.

COMMENT

Sudan Penal Code sections 449, 450 and 452.

This section provides penalties for the various categories of vagabonds.

PRACTICE

1. Prove :

- (a) that a person is an idle person or a vagabond within the definition contained in section 405.
- (b) vagabondage under paragraph (a) of subsection (2) requires proof of a previous conviction as an idle person. Similarly to prove that a person is an incorrigible vagabond proof of a previous conviction as a vagabond is necessary.

2. Procedure.—As for section 399.

3. Charge.—I [] hereby charge you [] as follows :

That you, on or about the..... day of..... at..... were an idle person in that you had no settled home and no ostensible means of subsistence and were unable to give a satisfactory account of yourself and thereby committed an offence under Section 406 of the Penal Code.

4. Note.—The charge must be so framed as to state the exact nature of the offence charged within one or other of the various categories prescribed in section 405. e.g., the charge above is of an offence in section 403 subsection (1) (c).

409. 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 was guilty of 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.

Evidence of intent to commit an 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 enter the shop.

COMMENT

Sudan Penal Code section 456.

This section should be read as a practice note governing the whole of Chapter XXV.

The Penal Code (Northern Region) Federal Provisions Ordinance 1960

(L.N. No. 25 of 1960)

General Note

1. By virtue of Section 64 of the Second Schedule to the Nigeria (Constitution) Order in Council, 1960. the Parliament of the Federation of Nigeria has power to the exclusion of the legislatures of the Regions to make laws in respect of any matter included in the Exclusive Legislative List set out in Part I of the Schedule to the Constitution of the Federation. Thus, although the Government of Northern Nigeria has a power to initiate in the Regional Legislature legislation in respect of general criminal matters, a Region has no power to create offences in respect of subjects within the Exclusive Legislative List. It follows that the Region had no power to repeal those sections of the Criminal Code of Nigeria which referred to Federal matters. It was, nevertheless, desirable that the courts of Northern Nigeria should not be compelled to administer miscellaneous sections of the Criminal Code concurrently with the Penal Code. At the same time, it was also desirable as far as possible to produce a high degree of conformity between the Penal Code provisions relating to Federal offences and those in force elsewhere in the Federation. For instance, what is an offence on the railway in Eastern Nigeria should clearly be an offence in Northern Nigeria and what is treason in Lagos should be treason in Kaduna. The purpose of the Penal Code (Northern Region) Federal Provisions Ordinance, 1960 (L.N. No. 25 of 1960) is to supplement the Northern Nigerian Penal Code with Federal provisions covering those matters within the Criminal Code exclusively within the Federal legislative power and thereby enable the repeal of the Criminal Code *in toto* in so far as it has effect within the Northern Region.

2. The Ordinance follows the pattern of the Northern Nigerian Penal Code Law in enacting the provisions of the Code as a Schedule to the Ordinance. Section 2 of the Ordinance provides that the Schedule shall be read as the law of the Northern Region and as such form part of the Penal Code set out in the Schedule to the Penal Code Law, 1959. The numbering of the sections of the Schedule is consecutive with that of the Penal Code, i.e. the first section is numbered Section 410 and follows Section 409, the last section of the Schedule to the Penal Code Law. Section 2 of the Ordinance further provides that the provisions of the Penal Code referring to the Explanations and Definitions, Criminal Responsibility, Punishments and Compensation, Joint Acts, Attempts and Abetment shall apply fully to the Federal provisions subject only to a proviso in Section 3 of the Ordinance that a sentence of caning under the Penal Code may only be passed in respect of a Federal offence if it would have been passed under Section 18 of the Criminal Code of Nigeria¹ or under Section 287 of the Criminal Procedure Ordinance.²

3. Section 4 of the Ordinance is identical with S.4 of the Penal Code Law, 1959 and provides for situations arising where a crime is partly committed within the Northern Region.

4. Section 5 repeals the Criminal Code Ordinance in so far as it has effect as a Federal law within the Northern Region. The Ordinance came into practice on 30th September, 1960. No offence which had been committed after 30th September and which is the subject of proceedings within the Northern Region is triable under the Criminal Code, although the repeal does not affect proceedings outside the Northern Region solely because some part of the offence was committed within the Northern Region.

1. Cap. 42 of the Laws of Nigeria, 1948.

2. Cap. 43 of the Laws of Nigeria, 1948.

5. The Criminal Procedure (Northern Region) Ordinance, 1960 (L.N. No. 20 of 1960) provides that courts in Northern Nigeria shall follow in respect of Federal offences the practice and procedure used in respect of other offences. This means that courts will use the procedure prescribed in the Criminal Procedure Code Law, 1960 (N.R. No. 11 of 1960) in respect of Federal offences. The Criminal Procedure Ordinance (Cap. 43 of the Laws of Nigeria, 1948) is repealed as it applies to the Northern Region by virtue of S.8 of the Criminal Procedure Code Law save that S.7 of the Federal Ordinance (No. 20 of 1960) saves sections 402-412 of the Criminal Procedure Ordinance (regarding deportation into or from Northern Nigeria) and sections 477-486 of the Ordinance (in respect of service and execution of process throughout Nigeria).

6. Following the pattern of the Northern Nigerian Criminal Procedure Code Law, the Criminal Procedure (Northern Region) Ordinance (L.N. No. 20 of 1960) includes as an appendix a tabular statement of the offences established by the Penal Code (Northern Region) Federal Provisions Ordinance, 1960 (L.N. No. 25 of 1960). It is important to note in regard to this appendix that no jurisdiction is conferred upon any native court in Northern Nigeria to exercise jurisdiction in respect of a Federal offence. The effect is that native courts in Northern Nigeria have thus lost jurisdiction over a number of classes of offences over which they formerly exercised jurisdiction at customary law.

7. A number of sections of the Penal Code (Northern Nigeria) Federal Provisions Ordinance, 1960 are identical or paraphrased versions of similar provisions in the Criminal Code of Nigeria. It is not proposed to comment on these sections since the relevant provisions in the Criminal Code of Nigeria have been discussed by Mr. Justice Hedges in his "Introduction to Nigerian Criminal Law" and cases decided on the Criminal Code in respect of these matters will presumably be followed in Northern Nigeria. A study of some of the sections transferred from the Criminal Code suggests that the draftsman has altered the words in an effort to reproduce the brevity and generalised character of the Indian model and to avoid the limitations of the *ejusdem generis* rule. Some sections are now capable of a substantially broader interpretation as a result of this treatment.

8. The following may be considered as provisions substantially transferred from the Criminal Code and therefore as not subject to any comment in this work :

- Chapter XXVI — Offences against the State (cf. sections 37, 41, 44, 45, 48 of the Criminal Code of Nigeria).
- Chapter XXVIII — Customs Offences (cf. sections 78, 79 & 86, Criminal Code of Nigeria).
- Chapter XXIX — Copyright (cf. sections 491, 492 & 493, Criminal Code of Nigeria).
- Chapter XXX — Offences related to Ships and Wharves (cf. sections 500-504 inclusive, Criminal Code of Nigeria).
- Chapter XXXIV — Posts & Telegraphs (cf. sections 161-189, Criminal Code of Nigeria).
- Chapter XXXV — Railways & Aircraft (cf. sections 449, 451, 459, 459A, 459B & 460 of the Criminal Code of Nigeria).
- Chapter XXXVI — Mines & Minerals (cf. sections 396 & 453 of the Criminal Code of Nigeria).
- Chapter XXXVII — Deportation of Passports (cf. section 190A of the Criminal Code of Nigeria).

9. Chapter:XXVII—Sedition.

(a) Section 416 defining sedition is an adaptation of section 124A of the Indian Penal Code and departs from both Nigerian and Sudan precedents although the adaptation is designed to cover the same ground as corresponding provisions in the Criminal Code of Nigeria. The word "sedition" does not appear in section 416. The Judicial Committee of the Privy Council have held that the corresponding Indian section is to be construed free of any interpretation derived from English Law.¹

(b) Note that the wording of the first part of the section is identical with that of section 391, defining defamation. Although the two offences are separately defined, their character is similar.

(c) There must be a publication of the matter calculated to excite feelings of disaffection. In the case of sedition by written words, not only could the author of the words be liable but also any person making use of the material who had knowledge of the nature of the matter which it contained. Disaffection by definition includes disloyalty and all feelings of enmity and resumably contempt. There is nothing in the section requiring proof that the words used were likely to cause a breach of the peace, although evidence of riot or agitation following publication would be *prima facie* evidence of an intention to create disaffection.

(d) In proving intention under this section, the accused must be presumed to intend the natural consequences of his acts and the contents of the publication are relevant. The Privy Council have held in interpreting Indian section that it is not necessary to produce evidence of intention outside the words used.² It is nevertheless desirable in seeking evidence of intention for a court to consider the manner in which the sedition was published, the persons or class of persons to whom it was published and the state of public feeling in the topic at the time of publication.

(e) The section specifically provides (perhaps now an anachronism?) that acts of the nature provided for in section 416 attacking the Government of the United Kingdom are punishable. The section also provides for attacks upon the Government of the Federation of Nigeria or that of any part of Nigeria (e.g. a Regional Government) but not upon a local government or native authority.

(f) Explanations 2 and 3 of the section are designed to safeguard to the general public the right to express opinions, criticism or disapproval of acts of Government providing that the words are not used with the intention of arousing feelings of enmity, hatred or disloyalty. Section 24 of the Constitution of Nigeria provides that every person shall be entitled to enjoy freedom of expression subject always to the proviso that freedom of speech must not be abused to injure the rights of other citizens or to the detriment of public order.³

(g) Section 417 follows section 106 of the Sudan Penal Code and section 153A of the Pakistan Penal Code in punishing persons who seek to stir up communal strife by embittering relations between elements or classes of the community. The method of stirring up hatred is immaterial and the section is thus wider in its application than S.416. It must be proved that the act of the accused was likely to cause a breach of the peace.

(h) Section 418 punishes the spreading of false information or rumour with intent to disturb the public and thereby be likely to precipitate a breach of the peace. The section follows section 107 of the Sudan Penal Code except that, in the Sudan, the spreading of false news is punishable if it is likely to lead to either the commission of an offence against the State or a breach of the peace.

1. Besant (1919) L.R. 46 I.A. 176.

2. Wallace-Johnson 1940 A.L. 231.

3. S. 24. Second Schedule to the Nigeria (Constitution) Order in Council, 1960.

(i) Section 419 follows section 107A of the Sudan Penal Code in punishing possession of material which, if published, would be the subject of proceedings under sections 416, 417 or 418. Possession of the material constitutes the offence, but it is open to an accused person to show lawful excuse for possession.

(j) Section 420 paraphrases section 58 of the Criminal Code of Nigeria and provides that the appropriate Federal Minister may prohibit the importation of publications in the public interest. An order made by the Minister may specify publications in particular or may be applied to all publications published by a named organisation or person.

(k) Section 422 relating to unlawful drilling may be compared with section 114 A of the Sudan Penal Code although it is, in fact, merely a reproduction of section 57 of the Criminal Code of Nigeria. There is no corresponding section in the Pakistan Penal Code.

10. Chapter XXXI and Chapter XXXII relating to Coin and Notes and Revenue Stamps.

(a) Sections 432-448 substantially reproduced sections 193-211 of the Sudan Penal Code, which happen to cover all the like offences provided in the Nigerian Criminal Code, although the language of the Sudan Code is somewhat more concise. It is clearly essential that there should be no differences of substance in respect of offences relating to money and revenue stamps between the Northern Nigerian Penal Code and the Nigerian Criminal Code in force elsewhere in the Federation.

(b) For the definition of "counterfeit" to be used in interpreting these provisions see section 21 of the Northern Nigerian Penal Code. For the presumption under section 21 to arise there must be sufficient resemblance for a reasonable person to be deceived. In respect of an offence under section 441, "counterfeit" is given an enlarged meaning by the Explanation to the section in that the offence can be committed by causing a revenue stamp of one denomination to appear like a stamp of a different denomination.

(c) For definitions of the words "dishonestly" and "fraudulently" used in these sections see sections 16 and 17. "Fraudulently" will generally imply an intention to deceive the person to whom the coin, etc. is tendered with a belief that what he has been offered is genuine. "Dishonestly" involves "wrongful gain" or "wrongful loss" to some person.

(d) In both chapters there is no limitation to Nigerian money or revenue stamps. The counterfeiting of any coinage or stamps of any country would constitute offences if done in Northern Nigeria.

(e) Mere possession of counterfeit coins, notes or stamps is not an offence, nor is possession accompanied by knowledge that the money or stamps were counterfeit. It is necessary to prove that the holder intended to use or dispose of the counterfeit money or stamps as genuine.

PENAL CODE (NORTHERN REGION) FEDERAL PROVISIONS ORDINANCE, 1960

ARRANGEMENT OF SECTIONS

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2. Application of provisions of Schedule as Law of Northern Region.
3. Punishment of offences in Schedule committed in Northern Region.
4. Circumstances in which provisions of Schedule apply.
5. Repeal of Cap. 42 in Northern Region and amendment in other application.

SCHEDULE

ARRANGEMENT OF SECTIONS

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410. Treason.
411. Punishment for treason.
412. Treasonable crimes.
413. Inciting to mutiny.
414. Causing disaffection among soldiers, police or prison officers.
415. Assisting or allowing escape of prisoners of war.

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417. Exciting hatred between classes.
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420. Power to prohibit importation of publications.
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426. Making or dealing in copies of copyright work.
427. Being in possession of plate for making copies: giving unauthorized performances of copyright work.

CHAPTER XXX : OFFENCES RELATING TO SHIPS AND WHARVES

- 428. Definitions.
- 429. Offences relating to ships.
- 430. Entering ship or wharf without ticket.
- 431. Interfering with navigation works.

CHAPTER XXXI : OFFENCES RELATING TO COIN AND NOTES

- 432. Coin and note defined.
- 433. Counterfeiting coin or notes.
- 434. Making or selling instrument for counterfeiting coin or notes.
- 435. Possession of instrument or material for counterfeiting.
- 436. Import or export of counterfeit coin or notes.
- 437. Fraudulently diminishing weight or altering composition of coin.
- 438. Delivery of coin or note possessed with knowledge that it is counterfeit.
- 439. Possession of coin or note by person who knew it to be counterfeit when he became possessed thereof.

CHAPTER XXXII : OFFENCES RELATING TO REVENUE STAMPS

- 440. Revenue stamp defined.
- 441. Counterfeiting revenue stamp.
- 442. Having possession of instrument or material for counterfeiting revenue stamp.
- 443. Making or selling instrument for counterfeiting revenue stamp.
- 444. Import, export, use or sale of counterfeit revenue stamps.
- 445. Having possession of counterfeit revenue stamp.
- 446. Effacing writing from substance bearing revenue stamp, or removing from document a stamp used for it, with intent to cause loss.
- 447. Using revenue stamp known to have been used before.
- 448. Erasure of mark denoting that revenue stamp has been used.

CHAPTER XXXIII : OFFENCES RELATING TO WEIGHTS AND MEASURES

- 449. Fraudulent use of false instrument for weighing.
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CHAPTER XXXIV : OFFENCES RELATING TO POSTS AND TELEGRAPHS

- 453. Definitions.
- 454. Paper and dies for postage stamps.
- 455. Paper for postal purposes.
- 456. Stopping mails.
- 457. Intercepting telegrams or postal matter.
- 458. Misdelivery of postal matter.
- 459. Retarding delivery of postal matter.
- 460. Fraudulently removing stamps.
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- 462. Unlawful franking of letters.
- 463. Sending dangerous or obscene things by post.
- 464. Illegally setting up of post office.
- 465. Damaging post office, etc.
- 466. Placing injurious substances in or against letter box.
- 467. Interference with telegraphs.
- 468. Negligently injuring telegraphs.

CHAPTER XXXV : OFFENCES RELATING TO RAILWAYS AND AIRCRAFT

- 469. Intentionally endangering safety of persons travelling by railway.
- 470. Obstructing and injuring railways.
- 471. Damage to railway works.
- 472. Obstructing aircraft.
- 473. Trespass on aerodrome.

CHAPTER XXXVI : OFFENCES RELATING TO MINES AND MINERALS

- 474. Fraudulently dealing with minerals in mines.
- 475. Attempt to injure mines.

CHAPTER XXXVII : DEPORTATION AND PASSPORTS

- 476. Deportation of non-natives of Nigeria.
- 477. False statements in application for passports.

AN ORDINANCE TO SUPPLEMENT THE PENAL CODE OF THE NORTHERN REGION IN RESPECT OF MATTERS WITHIN THE EXCLUSIVE LEGISLATIVE COMPETENCE OF THE LEGISLATURE OF THE FEDERATION, AND FOR PURPOSES ANCILLARY THERETO.

[By Notice, see section 1]

WHEREAS by the provision of a Law entitled the Penal Code Law, 1959 of the Northern Region of Nigeria a Penal Code is upon the coming into operation of that Law to be established for that Region;

Title.

Commence-
ment.

Preamble.

Enactment.

Short title,
commence-
ment and
application.

Application
of
provisions of
Schedule as
Law of
Northern
Region.
N.R. Law
18 of 1959.

Punishment
of offences in
Schedule
committed
in Northern
Region.

Caps. 42
and 43.

Circum-
stances in
which
provisions of
Schedule
apply.

AND WHEREAS certain matters which are outside the legislative competence of the Northern Region but are within the exclusive legislative competence of the Federation were not provided for in the said Penal Code;

AND WHEREAS it is necessary and expedient that such matters should be provided for by Federal legislation and that the provisions of such legislation should take effect with the Penal Code so that the whole may conveniently be read as one Code in the Northern Region, in replacement for that contained in the Criminal Code Ordinance of the Federation:

Now, THEREFORE, BE IT ENACTED by the Legislature of the Federation of Nigeria as follows —

1. (1) This Ordinance may be cited as the Penal Code (Northern Region) Federal Provisions Ordinance, 1960, and shall come into operation on a day to be appointed by the Governor-General by notice in the Gazette.

(2) This Ordinance shall be of Federal application.

2. (1) The provisions contained in the Schedule to this Ordinance shall apply in respect of the Northern Region and shall be read as the law of that Region and as such form part of the Penal Code contained in the Schedule to the Penal Code Law, 1959, of the Northern Region (hereinafter referred to as the Penal Code of the Northern Region).

(2) The provisions of Chapter I to Chapter VI of the Penal Code of the Northern Region shall apply in respect of the provisions of the Schedule to this Ordinance as fully as though the provisions of such Chapters were enacted in this Ordinance.

3. Every person shall be liable to punishment under the provisions of section 2 of this Ordinance and of the Schedule to this Ordinance for every act or omission contrary to the provisions of the Schedule to this Ordinance of which he is guilty within the Northern Region :

Provided that a sentence of caning shall not be passed in accordance with section 77 of the Penal Code of the Northern Region save in a case where a sentence of whipping could have been passed in accordance with section 18 of the Criminal Code or section 387 of the Criminal Procedure Ordinance.

4. (1) Where by the provisions contained in the Schedule to this Ordinance, the doing of any act or the making of any omission is made an offence, those provisions shall apply to every person who is in the Region at the time of his doing the act or making the omission.

(2) Where any such offence comprises several elements and any acts, omissions or events occur which, if they all occurred in the Northern Region, would constitute an offence, and any of such acts, omissions or events, occur in the Northern Region, although the other acts, omissions or events, which if they occurred in the Northern Region would be elements of the offence, occur elsewhere than in the Northern Region then —

(a) if the act or omission, which in the case of an offence committed wholly in the Northern Region would be the initial element of the offence, occurs in the Northern Region, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment as if all the subsequent elements of the offence occurred in the Northern Region; and

(b) if the act or omission occurs elsewhere than in the Northern Region, and the person who does that act or makes that omission afterwards enters the Northern Region, he is by such entry guilty of an offence of

the same kind and is liable to the same punishment, as if that act or omission had occurred in the Northern Region and he had been in the Northern Region when it occurred.

(3) Notwithstanding the provisions of subsection (2) it shall be a defence to the charge in any such case to prove that the person accused did not intend that the act or omission should have effect in the Northern Region.

(4) The provisions of subsection (2) do not extend to a case in which the only material event that occurs in the Northern Region is the death of a person whose death is caused by an act or omission at a place outside, and at a time when that person was outside, the Northern Region.

5. (1) The Criminal Code Ordinance, in so far as it has effect as if it were a law enacted by the Legislature of the Federation and as it applies in the Northern Region, is repealed :

Provided that such repeal shall not, in respect of proceedings taken outside the Northern Region, affect the operation of the Criminal Code solely because some element or elements of the offence are alleged to have occurred within the Northern Region.

(2) The Criminal Code Ordinance is amended by the addition after section 1 of the following new section :—

1A. The provisions of this Ordinance shall take effect subject to the provisions of the Penal Code (Northern Region) Federal Provisions Ordinance, 1960.”

“Saving in respect of Northern Region.

SCHEDULE (section 2)

CHAPTER XXVI.—OFFENCES AGAINST THE STATE

*410. (1) Whoever levies war against the Sovereign, in order to intimidate or overawe the Governor-General is said to commit treason.

(2) Nothing in this section shall prevent any act from being treason which is so by the law of England as in force in Nigeria.

411. Whoever commits treason shall be punished with death, and whoever attempts or abets treason shall be punished with imprisonment for life or for any less term or with fine or with both.

412. (1) Whoever intends :—

(a) to depose the Sovereign from the style, honour, and royal name of the Imperial Crown of the United Kingdom of Great Britain and Northern Ireland, or of any other of Her Majesty's dominions, or from her style, honour, and name of Supreme Lord in and over Nigeria, or in and over any other country which has been declared to be under her protection; or

(b) to levy war against the Sovereign within any part of Her Majesty's dominions, or within any country which has been declared to be under her protection, in order by force or constraint to compel the Sovereign to change her measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe any House of Parliament or other legislature or legislative authority of any of Her Majesty's dominions, or of any country which has been declared to be under her protection; or

Note: The numbering is consecutive with that of the penal Code of the Northern Region.

Repeal of Cap. 42 in Northern Region and amendment in other application.

Treason.

Punishment for treason.

Treasonably crimes.

(c) to instigate any foreigner to make an armed invasion of any of Her Majesty's dominions, or of any country which has been declared to be under her protection,

and manifests such intention by an overt act, shall be punished with imprisonment for life or any less term and shall also be liable to fine.

(2) A person charged with any of the offences specified in this section is not entitled to be acquitted on the ground that any act proved to have been committed by him constitutes the offence of treason; but a person who has been tried, and convicted or acquitted, on a charge of any such offence cannot be afterwards prosecuted for treason in respect of the same facts.

413. Whoever—

(a) seduces any person serving in Her Majesty's forces or the military forces of Nigeria or any member of the police force from his duty and allegiance to Her Majesty; or

(b) incites any such persons to commit an act of mutiny, shall be punished with imprisonment for life or for any less term and also be liable to fine.

Inciting to mutiny.

414. (1) Whoever causes or does any act calculated to cause disaffection amongst persons serving as—

(a) members of Her Majesty's forces or the military forces of Nigeria; or

(b) police officers; or

(c) prison officers,

Causing disaffection among soldiers, police or prison officers.

or does any act calculated to induce any person serving as aforesaid to withhold his services or to commit breaches of discipline, shall be punished with imprisonment which may extend to three years or with fine which may extend to three hundred pounds or with both.

Cap. 177.

(2) For the purposes of this section the expression “prison officer” shall have the same meaning as in subsection (1) of section 9 of the Prisons Ordinance and includes native authority prison staff as defined in section 127 of the Native Authority Law, 1954, of the Northern Region.

N.R. 4 of 1954.

415. Whoever intentionally aids an enemy of Her Majesty, being a prisoner of war in Nigeria, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or if he is at large on his parole, to escape from Nigeria, shall be punished with imprisonment for life or for any less term and shall also be liable to fine, and whoever negligently or unlawfully permits the escape of any such prisoner shall be punished with imprisonment which may extend to two years or with fine or with both.

Assisting or allowing escape of prisoners of war.

CHAPTER XXVII.—SEDITION.

416. Whoever by words, either spoken or reproduced by mechanical means or intended to be read, or by signs or by visible representation or otherwise excites or attempts to excite feelings of disaffection against the person of Her Majesty, her heirs or successors or the person of the Governor-General or the Governor of a Region, or the Government or constitution of the United Kingdom or of Nigeria or any Region thereof or against the

Inciting disaffection to the Government.

administration of justice in Nigeria or any Region thereof, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

EXPLANATION 1.—The expression “disaffection” includes disloyalty and all feelings of enmity.

EXPLANATION 2.—Comments expressing disapprobation of the measures of the Government or the Government of the United Kingdom or any Government of Nigeria with a view to obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

EXPLANATION 3.—Comments expressing disapprobation of the administrative or other action of the Government or the Government of the United Kingdom or any Government of Nigeria without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

417. Whoever seeks to excite hatred or contempt against any class of persons in such a way as to endanger the public peace, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

418. Whoever circulates, publishes or reproduces any statement, rumour 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 the public whereby any person may be induced to commit an offence against the public peace, shall be punished with imprisonment which may extend to three years or with fine or with both.

419. Whoever has in his possession without lawful excuse, the proof of which shall lie on him, any book, pamphlet, paper, gramophone record, tape recording, drawing, printing, photograph, cinema film or other visible or audible representation or reproduction, the publication or exhibition of which would constitute an offence under section 416, 417 or 418, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

420. (1) The Minister charged with responsibility for such matters may, if he is of opinion that the importation of any publication would be contrary to the public interest, by order prohibit the importation of such publication.

(2) If such Minister is of opinion that it would be in the public interest to do so he may by order prohibit the importation of all publications published by or on behalf of any organisation or association of persons specified in the order.

(3) An order made under the provisions of subsection (1) shall, unless a contrary intention is expressed therein, have effect—

- (a) with respect to all subsequent issues of such publication; and
- (b) not only with respect to any publication under the name specified in relation thereto in the order, but also with respect to any publication published under any other name if the publishing thereof is in any respect in continuation of, or in substitution for, the publishing of the publication named in the order.

Exciting hatred between classes.

Publication of false news with intent to cause offence against the public peace.

Possession of seditious articles.

Power to prohibit importation of publications.

Punishment for importation of prohibited publications.

Unlawful drilling.

Smuggling or rescuing goods under arms.

Smuggling under arms or in disguise.

Assembling for the purpose of smuggling.

Making or dealing in copies of copyright work.

(4) An order made under the provisions of subsection (2) shall, unless a contrary intention is expressed therein, have effect not only with respect to all publications published by or on behalf of the organisation or association of persons named therein before the date of the order but also with respect to all publications so published on or after such date.

(5) An order made under the provisions of subsection (1) or (2) shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

421. Whoever intentionally imports, publishes, sells, distributes or reproduces or has in his possession any publication the importation of which has been prohibited under section 420 or any extract therefrom, shall be punished with imprisonment which may extend to three years or with fine or with both.

422. Whoever, without the permission of the Governor-General, instigates, practises, takes part in or is concerned in any exercise, movement, evolution or drill of a military nature shall be punished with imprisonment which may extend to seven years or with fine or with both.

CHAPTER XXVIII.—CUSTOMS OFFENCES

423. Whoever assembles with two or more persons armed with any dangerous weapon for any of the following purposes—

- (a) to unlawfully ship, unship, load, move or carry away any goods the importation of which is prohibited, or any goods liable to customs duties, which duties have not been paid or secured;
 - (b) to rescue or take any such goods from any person authorized to seize them, or from any person employed by that person, or assisting that person,
- shall be punished with imprisonment which may extend to seven years or with fine or with both.

424. Whoever assembles with five or more persons who have with them any goods liable to forfeiture under any law relating to the customs, and who are carrying dangerous weapons, or who are disguised shall be punished with imprisonment which may extend to seven years or with fine or with both.

425. Whoever assembles with two or more persons for the purpose of unshipping, carrying, or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs shall be punished with imprisonment which may extend to six months or with fine which may extend to one hundred pounds.

CHAPTER XXIX.—OFFENCES RELATING TO COPYRIGHT

426. Whoever intentionally—

- (a) makes for sale or hire any copy of a work which infringes a copyright; or
- (b) sells or lets for hire any copy of any such work; or
- (c) distributes copies of any such work for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or

(d) by way of trade exhibits in public any copy of any such work, shall be punished with imprisonment for a term which may extend to two months or with fine which may extend to fifty pounds or with both.

427. Whoever intentionally makes or possesses any plate for the purpose of making copies of any work which infringes a copyright, or intentionally and for profit causes any such work to be performed in public without the consent of the owner of the copyright shall be punished with imprisonment for a term which may extend to two months or with fine which may extend to fifty pounds or with both.

Being in possession of plate for making copies : giving unauthorized performances of copyright work.

CHAPTER XXX.—OFFENCES RELATING TO SHIPS AND WHARVES

428. In this chapter—

“crew” includes masters, mates, pilots, engineers, stokers, deckhands and all persons engaged in the navigation or service of a ship;

“passenger steamer” means every steamship carrying one or more persons other than the crew, and the owner, his family, friends and servants;

“ship” includes every description of vessel in the service of the Government or the Government of the Federation and every passenger steamer employed in local navigation on the inland and territorial waters of Nigeria, but does not include ocean going ships not in the service of the Government or the Government of the Federation or vessels or canoes of native manufacture.

429. (1) Whoever—

- (a) obstructs any member of the crew in the navigation or management of a ship;
 - (b) after having been refused admission to a ship by any authorized member of the crew on account of the ship being full, attempts to enter the ship;
 - (c) having gone on board the ship at any place and being requested, on account of the ship being full, by any duly authorized member of the crew to leave the ship, before it has quitted that place, does not comply with that request;
 - (d) travels in a ship without first paying his fare and with intent to avoid payment;
 - (e) being on board a ship fails when requested by an authorized member of the crew to pay his fare or exhibit the ticket or other receipt, if any, showing the payment of his fare;
 - (f) travels in that part of a ship which is set apart for passengers of a superior class to that for which he holds a ticket;
 - (g) travels in any ship or part of a ship which is not set apart for public passengers and on being ordered by any authorized member of the crew to leave such place refuses so to do,
- shall be punished with a fine which may extend to five pounds.

Definitions.

Offences relating to ships

(2) Whoever commits an offence under subsection (1) and on the application of the officer in charge of the ship, refuses to give his name and address, or gives a false name or address, shall be punished with a fine which may extend to twenty pounds.

430. Whoever not being a passenger by a ship or not having purchased a ticket to travel by a ship enters upon any enclosed quay, wharf, or landing place and on being ordered to leave such quay, wharf, or landing place by any public servant acting in the course of his duty refuses to do so shall be punished with imprisonment which may extend to one month or with fine or with both.

431. Whoever intentionally and unlawfully—

- (a) removes or disturbs any fixed objects or material used for securing a bank or wall of a river, canal, aqueduct, reservoir or inland water, or for securing any work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for purposes of navigation or lading or unlading goods; or
 - (b) does any act which obstructs the carrying on or maintenance of the navigation of a navigable river or canal,
- shall be punished with imprisonment which may extend to seven years or with a fine or with both.

CHAPTER XXXI.—OFFENCES RELATING TO COIN AND NOTES

432. (1) Coin is metal used for the time being as money and stamped and issued by or under the authority of any government in order to be so used.

(2) For the purposes 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 substitute for money and bank note which is legally current in any country.

433. Whoever counterfeits or knowingly performs any part of the process of counterfeiting any coin or note shall be punished with imprisonment for life or any less term and shall also be liable to fine.

EXPLANATION—A person commits this offence who, intending to practise deception or knowing it to be likely that deception will thereby be practised, causes a genuine coin or note to appear like a different coin or note.

434. 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 shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

435. 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 shall be punished with imprisonment which may extend to four years or with fine or with both.

Entering ship or wharf without ticket.

Interfering with navigation works.

Coin and note defined.

Counterfeiting coin or notes.

Making of selling instrument for counterfeiting coin or notes.

Possession of instrument or material for counterfeiting.

436. Whoever imports into Nigeria or exports therefrom any counterfeit coin or note knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

437. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment for a term which may extend to ten years and shall 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.

438. Whoever, having in his possession any counterfeit coin or note or any coin with respect to which an offence under section 437 has been committed and having known at the time when he became possessed 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 received the same, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

439. 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 437 has been committed having known at the time of becoming possessed thereof that such coin or note was counterfeit or that such offence had been committed with respect to such coin, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

CHAPTER XXXII.—OFFENCES RELATING TO REVENUE STAMPS

440. For the purposes of this chapter the words "revenue stamp" mean a stamp issued by or under the authority of any government for postal or other revenue purposes.

441. Whoever counterfeits or knowingly performs any part of the process of counterfeiting any revenue stamp, shall be punished with imprisonment for a term which may extend to seven years and shall 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.

442. 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, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Import or export of counterfeit coin or notes.

Fraudulently diminishing weight or altering composition of coin.

Delivery of coin or note possessed with knowledge that it is counterfeit.

Possession of coin or note by person who knew it to be counterfeit when he possessed thereof.

Revenue stamp defined.

Counterfeiting revenue stamp.

Having possession of instrument or material for counterfeiting revenue stamp.

Making or selling instrument for counterfeiting revenue stamp.

Import, export, use or sale of counterfeit revenue stamps.

Having possession of counterfeit revenue stamp.

Effacing writing from substance bearing revenue stamp, or removing from document a stamp used for it, with intent to cause loss.

Using revenue stamp known to have been used before.

Erasure of mark denoting that revenue stamp has been used.

Fraudulent use of false instrument for weighing.

Fraudulent use of false weight or measure.

Being in possession of false weight or measure.

443. 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, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

444. Whoever imports into Nigeria or exports therefrom 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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

445. 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 or in order that it may be used as a genuine revenue stamp, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

446. Whoever fraudulently or with intent to cause loss to 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 a different writing or document, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

447. Whoever fraudulently or with intent to cause loss to any government uses for any purpose any revenue stamp which he knows to have been used before, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

448. Whoever fraudulently or with intent to cause loss to 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 which he knows to have been used, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

CHAPTER XXXIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES

449. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

450. 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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

451. Whoever is in possession of any instrument for weighing or of any weight or of any measure of length or capacity which he knows to be false and intending that the same may be fraudulently used, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

436. Whoever imports into Nigeria or exports therefrom any counterfeit coin or note knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

437. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment for a term which may extend to ten years and shall 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.

438. Whoever, having in his possession any counterfeit coin or note or any coin with respect to which an offence under section 437 has been committed and having known at the time when he became possessed 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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

439. 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 437 has been committed having known at the time of becoming possessed thereof that such coin or note was counterfeit or that such offence had been committed with respect to such coin, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

CHAPTER XXXII.—OFFENCES RELATING TO REVENUE STAMPS

440. For the purposes of this chapter the words "revenue stamp" mean a stamp issued by or under the authority of any government for postal or other revenue purposes.

441. Whoever counterfeits or knowingly performs any part of the process of counterfeiting any revenue stamp, shall be punished with imprisonment for a term which may extend to seven years and shall 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.

442. 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, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

Import or export of counterfeit coin or notes.

Fraudulently diminishing weight or altering composition of coin.

Delivery of coin or note possessed with knowledge that it is counterfeit.

Possession of coin or note by person who knew it to be counterfeit when he possessed thereof.

Revenue stamp defined.

Counterfeiting revenue stamp.

Having possession of instrument or material for counterfeiting revenue stamp.

Making or selling instrument for counterfeiting revenue stamp.

Import, export, use or sale of counterfeit revenue stamps.

Having possession of counterfeit revenue stamp.

Effacing writing from substance bearing revenue stamp, or removing from document a stamp used for it, with intent to cause loss.

Using revenue stamp known to have been used before.

Erasure of mark denoting that revenue stamp has been used.

Fraudulent use of false instrument for weighing.

Fraudulent use of false weight or measure.

Being in possession of false weight or measure.

443. 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, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.

444. Whoever imports into Nigeria or exports therefrom 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, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

445. 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 or in order that it may be used as a genuine revenue stamp, shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

446. Whoever fraudulently or with intent to cause loss to 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 a different writing or document, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

447. Whoever fraudulently or with intent to cause loss to any government uses for any purpose any revenue stamp which he knows to have been used before, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

448. Whoever fraudulently or with intent to cause loss to 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 which he knows to have been used, shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

CHAPTER XXXIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES

449. Whoever fraudulently uses any instrument for weighing which he knows to be false, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

450. 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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

451. Whoever is in possession of any instrument for weighing or of any weight or of any measure of length or capacity which he knows to be false and intending that the same may be fraudulently used, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

452. Whoever makes, 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, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

CHAPTER XXXIV.—OFFENCES RELATING TO POSTS AND TELEGRAPHS

453. In this chapter—

“mail” includes any conveyance of any kind by which postal matter is carried, and also any vessel employed by or under the Posts and Telegraphs Department, or the postal authority of any other country, or the Admiralty, for the conveyance of postal matter, under contract or not, and also a ship of war or other vessel in the service of Her Majesty in respect of letters conveyed by it and also a person or animal used for the conveyance or delivery of postal matter;

“postal matter” includes any letter, telegram, newspaper, packet, parcel, or other thing, authorized by law to be transmitted by post, which has been posted or received at a post office for delivery or transmission by post, and which is in course of transmission by post, and any movable receptacle which contains any such thing, and which is in course of transmission by post;

“post office” and “telegraph office” respectively, include any structure, room, place or receptacle, of any kind appointed by authority of the Director of Posts and Telegraphs for the receipt, despatch or delivery, of any postal matter or telegram, or for the transaction of the business of the department relating to posts and telegraphs; and “telegraph office” includes any room or place used by a telegraph company for the receipt, despatch or delivery of telegrams.

454. Whoever without lawful authority, the proof of which lies on him—

(a) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession or disposes of any imitation or representation on paper or any other material, of any stamp used for denoting any rate of postage of Nigeria, or of any other country; or

(b) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession or disposes of, any die, plate, instrument or material, for making any such imitation or representation,

shall be punished with imprisonment which may extend to one year or with fine which may extend to fifty pounds or with both.

EXPLANATION. A stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

455. Whoever without lawful authority, the proof of which lies on him, knowingly has in his possession or disposes of any paper which has been specially provided by the proper authority for the purpose of being used for postage stamps, money orders, or postal orders, before such paper has been lawfully issued for public use, shall be punished with imprisonment which may extend to two years or with fine or with both.

456. Whoever stops a mail with intent to carry out an unlawful search or to commit theft of postal matter shall be punished with imprisonment for life or any less term or with fine or with both.

Making or selling false weight or measure.

Definitions.

Paper and dies for postage stamps.

Paper for postal purposes.

Stopping mails.

Intercepting telegrams or postal matter.

Misdelivery of postal matter.

Retarding delivery of postal matter.

Fraudulently removing stamps.

Fraudulent evasion of postal laws.

Unlawful franking of letters.

457. Whoever unlawfully secretes, destroys, tampers with or obtains by cheating any postal matter shall be punished.—

- (a) with imprisonment for a term which may extend to seven years or with fine or with both; and
(b) if the postal matter so secreted or destroyed shall contain any money or chattel or any valuable security, shall be punished with imprisonment for life or any less term and shall also be liable to fine.

458. Whoever being a public servant charged by virtue of his employment with the delivery of any postal matter intentionally delivers it to a person other than the person to whom it is addressed or to his authorized agent shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

459. Whoever being a public servant charged with the handling of postal matter—

- (a) neglects or refuses to receive, despatch, deliver or convey postal matter;
(b) intentionally detains or delays any postal matter;
(c) without proper authority allows any postal matter out of his possession;
(d) is guilty of any neglect whereby any postal matter is endangered, mislaid, detained or delayed,

shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

EXPLANATION 1.—Nothing in this section shall extend to the opening or detaining of any postal matter returned because the address is dead or cannot be found or refuses to accept delivery or refuses or neglects to pay any charges payable in respect of the postal matter.

EXPLANATION 2.—Nothing in this section shall extend to the opening, detaining or delaying of any postal matter by a public servant under the authority of any Ordinance or Law or in obedience to an express warrant in writing under the hand of the Governor-General.

460. Whoever with intent to defraud removes from any postal matter any stamp affixed thereon or removes from a stamp previously used any postal mark or knowingly uses a postage stamp which has been marked by a public servant authorized so to do shall be punished with imprisonment which may extend to one year or with fine or with both.

461. Whoever with fraudulent intent—

- (a) subscribes on the outside of anything sent by post a false statement of its contents; or
(b) puts into a post office anything which falsely purports to be a thing falling within any exemption or privilege declared by the laws relating to postal matter,

shall be punished with a fine which may extend to fifty pounds.

462. Whoever being a public servant franks any postal matter—

- (a) which does not relate to the business of his office; or
(b) which contains anything which does not relate to such business,

shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

- 463.** Whoever intentionally sends by post anything which—
 (a) encloses anything of such a nature as to be likely to cause injury to any person or thing in the course of conveyance; or
 (b) encloses any obscene book, pamphlet, paper, gramophone record or similar article, drawing, painting, representation or figure,
 shall be punished with imprisonment which may extend to one year or with fine or with both.
- 464.** Whoever without the authority in writing of the Director of Posts and Telegraphs places or maintains or permits to be placed or maintained, or to remain on any place under his control—
 (a) the words "post office" or "royal mail"; or
 (b) the words "letter box", accompanied with words, letters or marks which signify or imply, or may reasonably lead the public to believe, that it is a receptacle provided by authority for the reception of postal matter; or
 (c) any words, letters or marks which signify or imply, or may reasonably lead the public to believe, that any place is a post office, or that any such receptacle is provided by authority,
 shall be punished with a fine which may extend to five pounds.
- 465.** Whoever intentionally destroys, damages or defaces, any post office, receptacle provided by authority for the reception of postal matter, or any card or notice relating to the postal or telegraph service set up by authority of the Director of Posts and Telegraphs, shall be punished with a fine which may extend to fifty pounds.
- 466.** Whoever places in or against any receptacle provided by authority for the reception of postal matter or telegrams, any fire or match, or any explosive, dangerous, noxious or deleterious substance, or any fluid or filth shall be punished with a fine which may extend to twenty pounds.
- 467.** Whoever intentionally and unlawfully—
 (a) destroys, damages or removes, any telegraph works; or
 (b) prevents or obstructs the sending or delivering of a communication by any telegraph,
 shall be punished with imprisonment which may extend to three years or with fine or with both.
- 468.** Whoever negligently destroys or damages any telegraph works shall be punished with a fine which may extend to two pounds.
- CHAPTER XXXV.—OFFENCES RELATING TO RAILWAYS AND AIRCRAFT
- 469.** Whoever with intent to injure or to endanger the safety of any person travelling by any railway—
 (a) places anything on the railway; or
 (b) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the safety of any such person; or

Sending dangerous or obscene things by post.

Illegally setting up of post office.

Damaging post office, etc.

Placing injurious substances in or against letter box.

Interference with telegraphs.

Negligently injuring telegraphs.

Intentionally endangering safety of persons travelling by railway.

- (c) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
 (d) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered.

shall be punished with imprisonment for life, or for any less term and shall also be liable to fine.

Obstructing and injuring railways.

470. Whoever unlawfully and with intent to obstruct the use of a railway or to injure any property upon a railway—

- (a) deals with the railway or with anything whatever upon or near the railway in such a manner as to affect or endanger the free and safe use of the railway; or
 (b) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
 (c) by any omission to do any act which it is his duty to do causes the free and safe use of the railway to be endangered,

shall be punished with imprisonment for life or for any less term and shall also be liable to fine.

Damage to railway works.

471. Whoever—

- (a) intentionally damages or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, waggon, truck, material or plant belonging to any railway works; or
 (b) intentionally interferes with, any pole, stake, flag, peg, line, mark, or anything driven or placed in or upon the ground, any tree, stone, or buildings, or any other material belonging to any railway works; or
 (c) commits nuisance or trespass in or upon any land, buildings or premises, acquired for or belonging to any railway works; or
 (d) intentionally obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

shall be punished with imprisonment which may extend to three months or with fine which may extend to twenty pounds or with both.

Obstructing aircraft.

472. Whoever, by any unlawful act, obstructs, causes an alteration to be made in the course of or in any way whatsoever hinders or impedes the movement of any aircraft, which is in motion on or in flight over any aerodrome shall be punished with imprisonment which may extend to two years or with fine or with both.

Trespass on aerodrome.

473. Whoever commits any nuisance or trespass in or upon any aerodrome or in or upon any building or premises situated on any aerodrome shall be punished with imprisonment which may extend to three months or with fine or with both.

CHAPTER XXXVI.—OFFENCES RELATING TO MINES AND MINERALS

Fraudulently dealing with minerals in mines.

474. Whoever takes, conceals, or otherwise disposes of, any ore of any metal or mineral in or about a mine, with intent to defraud shall be punished with imprisonment which may extend to three years or with fine or with both.

475. Whoever with intent to injure a mine or to obstruct the working of a mine—

Attempt to injure mine.

- (a) unlawfully, and otherwise than by an act done underground in the course of working an adjoining mine—
- (i) causes water to run into the mine or into any subterranean passage communicating with the mine; or
- (ii) obstructs any shaft or passage of the mine; or
- (b) unlawfully obstructs the working of any machine, appliance, or apparatus, appertaining to or used with the mine, whether the thing in question is completed or not; or
- (c) unlawfully, and with intent to render it useless, injures or unfastens a rope, chain or tackle or whatever material, which is used in the mine, or upon any way or work appertaining to or used with the mine.

shall be punished with imprisonment which may extend to seven years or with fine or with both.

CHAPTER XXXVII.—DEPORTATION AND PASSPORTS

476. (1) Whoever not being a native of Nigeria shall, upon conviction of an offence under section 201, 275, 276, 278 or 281 be liable to be deported by order of the Minister charged with responsibility for such matters, and the provisions of sections 4, 5, 6 and 9 of the Aliens Ordinance shall apply *mutatis mutandis* in the case of a deportation under this section.

Deportation of non-natives of Nigeria. Cap. 9.

(2) Where any person being a native of Nigeria is deported from any British possession to Nigeria under the provisions of any law of such possession and for offences similar to the offences contained in section 210, 275, 276, 278 or 281, such person may, on arrival in Nigeria, be kept temporarily in custody and returned under police escort to the place in Nigeria to which such person belongs.

477. Whoever for the purpose of procuring a passport, whether for himself or any other individual, makes or causes to be made in any written application to a public servant a statement which to the knowledge of such person is false in any material particular shall be punished with imprisonment which may extend to one year or with fine or with both.

False statements in application for passports.

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