

LAWS OF DOMINICA

CRIMINAL LAW AND PROCEDURE ACT

CHAPTER 12:01

Act

L.I. 3 of 1873

Amended by

L.I. 2 of 1901

5 of 1916

10 of 1931

14 of 1937

D. 19 of 1939

8 of 1974

9 of 1986*

12 of 1990

10 of 1992

(*See note on page 2)

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
1 - 2	1/1995
3 - 10	1/1991
11 - 14	1/1995
15 - 36	1/1991

L.R.O. 1/1995

**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

**Note
on
Act No. 9 of 1986**

- (a) Section 62 of Act No. 9 of 1986 has been incorporated in this Act as section 2(4).
- (b) Section 61 of Act No. 9 of 1986 has been incorporated in this Act as section 60.

CRIMINAL LAW AND PROCEDURE ACT

CHAPTER 12:01

(Formerly Criminal Procedure Ordinance (Cap. 34) 1961 Revised Edition)

Comparative Table

Section Numbers

1961 Rev. Ed. Section	Ch. 12:01 Section	1961 Rev. Ed. Section	Ch. 12:01 Section	1961 Rev. Ed. Section	Ch.12:01 Section	
1	-	1		45	-	53
2(1)	-		19	20	-	54
2(1)(a)	-	2(1)	20	21	-	55
2(1)(b)	-	2(2)	21	22	-	56
2(1)(c)	-	2(3)	22	23	-	57
2(2)	-	2(1)	23	24	-	58
-	-	2(4)*	24	25	-	59
2A	-	3	25	26	-	60**
2B	-	4	26	27	-	-
2C	-	5	27	28	-	61
2D	-	6	28	29	-	62
2E	-	7	29	30	-	63
3	-	8	30	31	-	64
4	-	9	31	31A	-	65
5	-	10	31A	32	-	66
6	-	11	32	33	-	67
6A	-	12	33	34	-	68
6B	-	13	34	35	-	-
7	-	14	35	36	-	69
8	-	15	36	37	-	70
9	-	16	37	38	-	-
10	-	17	38	39	-	71
11	-	18	39	40	-	72
12	-	19	40	41	-	-
13	-	20	41	42	-	-
14	-	21	42	43	-	73
15	-	22	43	44	-	74
16	-	23	44	43A	-	70
17	-	24	43A	43B	-	Schedule
18	-	25	43B	44	-	Schedule
			44			

* Section 62 of Act No. 9 of 1986.

** Section 61 of Act No. 9 of 1986.

CHAPTER 12:01

CRIMINAL LAW AND PROCEDURE ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.

**PART I
CRIMINAL LAW**

3. Abolition of distinction between felony and misdemeanour.
4. Penalties for assisting offenders.
5. Penalties for concealing offences or giving false information.
6. Abolition of presumption of coercion of wife by husband.
7. Abettors in summary offences.

**PART II
APPREHENSION OF OFFENDERS**

8. Constable or peace officer may apprehend without warrant.
9. Persons offering goods suspected to be stolen may be apprehended.
10. Apprehension by private persons of night offenders.
11. Constable, etc., may apprehend persons found loitering about at night.
12. Arrest without warrant.
13. Use of force in making arrest.
14. Parties to be proceeded against under the Magistrate's Code of Procedure Act subject to any special provision in any other Act.

**PART III
PROCEDURE AFTER PRELIMINARY INQUIRY AND
BEFORE INDICTMENT**

15. When accused committed for trial, copy of depositions to be supplied to law officer.
Law officer to elect whether he will indict.
Procedure when he decides not to indict.

Power to law officer to refer case back to Magistrate for further preliminary inquiry.

Power to Director of Public Prosecutions to refer back case to be dealt with summarily.

16. Law officer may direct a Magistrate to investigate a charge.
17. Although the charge at a preliminary inquiry has been dismissed, the accused may be arrested by a Judge's order and indicted.

PART IV

SPEEDY TRIALS ON GUILTY CONFESSIONS

18. Procedure where accused confesses guilt at preliminary inquiry.
19. Transmission of record of proceedings.
Indictment.
20. Accused to be brought before Judge to be dealt with.
Plea by accused committed for sentence.
21. Withdrawal by accused of consent to his committal for sentence.
22. Powers of Court and Judge when dealing with committals for sentence.
23. Notice by person committed for trial of intention to plead guilty.

PART V

INDICTMENTS

24. Law officer, or barrister authorised by him, may present indictment.
25. Court may order in writing prisoner to be brought up for trial without any writ of *habeas corpus*.
26. Benefit of clergy abolished, joinder of counts admissible in certain cases.

PART VI

DILATORY PLEAS, ARRAIGNMENT, ETC.

27. No traverse or time allowed to plead, or demur, but Court may grant time, if of opinion that the accused should have time, and respite the recognizances.
28. Plea of not guilty puts defendant on trial, and Court may call a jury.

SECTION

29. Persons standing mute, Court may order plea of not guilty to be entered.
30. Where party has been either convicted or acquitted, sufficient for him to say so.

PART VII

TRIAL, DEFENCE, VERDICT, ETC.

31. Defence by counsel.
32. Rule for addresses by counsel to jury.
33. Accused entitled to inspect depositions at trial without fee.
34. Accused entitled to a copy of the depositions.
35. Punishment of person attempting to commit offence not being completed.
36. No person, after trial for any offence, to be tried for attempting to commit same offence.
37. Verdict of assault may be found where felony charged.
38. Trial of offences.
39. Proceedings upon indictment for committing any offence after a previous conviction.
40. No general forfeiture or forfeiture of chattels which caused death.

PART VIII

EVIDENCE, AMENDMENT, JUDGMENTS, ETC.

41. Depositions may be read in evidence for other offence than that for which they were taken.
42. Any person confined in any prison may be conveyed to the place at which such prisoner is required.
43. Crime or interest does not incapacitate a witness.
44. Persons so offered as witnesses are compellable to give evidence.
45. Where procedure not otherwise prescribed English practice to be followed.
46. Where second jury, same right to challenge as in the first jury.
47. Mode of making up record on conviction.
48. Judgment not to be stayed or reversed for want of a *similiter*, etc.

SECTION

PART IX
PUNISHMENT

49. Similar punishment for capital offences whether by verdict or confession.
50. Penalties prescribed to be maximum penalties and applicable to each accused.
51. Power to impose fine or recognizances.
52. Mode of punishment for felony not capital.
53. Rescue of a prisoner in custody and felonious rescue.
54. Procuring discharge of prisoner by false pretence.
55. Prisoners escaping to undergo unexpired term with further imprisonment.
56. Punishment of felonies less than capital.
57. Where no definite term of imprisonment is fixed by law, Court may fix the term, and where a fine may be awarded, fix the amount.
58. Sentence to commence from day of passing same.
59. Court may award imprisonment for a subsequent offence before expiration of imprisonment for prior offence, to commence on expiration of first imprisonment.
60. Imprisonment may be with or without hard labour.

PART X
JUDGMENT OF DEATH

61. Execution of prisoner under sentence of death shall be done according to law.
62. Judge, without delay, to report to the President the case of any prisoner under sentence of death, and Judge in certain cases may relieve.
63. Prisoner, after sentence of death to be kept apart in safe custody, and only to be visited by certain persons.
64. President to appoint place of execution.
65. Execution within walls of prison.
The Provost Marshal and other officers of prison to be present at the execution.
Relations, etc., of prisoner permitted to be present at execution.

PART I
CRIMINAL LAW

Abolition of
distinction
between felony
and misdemean-
our.
[12 of 1990].

3. (1) Subject to the provisions of this Act all distinctions hitherto existing between felony and misdemeanour are abolished as from the appointed day. However, any written law imposing a disqualification or disability on a person by reason of a conviction for a felony shall continue to have effect.

(2) As from the appointed day the expression "felony" means an offence for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years, or an attempt to commit such offence; and the expression "misdemeanour" means any indictable offence other than a felony.

(3) Subject to this Act, on all matters on which a distinction has previously been made between felony and misdemeanour including mode of trial, the law and practice in relation to all offences cognizable under the law of Dominica (including piracy) shall be the law and practice applicable on the appointed day in relation to misdemeanour.

Schedule.

(4) The provisions set out in the Schedule (being transitional and other provisions related to the abolition of the distinction between felonies and misdemeanours) shall have effect as from the appointed day.

12 of 1990

(5) In this section "appointed day" means the day on which the First Schedule to the Law Revision (Miscellaneous Amendment) Act 1990 comes into operation.

Penalties for
assisting
offenders.
[12 of 1990].

4. (1) Where a person has committed a felony, any other person who, knowing or believing him to be guilty of the offence or of some other felony, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution is guilty of an offence.

(2) If on the trial of an indictment of any felony the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) of which they are satisfied that he is guilty in relation to the offence charged (or that other offence).

(3) A person committing an offence under subsection (1) with intent to impede another person's apprehension or prosecution shall on conviction on indictment be liable to imprisonment according to the gravity of the other person's offence as follows:

- (a) if that offence is a capital offence, he is liable to imprisonment for ten years;
- (b) if it is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of fourteen years, he is liable to imprisonment for seven years;
- (c) if it is not one included in paragraphs (a) and (b) but is one for which a person (not previously convicted) may be sentenced to imprisonment for a term of ten years, he is liable to imprisonment for five years;
- (d) in any other case, he is liable to imprisonment for not more than three years.

(4) No proceedings shall be instituted for an offence under subsection (1) except by or with the consent of the Director of Public Prosecutions, but this subsection shall not prevent the arrest or the issue of a warrant for the arrest of a person for such an offence, or the remand in custody or on bail of a person charged with such an offence.

(5) Offences under subsection (1), and incitement to commit them, shall be included in the First Schedule to the Magistrate's Code of Procedure Act where that Schedule includes or is under any written law to be treated as including the felony to which they relate. Ch. 4:20.

(6) For purposes of the Extradition Act, offences in relation to an extradition crime which in Dominica would be offences under subsection (1) shall be extradition crimes and be deemed to be included in the Schedule to that Act. Ch. 12:04.

5. (1) Where a person has committed a felony, any other person who, knowing or believing that the offence or some other felony has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, is liable on conviction on indictment to imprisonment for two years. Penalties for concealing offences or giving false information. [12 of 1990].

(2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he is liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

Ch. 4:20.

(3) Offences under subsection (1) and incitement to commit them shall be included in the First Schedule to the Magistrate's Code of Procedure Act where that Schedule includes or is under any written law to be treated as including the felony to which they relate.

(4) The compounding of an offence other than treason shall not be an offence otherwise than under subsection (1).

Abolition of presumption of coercion of wife by husband. [12 of 1990].

6. Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of her husband is abolished, but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

Abettors in summary offences. [12 of 1990].

7. (1) Any person who aids, abets, counsels or procures the commission of any offence punishable on summary conviction is liable to the same punishment as the principal offender, and may be proceeded against either with the principal offender or before or after his conviction, and either in the district in which the principal offender may be convicted or that in which the offence of aiding, abetting, counselling or procuring may have been committed.

(2) Any person so aiding, abetting, counselling or procuring may be tried before any Magistrate or Justice having cognizance of the principal offence.

PART II

APPREHENSION OF OFFENDERS

Constable or peace officer may apprehend without warrant. [10 of 1992].

8. (1) Any person, found committing an offence punishable either upon indictment or upon summary conviction, may be immediately apprehended by any constable, or peace officer, without a warrant, or by the owner of the property on or with respect to which the offence is being committed, or by his servant, or any other person authorised by the owner, and shall be forthwith taken before a Magistrate to be dealt with according to law.

* (2) For the purposes of this Part the word "constable" includes any gazetted officer or subordinate officer.

9. If any person, to whom any property is offered to be sold, pawned or delivered, has reasonable cause to suspect that any such offence has been committed with respect to the property, he may, and, if in his power, he shall, apprehend and forthwith carry before a Magistrate the party offering the same, together with the property, to be dealt with according to law.

Persons offering goods suspected to be stolen may be apprehended.

10. Any person may apprehend any other person found committing any indictable offence in the night, and shall convey or deliver him to some constable, or other person in order that he may be taken, as soon as he conveniently may be, before a Magistrate to be dealt with according to law.

Apprehension by private persons of night offenders.

11. Any constable or peace officer may, without a warrant, take into custody any person whom he finds loitering or lying in any highway, yard or other place during the night, and whom he has good cause to suspect of having committed, or being about to commit, any felony, and may detain such person until he can be brought before a Magistrate to be dealt with according to law; but no person, apprehended as aforesaid, shall be detained longer than forty-eight hours without being brought before a Magistrate.

Constable, etc., may apprehend persons found loitering about at night.

12. (1) The powers of summary arrest conferred by the following subsections shall apply to felonies.

Arrest without warrant.
[12 of 1990].

(2) Any person may arrest without warrant anyone who is, or whom he with reasonable cause suspects to be, in the act of committing a felony or to be about to commit a felony.

(3) Where a felony has been committed, any person may arrest without warrant anyone who is, or whom he with reasonable cause suspects to be guilty of the offence.

(4) Where a constable, with reasonable cause, suspects that a felony has been committed, he may arrest without warrant anyone whom he with reasonable cause suspects to be guilty of the offence.

(5) A constable may arrest without warrant any person who is, or whom he with reasonable cause suspects to be about to commit a felony.

* This provision came into operation on the 1st May, 1992.

(6) For the purpose of arresting a person under any power conferred by this section a constable may enter (if need be, by force) and search any place where that person is or where the constable with reasonable cause suspects him to be.

(7) This section shall not affect the operation of any enactment restricting the institution of proceedings for an offence, nor prejudice any power of arrest conferred by law apart from this section.

Use of force in making arrest. [12 of 1990].

13. (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

(2) Subsection (1) replaces the rules of the common law on the question when force used for a purpose mentioned in the subsection is justified by that purpose.

Parties to be proceeded against under the Magistrate's Code of Procedure Act subject to any special provision in any other Act. Ch. 4:20.

14. The proceedings to be had before any Magistrate, when any offender is brought before him, shall, subject to any special provision contained in any Act relating to the particular offence with which the offender is charged, be regulated by the provisions of the Magistrate's Code of Procedure Act, relating to the summary jurisdiction (criminal) of Magistrates.

PART III

PROCEDURE AFTER PRELIMINARY INQUIRY AND BEFORE INDICTMENT

When accused committed for trial, copy of depositions to be supplied to law officer. Ch. 4:20.

15. (1) When a person is committed for trial under the provisions of the Magistrate's Code of Procedure Act, the Registrar shall, as soon as practicable after the written information (if any), the depositions and the statement of the accused have been delivered to him in accordance with the provisions of the said Act, cause a copy of the said documents to be made and delivered to the proper law officer.

Law officer to elect whether he will indict. Procedure when he decides not to indict.

(2) The proper law officer shall, within a reasonable time after the receipt of the copy, consider the said documents or the copy thereof, and make such further inquiry (if any) as he thinks fit, and decide whether he will, or will not, present an indictment against such person, and if the law officer decides not to present an indictment –

(a) he shall file in the office of the Registrar a notice in writing, under his hand, specifying the name of the accused and the offence with which he was charged, the

name of the Magistrate by whom the accused was committed, and the date of the committal, and stating that he (the law officer) does not intend to present an indictment against the accused; and

- (b) if the accused is in custody, awaiting his trial to answer the charge for which he has been so committed or if any witness at the preliminary inquiry is in custody under the said Act for refusing to enter into or acknowledge a recognizance as provided by the said Act, the law officer shall forthwith, by an order in writing under his hand identifying the warrant under which the accused person or the witness (as the case may be) is in custody in respect of the said charge or of the said refusal (as the case may be), direct the keeper of the prison in which the accused person or the witness is detained that he shall no longer detain the accused person or the witness (as the case may be) in custody under the said warrant.

(3) On the receipt of the order, the warrant specified therein shall cease to have effect, and the said keeper shall discharge the person to whom the order applies unless, and except so far as, the person is legally liable to be kept in custody on other grounds.

(4) When the law officer has filed in the Registrar's office a notice as hereinbefore provided, the Registrar shall forthwith cause every person bound by recognizance in the case to be served with a written notice that no indictment will be presented against the accused, and that the person so bound is discharged from his said recognizance (identifying the recognizance) and that his attendance at the High Court will not be required under his said recognizance.

(5) Every person, so notified shall, from the date of the service of the notice, be released from the recognizance specified in the notice and cease to be entitled to any compensation for trouble or loss of time in respect of any subsequent attendance or continued attendance at any Court, under the said recognizance.

(6) For the purpose of making any such further inquiry the law officer may at any time refer back the documents to the Registrar with directions to the Magistrate to re-open the inquiry for the purpose of taking evidence, or further evidence, on a point or points to be specified and with such directions as the law officer may think proper; and subject to any express directions which may be given by the law officer, the

Power to law officer to refer case back to Magistrate for further preliminary inquiry.

effect of the reference back to the Registrar shall be that the preliminary inquiry shall be re-opened and dealt with by the Magistrate in all respects as if the accused person had not been committed for trial.

Power to Director of Public Prosecutions to refer back case to be dealt with summarily.

(7) If, after such receipt of any document as aforesaid, the Director of Public Prosecutions is of opinion that the accused person should not have been committed for trial, but that the case should have been dealt with summarily, the Director of Public Prosecutions may, if he thinks fit, at any time after such receipt, refer back such documents to the Magistrate with directions to deal with the case accordingly and with such other directions as he may think proper; and any directions given by the Director of Public Prosecutions or law officer under this subsection, shall be complied with by the Magistrate, and by him be attached to the documents in the proceedings. The Director of Public Prosecutions may at any time add to, alter, or revoke any such directions.

Law officer may direct a Magistrate to investigate a charge.

16. Whenever it appears to the proper law officer that there is reasonable ground for believing that an indictable offence has been committed by any person, he may, by writing under his hand, require any Magistrate having jurisdiction in the matter to inquire into it, and on the receipt of any such requisition, the Magistrate shall proceed to investigate the matter, in the same manner as if a charge under oath had been made before him against such person.

Although the charge at a preliminary inquiry has been dismissed, the accused may be arrested by a Judge's order and indicted.

17. (1) In every case in which a Magistrate, after a preliminary inquiry has been held under the provisions of the said Act, dismisses the charge against the accused, the person who preferred the charge or at whose instance the preliminary inquiry was held, or the proper law officer, may, by writing under his hand, require the Magistrate to transmit to the Registrar all the evidence, including the written information (if any) and the statement (if any) of the accused taken at the inquiry and, forthwith on the receipt of the requisition, the Magistrate shall comply with the same.

(2) The Registrar shall forthwith on receipt of the evidence cause a copy of the evidence to be made and transmitted to the proper law officer.

(3) If the law officer, on considering the evidence, or the copy thereof, is of opinion that the Magistrate should not have dismissed the charge, he may apply to a Judge for a warrant for the arrest and committal for trial of the accused person, and, if the Judge is of opinion that the evidence as given before the Magistrate was sufficient to put the

accused on his trial, he may issue his warrant for the arrest of the accused and for his committal to prison, there to be kept until discharged by due course of law, and every such person so committed may be further prosecuted in the same manner as if he had been committed for trial by the Magistrate by whom the charge was dismissed as aforesaid.

(4) Nothing in this section shall apply to any case which has been considered and determined summarily by a Magistrate.

PART IV

SPEEDY TRIALS ON GUILTY CONFESSIONS

18. (1) Except when the charge is one of treason or murder, if an accused person in any statement referred to in section 52 of the Magistrate's Code of Procedure Act says or admits that he is guilty of the charge, then the Magistrate shall further say to him the words following, or words to the like effect:

Procedure where accused confesses guilt at preliminary inquiry.
Ch. 4:20.

"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not, you will now be committed for sentence instead of being committed for trial."

If the accused, in answer to the question, states that he does not wish the witnesses again to appear to give evidence against him, his statement shall be taken down in writing and read to him and shall be signed by the Magistrate and by the accused, if he will, and shall be kept with the depositions of the witnesses.

(2) The Magistrate may thereupon bind over the witnesses to attend the trial conditionally upon reasonable notice being given to them by the Registrar that they are required to attend in pursuance of their recognizances.

(3) In any such case as is mentioned in this section, the Magistrate shall, instead of committing the accused for trial, order him to be committed for sentence before the High Court and in the meantime the Magistrate shall, by his warrant, commit him to prison to be there safely kept until the sittings of that Court, or until he is admitted to bail or delivered by due course of law.

(4) The statement of the accused made under this section shall be received in evidence upon its mere production without further proof thereof by the Court before which he is brought for sentence.

Transmission of record of proceedings.

19. (1) The Magistrate shall, as soon after the committal as is practicable, transmit the complaint or information, depositions, and any statement or confession of the accused, taken on the hearing of the charge, to the Registrar, together with a copy of all such documents for the use of the Director of Public Prosecutions, and the Registrar shall, as soon as practicable after receiving the same, deliver them to the Judge and the Director of Public Prosecutions.

Indictment.

(2) The Director of Public Prosecutions shall, as soon as practicable after receiving a copy of the record of the proceedings at the preliminary inquiry, prefer and file an indictment against the accused person committed for sentence.

Accused to be brought before Judge to be dealt with.

20. (1) As soon as conveniently may be after the filing of an indictment against an accused person committed for sentence, the Registrar of the High Court shall issue a summons to the accused person to appear and if he is in custody an order to the gaoler to bring the prisoner before a Judge of the High Court at a time to be fixed by the Judge, and the Registrar shall notify the Director of Public Prosecutions accordingly.

Plea by accused committed for sentence.

(2) The accused person shall be called upon to plead to the indictment in the same manner as if he had been committed for trial, and he may plead either that he is guilty of the offence charged in the indictment, or with the consent of the prosecutor, of any other offence of which he might be convicted on the indictment.

(3) If the accused person pleads in the High Court that he is not guilty, or if although he pleads that he is guilty it appears to the Court upon the examination of the depositions of the witnesses that he has not in fact committed the offence charged in the indictment, or any other offence of which he might be convicted on the indictment, the plea of not guilty shall be entered and the trial is to proceed as in other cases when that plea is entered, and the Judge shall postpone the case for trial by a jury at the regular criminal sessions of the High Court, and may remand the accused to prison or admit him to bail in the meantime.

(4) A person who has been committed for sentence may plead *autrefois acquit*, *autrefois convict*, pardon, or such special plea as he would be permitted to plead according to the law in force in England on 2nd November 1978, and in such case unless the accused and the prosecutor and the Judge consent to the issue being tried by the Judge without a jury, the Judge shall postpone the case for trial by a jury as provided in subsection (3).

21. (1) A person may at any time before he is brought up for sentence give notice in writing to the Registrar that he desires to withdraw his consent to be committed for sentence, and in such case the prisoner shall not be taken before the High Court for sentence but shall be brought up for trial at the regular criminal sessions of the said Court.

Withdrawal by accused of consent to his committal for sentence.

(2) The notice shall be filed on record in the Registrar's office, and the Registrar shall notify the Director of Public Prosecutions of the withdrawal of the consent to committal for sentence; and the notice may be put in evidence at the trial or mention may be made at the trial of the fact that the notice was given.

(3) In the event of the accused person withdrawing his plea of guilty or pleading not guilty, the Director of Public Prosecutions may refer back the case to the Magistrate in the manner and for the purposes stated in section 15(6) and (7).

22. (1) A Judge of the High Court when sitting to deal with persons committed for sentence shall, subject to these provisions, possess all the powers, authorities and jurisdiction vested in the High Court with respect to the trial of criminal cases in the exercise of the ordinary criminal jurisdiction of the said Court.

Powers of Court and Judge when dealing with committals for sentence.

(2) The Registrar or other proper officer shall attend before a Judge in any proceedings respecting persons committed for sentence, and keep a record thereof in like manner as in other proceedings in the Court.

23. (1) A person committed for trial, whether he is in custody or not, may if he wishes to plead guilty and be sentenced prior to the regular criminal sessions of the Court, file with the Registrar a notice in writing to that effect; the notice shall be filed on record in the Registrar's office.

Notice by person committed for trial of intention to plead guilty.

(2) In such case the Registrar shall notify the Judge and the Director of Public Prosecutions, or other prosecutor, of the notice and the subsequent proceedings shall be as in the case of a person committed for sentence and the provisions of sections 20, 21 and 22 hereof shall *mutatis mutandis* apply.

PART V
INDICTMENTS

Law officer, or barrister authorised by him, may present indictment. [12 of 1990].

24. (1) Any criminal case in which, after a preliminary inquiry under the provisions of the said Act, the accused has been committed for trial or has, after the charge against him was dismissed by a Magistrate, been committed to prison under the provisions of section 17, may be brought under the cognizance of the High Court by an indictment presented by the proper law officer, or by a barrister-at-law authorised by the law officer to present the indictment in the name and on behalf of the law officer; and, in every such case, an indictment in such form and so presented shall be as valid and effectual as if the same had been presented by a grand jury.

(2) When an indictment has been presented by a barrister-at-law in the name and on behalf of a law officer, he shall be presumed, until the contrary is shown, to have been authorised by the law officer to present the indictment.

(3) Any power to bring proceedings for an offence by criminal information is hereby abolished.

Court may order in writing prisoner to be brought up for trial without any writ of *habeas corpus*.

25. When any person, against whom an indictment is presented, is confined in any prison within the jurisdiction of the High Court, the Court may, by an order in writing, direct the keeper of the prison to bring the person before the Court, to be arraigned and tried on the indictment, and the keeper shall obey the order.

Benefit of clergy abolished, joinder of counts admissible in certain cases.

26. Benefit of clergy is hereby declared to have been abolished, but the abolition does not prevent the joinder, in an indictment, of any counts which might have been joined but for the abolition.

PART VI
DILATORY PLEAS, ARRAIGNMENT, ETC.

No traverse or time allowed to plead, or demur, but Court may grant time, if of opinion that the accused should have time, and respite the recognizances.

27. No person prosecuted is entitled, as of right, to traverse or postpone the trial of any indictment presented against him in any court, or to have time allowed him to plead or demur to any such indictment; but if the Court before whom any person is so indicted, upon the application of that person, or otherwise, is of opinion that he ought to be allowed a further time to plead or demur, or to prepare for his defence or otherwise, the Court may grant such further time to plead or demur, or may adjourn the receiving or taking of the plea or demurrer, and the

trial (as the case may be) of that person, to some future time of the sitting of the Court, or to the next or any subsequent sitting of the Court, and upon such terms as to bail or otherwise as to the Court seems fit, and may, in the case of adjournment to another session or sitting, respite the recognizances of the prosecutor and witnesses accordingly; in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at the subsequent session or sitting, without entering into any fresh recognizances for that purpose.

28. Where a person is arraigned on an indictment he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea and on pleading "not guilty" he shall, by such plea, without any further form, be deemed to have put himself for trial by the State, and the Court may, in the usual manner, order a jury for the trial of such person accordingly.

Plea of not guilty puts defendant on trial, and Court may call a jury. [12 of 1990].

29. If any person, being arraigned upon any indictment for any indictable offence, stands mute of malice, or will not answer directly to the indictment, the Court shall, in every such case, if it thinks fit, order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the full force and effect as if such person had actually pleaded the same.

Persons standing mute, Court may order plea of not guilty to be entered.

30. In any plea of *autrefois convict* or *autrefois acquit*, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted (as the case may be) of the offence charged in the indictment.

Where party has been either convicted or acquitted, sufficient for him to say so.

PART VII

TRIAL, DEFENCE, VERDICT, ETC.

31. All persons tried for any indictable offence shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law.

Defence by counsel.

32. (1) Upon any trial, the addresses to the jury shall be regulated as follows: the counsel for the prosecution, in the event of the defendant, or his counsel, not announcing, at the close of the case for the prosecution, his intention to adduce evidence, shall be allowed to address the jury a second time at the close of the case, for the purpose of summing up the evidence; and the accused, or his counsel, shall then be allowed to open his case, and also to sum up the evidence, if any is adduced for the defence, and the right of reply shall be in accordance with the practice of the Courts in England on 2nd November 1978.

Rule for addresses by counsel to jury.

(2) Where the only witness to the facts of the case called by the defence is the person charged he shall be called as a witness immediately after the close of the evidence for the prosecution. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right to reply; but the right of reply shall be always allowed to the Director of Public Prosecutions, or to any counsel acting on behalf of the State.

Accused entitled to inspect depositions at trial without fee.

33. All persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) taken against them, and returned into the Court before which the trial is had.

Accused entitled to a copy of the depositions.

34. Every person indicted shall be entitled to a copy of the depositions returned into Court provided (if the same are not demanded before the opening of the term, sittings or sessions) the Court is of opinion that the same can be made without delay to the trial, but not otherwise; but the Court may, if it sees fit, postpone the trial on account of such copy of the depositions not having been previously had by the person charged.

Punishment of person attempting to commit offence not being completed.

35. If, on the trial of any person charged with any offence, it appears to the jury, upon the evidence, that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return, as their verdict, that the defendant is not guilty of the offence charged, but is guilty of an attempt to commit the same; and thereupon such person is liable to be punished in the same manner as if he had been convicted on an indictment for attempting to commit the particular offence charged in the indictment.

No person, after trial for any offence, to be tried for attempting to commit same offence.
[12 of 1990].

36. (1) No person shall be tried or prosecuted for an attempt to commit any offence, who has been previously tried for committing the same offence.

(2) A person convicted on indictment of an attempt to commit an offence for which a maximum term of imprisonment or a maximum fine is provided by an enactment shall not be sentenced to imprisonment for a term longer, nor to a fine larger, than that to which he could be sentenced for the completed offence.

37. On the trial of any person for any felony whatever, where the crime charged includes an assault against the person, although an assault is not charged in terms, the jury may acquit of the felony, and find a verdict of guilty of an assault against the person indicted, if the evidence warrants such finding, and the person so convicted is liable to imprisonment for two years.

Verdict of assault may be found where felony charged.

38. (1) Where a person is arraigned on an indictment he may plead not guilty to the offence charged in the indictment but guilty of another offence of which he might be found guilty on that indictment.

Trial of offences. [12 of 1990].

(2) On an indictment for murder a person found not guilty of murder may be found guilty –

- (a) of manslaughter, or of causing grievous bodily harm with intent to do so; or
- (b) of any offence of which he may be found guilty under an enactment specifically so providing, or under section 4(2); or
- (c) of an attempt to commit murder, or of an attempt to commit any other offence of which he might be found guilty;

but may not be found guilty of any offence not included above.

(3) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the Court of trial, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

(4) For purposes of subsection (3), any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged on indictment with attempting to commit an offence or with an assault or other act preliminary to an offence, but not with the completed offence, then (subject to the discretion of the Court to discharge the jury with a view to the preferment of an indictment for the completed offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(5) Where a person arraigned on an indictment pleads not guilty of an offence charged in the indictment but guilty of some other offence of which he might be found guilty on that plea of guilty without trial for the offence of which he has pleaded not guilty, then (whether or not the two offences are separately charged in distinct counts) his conviction of the one offence shall be an acquittal of the other.

(6) Subsections (1) to (3) apply to an indictment containing more than one count as if each count were a separate indictment.

Proceedings upon indictment for committing any offence after a previous conviction.

39. (1) The proceedings upon any indictment for committing any offence after a previous conviction, or convictions, shall be as follows (that is to say): the offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he pleads not guilty, or if the Court orders a plea of not guilty to be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning the subsequent offence only and, if they find him guilty, or if on arraignment he pleads guilty, he shall then, and not before, be asked whether he was so previously convicted as alleged and, if he answers that he was so previously convicted, the Court may proceed to sentence him accordingly, but, if he denies that he was so previously convicted, or stands mute of malice, or will not answer directly to the question, the jury shall then be charged to inquire concerning the previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall, for all purposes, be deemed to extend to the last mentioned inquiry.

(2) If, upon the trial of any person for any such subsequent offence, such person gives evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence, or offences, before the verdict of guilty is returned, and the jury shall inquire concerning the previous conviction, or convictions, at the same time that they inquire concerning the subsequent offence.

No general forfeiture or forfeiture of chattels which caused death. [12 of 1990].

40. (1) There is hereby abolished so much of the punishment for any offence as consists in any general forfeiture of lands or of goods and chattels or in being placed outside the State's protection or otherwise incapacitated to sue or be sued.

(2) There shall be no forfeiture of any chattels which may have moved to or caused the death of any human being, in respect of such death.

PART VIII

EVIDENCE, AMENDMENT, JUDGMENTS, ETC.

41. Depositions taken in the preliminary or other investigation of any charge against any person may be read as evidence in the prosecution of such person for any other offence whatsoever, upon the like proof, and in the same manner in all respects, as they may, according to law, be read in the prosecution of the offence with which such person was charged when the depositions were taken.

Depositions may be read in evidence for other offence than that for which they were taken.

42. When the attendance of any person, confined in any prison, is required in any court of criminal jurisdiction, in any case cognisable therein by indictment, the Court before whom the prisoner is required to attend, or any Judge of the Court, of any superior Court, may, before or during any such term or sitting at which the attendance of such person is required, make an order upon the keeper, or other person, having the custody of the prisoner, to deliver the prisoner to the person named in the order to receive him, and such person shall, at the time prescribed in the order, convey the prisoner to the place at which such person is required to attend, there to receive and obey such further order as to the said Court may seem fit.

Any person confined in any prison may be conveyed to the place at which such prisoner is required.

43. No person offered as a witness shall, by reason of any alleged incapacity from crime or interest, be excluded from giving evidence on the trial of any criminal case, or in any proceeding relating, or incidental, to such case.

Crime or interest does not incapacitate a witness.

44. Every person, so offered as a witness, shall be admitted and be compellable to give evidence on oath, or solemn affirmation where an affirmation is receivable, notwithstanding that such person has, or may have, an interest in the matter in question, or in the event of the trial in which he is offered as a witness, or of any proceeding relating, or incidental, to such case, and notwithstanding that such person, so offered as a witness, has been previously convicted of a crime or offence.

Persons so offered as witnesses are compellable to give evidence.

45. All other matters of procedure not herein or in any other written law expressly provided for shall be subject to the direction of the Judge acting in his discretion and in making any such direction, the Judge shall be guided by the practice of the Superior Courts of criminal jurisdiction in England.

Where procedure not otherwise prescribed English practice to be followed. [12 of 1990].

L.R.O. 1/1991

Where second jury, same right to challenge as in the first jury.

46. When any trial of an indictment for any felony or misdemeanour is had before a second jury, the State and the defendant, respectively, shall be entitled to the same challenges as they were entitled to with respect to the first jury.

Mode of making up record on conviction. [12 of 1990].

47. In making up the record of any conviction or acquittal on any indictment, it shall be sufficient to copy the indictment with the plea pleaded thereto, without any formal caption or heading; and the statement of the arraignment, and the proceedings subsequent thereto, shall be entered or recorded in accordance with the rules of the Supreme Court, which rules shall also apply to such inferior courts of criminal jurisdiction as shall be therein designated.

Judgment not to be stayed or reversed for want of a *similiter*, etc.

48. Judgment, after verdict, upon an indictment for any felony or misdemeanour shall not be stayed or reversed for want of a *similiter*, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning the process or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the Provost Marshal or other officer; and where the offence charged is an offence created by any statute or subjected to a greater degree of punishment by any statute, the indictment shall, after verdict, be held sufficient if it describes the offence in the words of the statute creating the offence or prescribing the punishment, although they are disjunctively stated or appear to include more than one offence or otherwise.

PART IX PUNISHMENT

Similar punishment for capital offences whether by verdict or confession.

49. Any person, indicted for any offence made capital by any statute, is liable to the same punishment, whether he is convicted by verdict or confession, and this follows as well in the case of accessories as of principals.

Penalties prescribed to be maximum penalties and applicable to each accused. [12 of 1990].

50. (1) Where any written law prescribes a penalty to which a person convicted of an offence shall be liable, such provision shall be construed to mean that, unless the contrary intention appears, the offence shall be punishable by a penalty not exceeding the penalty prescribed and the Court may, subject to such conditions as it may think fit, dispense with any or (in exceptional circumstances) with all of the forms of punishment it has power to impose.

(2) Where in any written law more than one penalty linked by the word “and” is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively.

(3) A Court shall not impose the penalty of imprisonment with solitary confinement on any person for any period. However, the disciplinary authority of any State prison may, if expressly authorised by law, order a prisoner to be kept in solitary confinement for a portion, or for portions of his term of imprisonment not exceeding one month at any one time nor three months in any one year.

(4) Where a written law provides that two or more persons shall, for any offence, be liable to a fine or to a term of imprisonment, then each such person shall be liable to the whole fine or to the whole term of imprisonment.

51. (1) Upon a conviction of any person for an offence whether indictable or summary, under any written law, notwithstanding the absence of any provision in such written law to that effect, the Court shall have a discretion in lieu of or in addition to any imprisonment prescribed, to impose such fine as it thinks fit, and in addition to or in lieu of any imprisonment or fine prescribed, to require the offender to enter into his own recognizances and to find sureties both or either for keeping the peace or for good behaviour for a reasonable time to be specified in the order and to be imprisoned until the recognizances are entered into; but no person shall be imprisoned under this section for a period exceeding one year.

Power to impose
fine or
recognizances.
[12 of 1990].

(2) Notwithstanding anything in any enactment whereby power is conferred on a Court, on a person’s conviction of an offence, to bind him over to keep the peace or be of good behaviour, that power may be exercised without sentencing the person convicted to a fine or to imprisonment.

(3) Subsections (1) and (2) shall have effect notwithstanding any provision contained in this Act or any other Act unless such Act expressly deprives the Court of the discretion conferred.

(4) This section shall not apply to a conviction for an offence punishable with death.

(5) Subject to the provisions of this subsection, where a fine is imposed by, or a recognizance is forfeited before the High Court, the Court may make an order –

- (a) allowing time for the payment of the amount of the fine or the amount due under the recognizance;
- (b) directing payment of the said amount by instalments of such amounts and on such dates respectively as may be specified in the order;
- (c) fixing a term of imprisonment which the person liable to make the payment is to undergo if any sum which he is liable to pay is not duly paid or recovered;
- (d) in the case of a recognizance, discharging the recognizance or reducing the amount due thereunder;

but any term of imprisonment fixed under this subsection in default of payment of a fine shall not exceed twelve months.

(6) Where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by any court to, or is serving or otherwise liable to serve, a term of imprisonment, the Court may order that any term of imprisonment fixed under subsection (5)(c) shall not begin to run until after the end of the first-mentioned term of imprisonment.

(7) The power conferred by subsection (5) to discharge a recognizance or reduce the amount due thereunder shall be in addition to the powers conferred by any other Act relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited thereunder.

Mode of
punishment for
felony not
capital.

52. If any person is convicted of felony not punishable with death, committed after a previous conviction for felony, such person is, on subsequent conviction, liable to imprisonment for seven years unless some other punishment is directed by any statute for the particular offence, in which case the offender is liable to the punishment thereby awarded, and not to any other.

Rescue of a
prisoner in
custody and
felonious rescue.

53. Any person who escapes or rescues or aids in rescuing any other person from lawful custody or makes or causes any breach of prison, if such offence does not amount to felony, is guilty of a misdemeanour and liable to imprisonment for two years; and any person who is convicted of a felonious rescue is, in any case where no special punishment is provided by any statute, liable to imprisonment for seven years.

54. Any person who, knowingly and unlawfully under colour of any pretended authority, directs or procures the discharge of any prisoner not entitled to be so discharged, is guilty of a misdemeanour and liable to imprisonment for two years, and the person so discharged shall be held to have escaped.

Procuring discharge of prisoner by false pretence.

55. Any person escaping from imprisonment shall, on being retaken, undergo, in the prison he escaped from, the remainder of his term unexpired at the time of his escape, in addition to the punishment which may be awarded for the escape.

Prisoners escaping to undergo unexpired term with further imprisonment.

56. (1) Any person convicted of a felony for which no punishment is specially provided is liable to imprisonment for seven years.

Punishment of felonies less than capital. [12 of 1990].

(2) Any person convicted of a misdemeanour or of any indictable offence for which no punishment is specially provided is liable to imprisonment for two years.

57. When imprisonment is to be awarded for any offence and no definite period is fixed by law, the term of the imprisonment shall always be in the discretion of the Court passing the sentence, and when a fine is to be awarded for any offence and no amount is fixed, the amount shall be in the discretion of the Court passing the sentence.

Where no definite term of imprisonment is fixed by law, Court may fix the term, and where a fine may be awarded, fix the amount.

58. The period of imprisonment, in pursuance of any sentence, shall commence on and from the day of passing the sentence, but no time, during which the convict may be out on bail, shall be reckoned as part of the term of imprisonment to which he is sentenced.

Sentence to commence from day of passing same.

59. Whenever sentence is passed for an offence on a person already imprisoned under sentence for another crime, the Court may award imprisonment, for the subsequent offence, to commence at the expiration of the imprisonment to which such person has been previously sentenced; and where such person is already under sentence of imprisonment, the Court may award sentence, for the subsequent offence, to commence at the expiration of the imprisonment for which such person has been previously sentenced, although the aggregate term of imprisonment may exceed the term for which the punishment could otherwise have been awarded.

Court may award imprisonment for a subsequent offence, before expiration of imprisonment for prior offence, to commence on expiration of first imprisonment.

Imprisonment may be with or without hard labour.

60. Where under any written law a Court is empowered to order imprisonment, either peremptorily or in default of payment of any pecuniary penalty, on conviction for an offence, the Court may, in the absence of express provision to the contrary in such law or in any other Act, order the offender to be imprisoned either with or without hard labour and it shall not be necessary in any written law prescribing the penalty to state that any such imprisonment may be with or without hard labour.

PART X

JUDGMENT OF DEATH

Execution of prisoner under sentence of death shall be done according to law.

61. Whenever any offender has been convicted, before any Court of criminal jurisdiction, of an offence for which the offender is liable to, and receives, the sentence of death, the Court shall order and direct execution to be done on the offender in the manner provided by law.

Judge, without delay, to report to the President the case of any prisoner under sentence of death, and Judge in certain cases may relieve.

62. In the case of any prisoner sentenced to the punishment of death, the Judge, before whom the prisoner has been convicted, shall, without delay, make a report of the case to the President previously to the sentence being carried into execution; and, if the Judge thinks the prisoner ought to be recommended for the exercise of the prerogative of mercy, or if from the non-decision of any point of law reserved in the case, or from any other causes, it is necessary to delay the execution, he, or any other Judge of the same Court, or who might have held, or sat in, such Court, may, from time to time, either in term, or in vacation, relieve the offender for such period, or periods, beyond the time fixed for the execution of sentence, as may be necessary for the consideration of the case by the President.

Prisoner, after sentence of death to be kept apart in safe custody, and only to be visited by certain persons.

63. Every person sentenced to suffer death shall, after judgment, be confined, in some safe place within the prison, apart from all other prisoners, and no person but the keeper of the prison and his servants, the medical officer or surgeon of the prison, a chaplain or a minister of religion, shall have access to any such convict without the permission in writing of the Court or Judge, before whom such convict has been tried, or of the Provost Marshal.

President to appoint place of execution.

64. Judgment of death to be executed on any prisoner shall be carried into effect in such place as the President shall direct.

Execution within walls of prison.

65. Where the execution is directed to take place within the walls of the prison, the following paragraphs lettered from (a) to (l) shall be applicable to the execution:

- (a) The Provost Marshal charged with the execution, and the keeper and medical officer or surgeon of the prison, and such other officers of the prison, and such persons as the Provost Marshal requires, shall be present at the execution. The Provost Marshal and other officers of prison to be present at the execution.
- (b) Any justice of the peace for the district, or place, to which the prisoner belongs, and such relatives of the prisoner or other persons as it seems to the Provost Marshal proper to admit within the prison for the purpose, and any minister of religion who may desire to attend, may also be present at the execution. Relations, etc., of prisoner permitted to be present at execution.
- (c) As soon as may be after judgment of death has been executed on the offender, the medical officer or surgeon of the prison shall examine the body of the offender, and shall ascertain the fact of death, and shall sign a certificate thereof, and deliver the same to the Provost Marshal. Surgeon to examine body after death and give certificate to Provost Marshal.
- (d) The Provost Marshal and the keeper of the prison, and such justices and other persons present (if any) as the Provost Marshal requires, or allows, to be present, shall also sign a declaration to the effect that judgment of death has been executed on the offender. Keeper and other persons present shall sign declaration of death of the offender.
- (e) The duties imposed upon the Provost Marshal, keeper, medical officer or surgeon by paragraphs (a) to (d) may and shall, in his absence, be performed by his lawful deputy or assistant, or other officer, or person ordinarily acting for him or conjointly with him, in the performance of his duties. Duties of Provost Marshal and others in four preceding paragraphs may be performed by deputy.
- (f) A coroner of the district, or place, wherein judgment of death is executed on any offender, shall, within twenty-four hours after the execution, hold an inquest on the body of the offender, and the jury at the inquest shall inquire into and ascertain the identity of the body, and whether judgment of death was duly executed on the offender, and the inquisition shall be in duplicate, and one of the originals shall be delivered to the Provost Marshal. Coroner to hold inquest on the body of the person executed.
- (g) No officer of the prison, or prisoner confined therein, shall, in any case, be a juror on the inquest. Officer of prison not to be a juror on inquest.

Minister may make rules to be observed on the execution of judgment of death.

(h) The Minister may, from time to time, make such rules and regulations, to be observed on the execution of judgment of death in every prison, as he may, from time to time, deem expedient for the purpose, as well of guarding against any abuse in the execution, as also of giving greater solemnity to the same, and of making known without the prison walls the fact that the execution is taking place.

Punishment for false certificate respecting any execution.

(i) Any person who, knowingly and wilfully, signs any false certificate, or declaration, required with respect to any execution, is guilty of a misdemeanour and liable, at the discretion of the Court, to imprisonment for two years.

Certificate, etc., shall be sent by Provost Marshal to President and printed copies to be exhibited.

(j) Every certificate and declaration, and the duplicate of the judgment required by this Act, shall, in each case, be sent, with all convenient speed, by the Provost Marshal to the President, or to such other officer as may, from time to time, be appointed for the purpose by the Minister; and printed copies of the same several instruments shall as soon as possible be exhibited, and shall, for twenty-four hours at least, be kept exhibited on or near the principal entrance of the prison within which judgment of death is executed.

Omission to comply with preceding paragraphs will not make execution illegal.

(k) The omission to comply with any provision of paragraphs (a) to (j) shall not make the execution of death illegal in any case where the execution would otherwise have been legal.

Manner in which judgment of death to be carried out.

(l) Except in so far as is hereby otherwise provided, judgment of death shall be carried into effect in the same manner as if paragraphs (a) to (k) had not been passed.

PART XI

PARDONS

President may extend prerogative of mercy.

66. The President may extend the prerogative of mercy to any person sentenced, by virtue of any statute, to imprisonment, although such person is imprisoned for non-payment of money to some party other than the State.

67. Where the President, in the name and on behalf of the State, grants to any offender convicted of a felony either a free or a conditional pardon, the discharge of the offender out of custody, in the case of a free pardon, and the performance of the condition, in the case of a conditional pardon, shall have the same effect as a pardon of the offender under the Great Seal or the Royal sign manual of the United Kingdom would have had with respect to an offender in the United Kingdom on 2nd November 1978 as to the felony for which pardon has been granted; but no free pardon, nor any discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent, or mitigate, the punishment to which the offender might otherwise be lawfully sentenced on subsequent conviction for any felony, or offence, other than that for which the pardon was granted.

When pardon granted, offender still liable for any other felony or offence.
[12 of 1990].

68. The President may commute the sentence of death passed upon any person convicted of a capital crime to imprisonment for any term of years not less than two years; and an instrument under the hand and seal of the President declaring the commutation of sentence, shall be sufficient authority to any of the Judges of the Supreme Court, having jurisdiction in such cases, or to any officer to whom the instrument is addressed, to give effect to the commutation, and to do all such things, and to make such orders, and to give such directions, as may be requisite for the charge or custody of the convict, and for his conduct to, and delivery at, a prison, and his detention therein, according to the terms on which his sentence has been commuted.

Commutation of sentence.

PART XII

UNDERGOING SENTENCE EQUIVALENT TO PARDON

69. When any offender has been convicted of a felony not punishable with death, and has endured the punishment to which the offender was adjudged, or if the felony is punishable with death and the sentence has been commuted, then, if the offender has endured the punishment to which his sentence was commuted, the punishment so endured shall, as to the felony whereof the offender was so convicted, have the like effects and consequences as a pardon under the Great Seal; but nothing herein contained, nor the enduring of the punishment, shall prevent, or mitigate, any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

Imprisonment to have the effect of a pardon, but the person pardoned is liable for subsequent felony.

PART XIII
GENERAL PROVISIONS

Felonies within Admiralty jurisdiction in State may be tried as other felonies.

70. When any felony, punishable under the laws of the State, has been commuted within the jurisdiction of any Court of Admiralty in the State, the same may be dealt with, inquired of, and tried and determined, in the same manner as any other felony committed within the State.

Continuous bail.

71. Where, on any adjournment of a criminal proceeding, either in the High Court or before a Magistrate, the accused is admitted to bail the recognizance may be conditioned for his appearance at every time and place to which the proceeding may be, from time to time, adjourned. Nothing contained in this section shall prejudice the power of the Court or Magistrate, at any subsequent adjournment of the proceeding, to refuse to admit the accused to bail, or, as a condition of such person being admitted to bail, to require him to enter into another recognizance as the Court or Magistrate may direct.

Taking of recognizance of bail.

72. For removing doubt it is hereby declared that where, as a condition of the release of any person, he is required to enter into a recognizance with sureties, the recognizances of the sureties may be taken separately, and either before or after the recognizances of the principal; and, if so taken, the recognizances of the principal and sureties shall be as binding as if they had been taken together and at the same time.

Order for compensation on conviction of indictable offence.
[8 of 1974].

73. (1) Any person who is convicted of an indictable offence may be adjudged by the Court to make compensation to any person injured by his offence; and any sum so adjudged may be recovered by such process, including imprisonment in default of payment, for twelve months, as the Court may direct.

(2) The payment of such compensation shall be a bar to any further action for the same injury.

Persons convicted may be condemned in costs.
[12 of 1990].

74. (1) The Court may, when pronouncing judgment upon the conviction of any person for any offence, in addition to such sentence as may otherwise by law be passed, condemn such person to the payment of the whole or any part of the costs or expenses incurred in or about the prosecution and conviction for the offence of which he is convicted, if the Court thinks fit to do so; and the payment of such costs and expenses, or any part thereof, may be ordered by the Court to be

made out of any moneys taken from such person on his apprehension, or may be enforced at the instance of the Director of Public Prosecutions or of any person liable to pay or who may have paid such costs and expenses, in the same manner (subject to the provisions of this Act) as the payment of any costs ordered to be paid by the judgment or order of the Court in civil cases may be enforced.

(2) In the meantime and until the recovery of such costs and expenses from the person so convicted as mentioned above, or from his estate, the same shall be paid and provided for in the same manner as if this section were not in force; and any money which may be recovered in respect thereof from the person so convicted, or from his estate, shall be applicable to the reimbursement of any person or fund by whom or out of which such costs and expenses may have been paid or defrayed.

SCHEDULE

Section 3.
[12 of 1990].

TRANSITIONAL AND OTHER RELATED PROVISIONS AS TO ABOLITION OF DISTINCTION BETWEEN FELONY AND MISDEMEANOUR

1. In this Schedule –

Interpretation.

“the commencement date” means the date on which the relevant amendments come into operation;

“the relevant amendments” means the amendments made to the Criminal Procedure Ordinance by the First Schedule of the Law Revision (Miscellaneous Amendments) Act 1990.

Cap. 34.
(1961 Ed.)
12 of 1990.

2. In so far as the relevant amendments affect any matter of procedure or evidence or the jurisdiction or powers of any court in relation to offences, they shall have effect in relation to proceedings on indictment for an offence (except as provided by the following paragraphs) if, but only if, the person charged with the offence is arraigned on or after the commencement date.

New provisions
apply to
arraignments on
or after com-
mencement date.

3. Where a person is arraigned after the commencement date on an indictment for a felony committed before that date, then for purposes of his trial on that indictment the offence shall be deemed always to have been a misdemeanour in the indictment.

Where felony
committed before
commencement
date.

L.R.O. 1/1991

Where indictment signed or court-martial ordered before commencement date.

4. On an indictment signed before the commencement date, a person may be found guilty of any offence of which he could have been found guilty on that indictment if the relevant amendments had not been enacted, but not of any other offence; and a person tried by a court-martial ordered or convened before the commencement date may be found guilty of any offence of which he could have been guilty if the relevant amendments had not been enacted, but not of any other offence.

Proof of trial on conviction before commencement date.

5. Where a person has been tried for or convicted of felony before the commencement date, the trial or conviction may be proved in any manner in which it could have been proved if the relevant amendments had not been enacted.

Construction of old enactments. 12 of 1990. Cap. 34. (1961 Ed.)

6. (1) Subject to any express amendment or repeal made by the Law Revision (Miscellaneous Amendments) Act 1990 to the Criminal Procedure Ordinance, the following provisions shall have effect in relation to any Act passed before the commencement date:

- (a) any written law creating an offence by directing it to be a felony shall still be read as directing it to be a felony;
- (b) any written law referring to felonious stealing shall be read as referring merely to stealing.

(2) Nothing in the relevant amendments shall affect the punishment provided for an offence by the written laws specially relating to that offence.

Treason.

7. In the provisions of the relevant amendments references to felony shall not be taken as including treason; but the procedure on trials for treason or misprision of treason shall be the same as the procedure as altered by the relevant amendments on trials for murder.
