

Landowners' Advocacy and Legal Support Unit

Public Solicitor's Office

Basic Criminal Law – Presenter's Notes

Criminal Law

- A Criminal Proceeding is when the State commences proceedings against an individual for a crime. In criminal proceedings, the police officer act as representative of the State or Crown. In Civil cases, an individual can commence court proceedings against another individual.
- The main source of criminal law in the SI is the Penal code. But there are other legislations that make some acts/omission to be treated as a criminal offence.
- The Penal Code is a set of laws passed by Parliament. These laws originate from England.

Starting criminal proceedings

- Any person can commence criminal proceedings apart from children less than 12 years old. A person who believes he/she is a victim to any unlawful act can go to the Police Station and make a detailed complaint about what happened.
- The complaint will be written down by a police officer. The person complaining must also sign the complaint that was written by the police officer.
- A complaint can be made against any person, corporation even against any police officer.
- When someone is arrested, and before they are charged, they are called the **suspect**.

Arrest of Suspect

- When the police have reasonable suspicion that a person is likely to or has committed a criminal offence, the police have the power to arrest the suspect and take him/her into custody for questioning.
- The police also have the power to put someone in custody/cell while the police prepare themselves to conduct an interview with the suspect.
- The police must interview the suspect and charge him/her within 24 hours (Common Law- not strictly applied in practice unless there has been unnecessary delay by the Police to deal with the suspect within 24 hours).
- When the interview is completed and the police believe that the suspect has committed an offence the police will charge the person with a criminal offence.
- After the charge is given the police must immediately present the accused before a Magistrate so that the court is aware of the matter.

Rights of Suspect

- When interviewing a suspect the police officer must warn the suspect that the suspect has the Right to Remain Silent, before continuing with the interview. The Law says that every suspect has the Right to Remain Silent. This means that when the interviewing police officer asks the suspect any question about the allegation made against the suspect, the suspect does not need to give an answer and can exercise his/her right to remain silent. The police officer must then conclude the interview and have the interview record signed by the suspect.
- Once a suspect says that he/she will remain silent the interviewing police officer must not use any force, threat, or any false promise whatsoever to make the suspect give an answer to the questions. If the police officer does this, the answers given by the suspect can be disregarded by the courts.
- When interviewing suspects, the interviewing police officer must also inform the suspect that he/she has the right to seek legal advice before continuing with the interview.
- If the suspect decides to give his side of the story, the police officer must write down every answer given by the suspect. At the end of the interview, the police officer must read back to the suspect every answer that was given and the suspect must sign the written interview.

Protection of Law

- Right to Remain Silent (as above)
- Every suspect must be given the opportunity to see a lawyer. The police officer must ask the suspect whether or not the suspect would want to speak to a lawyer before starting the interview. If the police do not ask the suspect this question, the answers given by the accused can be disregarded by the courts.
- The Public Solicitor's Office (**PSO**) normally attends to see the suspect, if requested by the suspect, and provide legal advice.
- When there are no lawyers available the suspect will need to proceed with the interview and can see a lawyer at a later stage or when the matter is brought to the court.
- Every person arrested must understand the nature of the allegations in a language that he/she understands. If person does not understand the allegations, the court can disregard the interview made by the police.
- Every suspect is presumed innocent until proven guilty.
- When a suspect comes to court, he/she will be referred to as the **accused** or **defendant**.

Right to bail

- The Constitution provides that every person charged with a criminal offence has the right to bail.
- Bail means that a person who has been remanded in custody can be released and reside outside of custody while waiting for his/her case to be disposed of.
- The Magistrate Court can grant bail to any person except for charges of Murder, Manslaughter and Treason. Only the High Court can grant bail for any offence.
- Before an accused is released on bail the court must decide whether to release the accused on cash bail. This means that the court will order the accused to pay a certain amount of money whether \$100 or \$200 for example and this must be paid by the accused before bail can be granted.

- In most cases, the court usually releases an accused on bail on what is called 'Principle Bail'. Under this rule, the accused will be released at a principle sum of \$100 or \$200 and if the accused breaches any of the bail conditions the accused will be ordered to pay a fine - the amount set on his/her bail - and the court can order that the accused to be remanded in custody.
- When a person is granted bail, the conditions that the accused must comply with whilst on bail are mainly as follows:
 - that the accused must not interfere or make any contact with the victim or any police witnesses,
 - the accused must not leave the place where he/she will reside until further orders of the court, or
 - that the accused must report every week at the nearest police station.
- If the accused breaches any of these conditions, the police can arrest the accused, bring him back to court and the court can send accused back to custody.

Court System

- The Practice in the Solomon Islands is that the Magistrates Court is the starting point for any criminal case. The Local courts also have jurisdiction to hear minor criminal cases but due to lack of funds the Local court are now mandated to hear dispute on customary land cases only.
- When a suspect is brought before a Magistrate court, the suspect will be referred to as the accused or defendant.
- The Magistrate will read the charge or allegation to the accused and the will ask the accused whether the charge/allegation is true or not.
 - If the accused admits the charge/allegation, the court will immediately give the sentence.
 - If the accused denies the charge/allegation, then the court set the matter for trial.
- The Magistrates Court has power to hear cases where the maximum sentence is 14 years imprisonment. In some cases the Magistrate can hear cases that carry life sentence such as 'Acts intended to cause grievous body harm'. The reason is simply to cut down the workload of the High Court given the very limited number of Judges. Only the Chief Justice can extend the power/jurisdiction of a Magistrate to hear life sentence cases.
- For cases where the sentence is 14 years to life sentence only the High Court has the power/jurisdiction to hear these cases e.g murder/manslaughter, attempted murder, rape or attempted rape, etc.

Trial

- On the day of the trial, the prosecution must bring to court all the witnesses that they will rely on to prove their case against the accused.
- The witnesses will be called into the court one by one and each of them will swear on the bible that they will only tell the truth.
- Once this is done, the prosecutor will ask the witness to tell the court his/her story. The witness must tell the court what the accused did or say as far the allegations are concerned.

- Once the witness completes his/her story, the lawyer for the accused will then ask questions to the witness. This is to test the accuracy of the witness's story.
- This same process will apply to every prosecution witness who comes to court to give evidence.
- When all prosecution witness tell their story, the court will ask the accused whether the accused will give his/her story (under oath), or make an unsworn statement that will not be included as evidence, or remain silent. If the accused decides to remain silent then the court will make its decision based on the prosecutions' evidence.
- The court must consider the prosecution evidence to see whether it has **onus of proof**. This means the prosecution must have some evidence for element of the charge. The Standard of Proof is what is known as '**beyond reasonable doubt**'.
- Before a court can convict an accused after trial *the court must be satisfied that the accused committed the offence beyond reasonable doubt*.
- If the court finds that there is a doubt that is not reasonable on the circumstances of the case, the court must acquit the defendant.
- An accused who is not satisfied with the decision or sentence given by the Magistrate can **appeal to the High Court within 14 days** from the date of sentence.

Sentencing

- The court has power to give the following sentences:
 - **Bound Over:** The Magistrate can order the accused to stay of trouble and keep the peace for a certain period with costs. If the accused does not comply with this and commits an offence within this period, the court will order the accused to pay cost which will be treated as a fine before proceeding with the fresh case.
 - **Fine:** The Magistrate can order a person to pay a fine within a certain time more usually within a day or two. If the accused fails to pay the fine within the given period the police can re-arrest the accused, bring him to court, and the court will send the accused to prison.
 - **Custodial Sentence:** The court can send an accused to prison. The period of time the accused will serve depends on the seriousness of the offence.
 - **Suspended Sentence:** Court can sentence some to prison but under certain circumstances the court can suspend that custodial sentence so that the accused can reside outside of prison but still regarded as a prisoner. An example is where the accused is very ill at the time of his sentence and needs to be admitted to a hospital.
- In every case, before the Magistrate gives the sentence an accused who has pleaded guilty or found guilty after trial, the court must consider the circumstances of the accused eg the personal background of the accused which includes – family, place of residence, education and employment history, the reason for committing the offence, any previous criminal record, etc.
- After the court considers this, the court will look at the seriousness of the offence.
- The court will then start on a sentencing exercise which means that the court must balance the background of the accused and the seriousness of the offence before deciding the appropriate sentence that should apply. Once this is done, the Magistrate will sentence the accused.

Appeals

- After the court delivers its verdict or sentence, any of the parties who is not satisfied with the verdict or sentence can appeal to a higher court to challenge the decision.
- Appeals from the Magistrates Court need to go to the High Court
- Appeals from the High Court go to the Court of Appeal. The Court of Appeal is the Highest Court in SI.
- If for example the Magistrate gives a sentence that the prosecutor finds to be lenient on circumstances of the case, the prosecutor can appeal to the High Court to challenge the sentence and ask the High Court to increase the sentence.
- If the Magistrate gives a sentence that the accused thinks is excessive on the circumstances of the case, the defence lawyer can appeal to the High Court to challenge the sentence and ask for leniency.
- The prosecution and defence can appeal to the High Court if they find that the Magistrate did not exercise proper court procedures such as procedures for conducting trials as discussed above. In this event, if the High Court finds that the Magistrate did not follow proper procedures for conducting trials or any related matter, the High Court can order the Magistrate for a re-trial (hear the case again).

Criminal Records

- The police have a record for every person who has been convicted for a criminal offence. The records are to show the court the character of the accused.
- Previous records of conviction are proved by document only.
- It is the duty of the prosecutor to show a copy of their record to the court.
- If a person is charged and the police inform the court of the accused's previous conviction, the court will only take into account the following:
 - Any past record of conviction which relates to the offence the accused is facing
 - How many of them
 - How long ago was the previous conviction (if it is more than 10 years, the court will be less likely to consider it when considering the sentence for the accused in the present case)

Persons not to be tried twice for the same offence

- The Constitution of the Solomon Islands says that *any person cannot be tried twice for the same offence*.
- This means that if an accused has been found guilty for an offence, that person cannot be charged again for that same exact offence to which the accused has previously been found guilty of.
- This does not apply to civil matters. In Civil a person can be sued more than once for any act or omission previously made by the same person.

Most common criminal cases arising out of land dispute

Unlawful Assembly

- This is an offence where people meet together and make a plan to commit an offence. This offence has a maximum penalty of 1 year. This offence is very common when landowners who are not happy with any logging company try to stop the company by taking the law into their own hands. When landowners meet they plan to burn any company building or machines such as dozers. Any person who is involved in this type of meeting will be guilty of this offence.

Criminal Trespass

- A person who enters another person's property with the intent to commit any criminal offence is guilty of this offence. This offence carries a maximum penalty of 1 year imprisonment. If a person enters another person's property and has no intention to commit an offence will not be guilty of this offence.

Intimidation

- Intimidation is an offence where a person threatens to cause injury to another person. This offence carries a maximum penalty of 2 years imprisonment. The threats include words and weapons that include stone, knife, axe, etc. If a person enters another person's land without the permission of the owner, the owner can threaten that person to leave. If the owner can prove that he/she is the owner of that land then the owner will not be guilty for this offence.

Malicious Damage

- Simply means damage to any property. Also carries a maximum sentence of 2 years imprisonment. If a person destroys another person's property eg. garden, trees, plantation etc., that person will be guilty unless he can prove ownership of the land and that he/she did not give any permission to the person who planted the garden, trees, plantation.