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CRIMINAL PROCEDURE CODE

(2005 Revision)

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Note (not forming part of the Law): This revision replaces the 1995 Revision which should now be discarded.

**CRIMINAL PROCEDURE CODE
(2005 Revision)**

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CRIMINAL PROCEDURE CODE

(2005 Revision)

PART I - Introductory

1. This Law (hereinafter referred to as this Code) may be cited as the Criminal Procedure Code (2005 Revision). Short title
2. In this Code- Definitions
- “Clerk” means the person appointed as Clerk of the Court under section 7 of the Grand Court Law (1995 Revision); 1995 Revision
- “Commissioner of Police” means the person appointed under section 4 of the Police Law (1995 Revision) and includes every person acting under his authority; 1995 Revision
- “committed for trial” means committed for trial before the Grand Court;
- “complaint” means an allegation that some person has committed an offence;
- “counsel” means any legal practitioner instructed to represent any party in proceedings before a court;
- “court” means the Grand Court or the Summary Court and the person presiding over such court as the context may require;
- “Court of Appeal” means the Court of Appeal exercising jurisdiction under the Constitution of the Islands and in accordance with the Court of Appeal Law (1996 Revision); 1996 Revision
- “Governor” means the Governor in Cabinet;
- “Judge” means a Judge of the Grand Court;
- “legal practitioner” means any person authorised to practise as such before the Grand Court under any law for the time being in force;
- “magistrate” includes a person presiding over a Summary Court and having jurisdiction in the matter under reference;
- “medical practitioner” means any person registered under the Health Practice Law, (2005 Revision as being authorised to practise medicine in the Islands); 2005 Revision
- “police officer” means any constable or member of the Police Force established under the Police Law (1995 Revision); 1995 Revision
- “preliminary inquiry” means an inquiry into a criminal charge conducted by a Summary Court under this Code, with a view to the committal of an accused person for trial before the Grand Court;

“private prosecution” means a prosecution instituted by any person other than-

- (a) a person appearing on behalf of the Crown, the Commissioner of Police or any department of the Government; or
- (b) a public officer acting in his official capacity or any person appearing on his behalf;

“public officer” means any person holding any office in the public service of the Government; and

2004 Revision

“Summary Court” means a court established under the Summary Jurisdiction Law (2004 Revision) or, with respect to proceedings or applications in connection with young persons (as defined in the Youth Justice Law (2005 Revision) under that Law.

2005 Revision

Inquiry into and trial of offences

3. Subject to the express provisions of any other law for the time being in force, all offences shall be inquired into, tried and otherwise dealt with according to this Code.

PART II - Powers of Courts

Power of courts to try offences

4. Save in the case of departmental, disciplinary and procedural offences for the disposal of which special provision is made in any other law, all offences shall be tried -

- (a) upon indictment before the Grand Court; or
- (b) summarily by the Summary Court.

Mode of trial of particular offences

5. (1) For the purpose of determining the mode of trial before a court, offences shall be classified into three categories-

Category A- offences triable upon indictment and not otherwise;

Category B- offences triable upon indictment which, with the consent of the prosecution and the person charged (or all of the persons charged if there be more than one), may be tried summarily; and

Category C-offences triable summarily and not otherwise.

(2) Where any law creating an offence fails to prescribe the mode of trial, the mode of trial shall be as prescribed in the First Schedule.

(3) Notwithstanding any other law but subject to section 190, the offences set forth in the First Schedule shall fall into the categories therein prescribed.

Sentences which courts may impose

6. (1) The Grand Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.

(2) Subject to the express provisions of any other law a Summary Court may, in a case in which such sentence is authorised by law to be inflicted in respect of the offence for which it is imposed, pass sentences of-

- (i) imprisonment for four years; and
- (ii) a fine of two thousand dollars.

(3) Any court may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(4) In determining the extent of a court's jurisdiction under this Code to pass a sentence of imprisonment, the court shall be deemed to have jurisdiction to pass the full sentence of imprisonment permitted under this section in addition to any imprisonment which may be awarded in default of payment of a fine, costs or compensation.

7. (1) Subject to subsection (2)(c), this section applies where, on the summary trial of a Category B offence, a person who is not less than eighteen years old is convicted of an offence.

Committal for sentence on summary trial of offence triable either way

(2) If a Summary Court is of opinion-

- (a) that an offence or the combination of the offence and one or more offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has the power to impose;
- (b) in the case of a violent or sexual offence, that a custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from a person; or
- (c) that a conviction for a Category B or C offence in that court results in the breach of a Grand Court order,

the Summary Court may, in accordance with Practice Directions issued under this section, commit the offender in custody or on bail to the Grand Court for sentence.

(3) The preceding provisions shall apply in relation to a corporation as if-

- (a) the corporation was an individual who is not less than eighteen years old; and
- (b) in subsection (2), paragraph (b), the words "in custody or on bail" were omitted.

(4) Where an accused is committed by a Summary Court under this section, the Grand Court shall inquire into the circumstances of the case and shall have power to deal with the offender in any manner in which it could deal with him if he had been convicted by the Grand Court.

(5) Nothing in this section compels the Grand Court to impose a greater sentence than that which could have been imposed by the Summary Court.

(6) The Chief Justice may, from time to time, issue Practice Directions relating to the power of a Summary Court to commit under this section and the procedure to be followed in such committals.

Sentences in cases of conviction of several offences at one trial

8. (1) When a person is convicted at one trial of two or more distinct offences the court may sentence him, for such offences, to the several punishments prescribed therefor which such court is competent to impose; such punishments when consisting of imprisonment to commence the one after the expiration of the other, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences it shall not be necessary for the Summary Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is permitted to impose on conviction of a single offence, to send the offender for trial before the Grand Court:

Provided that the aggregate punishment shall not exceed twice the amount of punishment which the Summary Court, as constituted to try that particular offender, is competent to impose in the exercise of its ordinary jurisdiction.

PART III - General Provisions Relating to Criminal Investigations and Proceedings

Authority of Grand Court and Summary Court, and general validity of judicial process

9. (1) The Grand Court and the Summary Court shall have authority to cause to be brought before it any person who is within the Islands and who is charged with an offence-

- (a) committed within the Islands; or
- (b) which according to law may be inquired into or tried as if it had been committed within the Islands,

and to deal with the accused person according to law and subject to the jurisdiction of the court concerned.

(2) Any summons, warrant of arrest, search warrant or other judicial process issued in due form under any law by any court, shall be of full force and effect in all parts of the Islands without any requirement for further authentication, backing or endorsement by any person before execution.

(3) In addition to the powers conferred upon a Judge by this Code or any other law, a Judge shall have all the powers conferred by this Code or any other

law upon any person to issue any summons, warrant of arrest, search warrant or other judicial process.

10. The place in which any court sits for the purpose of trying any offence shall be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Court to be open

Provided that the court, if it thinks fit at any stage of the trial of any particular case, may order that the public generally or any particular person shall not have access to or remain in the room or building used by the court.

11. (1) In any proceedings against any person, and at any stage thereof before verdict or judgment, as the case may be, the Attorney-General may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Crown intends that the proceedings, whether undertaken by himself or by any other person or authority, shall not continue, and thereupon the accused person shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be discharged; but such discharge of an accused person shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

Power of Attorney-General to enter *nolle prosequi*

(2) If the accused person is not before the court when such *nolle prosequi* is entered, the Clerk shall forthwith cause notice in writing of the entry of such *nolle prosequi* to be given to the officer in charge of the prison in which such accused person is detained and also, if the accused person has been committed for trial, to the Summary Court and the clerk thereof shall forthwith cause a similar notice in writing to be given to any person bound over to prosecute or give evidence and to their sureties, if any, and also to the accused and his sureties in case he shall have been admitted to bail.

12. (1) The Attorney-General and any legal practitioner instructed for the purpose by the Attorney-General may appear to prosecute on behalf of the Crown, the Commissioner of Police or any other public officer, public authority or department of Government in any criminal proceedings before any court.

Authority of Attorney-General in respect of conduct of prosecutions

(2) Subject to such directions as may be given by the Attorney-General from time to time, any police officer may conduct criminal proceedings in the Summary Court on behalf of the Crown or the Commissioner of Police, and any such police officer may appear and conduct the prosecution notwithstanding that he is not the officer who made the complaint or charge in respect of which such proceedings arose.

(3) The Attorney-General may, by writing, authorise any public officer to conduct prosecutions in the Summary Court in respect of particular matters or

categories of offences or in relation to the activities or functions of a particular department of the Government.

(4) Any *nolle prosequi* or authority purporting to be signed by the Attorney-General and issued under section 11 or this section shall be admitted and deemed to be *prima facie* valid for the purpose for which it was issued without proof of the signature.

(5) Notwithstanding any power conferred upon any person under this section to institute or conduct any criminal proceedings, any such person shall at all times in respect thereof be subject to the express directions of the Attorney-General who may in any case himself institute or conduct any criminal proceedings or may take over and continue or direct any legal practitioner or, in case of proceedings in a Summary Court, any public officer, to take over and continue in accordance with his instructions any criminal proceedings instituted or undertaken by any person, including a private prosecutor.

Conduct of private prosecutions

13. Any person conducting a private prosecution may do so in person or may be represented by a legal practitioner instructed by him in that behalf.

Complaint and charge

14. (1) Criminal proceedings may be instituted either by the making of a complaint or by the bringing before a magistrate of a person who has been arrested without a warrant.

(2) Any person, who believes from a reasonable and probable cause that an offence has been committed by any person, may make a complaint thereof to a Justice of the Peace.

(3) A complaint may be made orally or in writing but if made orally shall be reduced to writing by the Justice of the Peace, and in either case shall be signed by the complainant and the Justice of the Peace:

Provided that where proceedings are instituted by a police or other public officer, acting in the course of his duty as such, a formal charge, drawn up in conformity with this Code, duly signed by such officer may be presented to the Justice of the Peace and shall for the purposes of this Code be deemed to be a complaint and shall be signed by the Justice of the Peace.

(4) A Justice of the Peace, upon receiving any such complaint, shall, unless such complaint has been laid in the form of a formal charge under subsection (3), draw up or cause to be drawn up and shall sign a formal charge containing a statement of the offence with which the accused is charged.

(5) When an accused person who has been arrested without a warrant is brought before a magistrate, a formal charge containing a statement of the offence with which the accused is charged shall be signed and presented by the police officer preferring the charge.

(6) Every complaint shall be for one matter only, but the complainant may lay one or more complaints against the same person at the same time and the court hearing any one of such complaints may deal with one or more of the complaints together or separately as the interests of justice appear to require.

(7) Subject to any other law, no person shall be arrested without a warrant otherwise than in connection with an offence prescribed in the First Schedule as an arrestable offence.

15. (1) Upon receiving a complaint and the charge having been duly signed in accordance with section 14, a Justice of the Peace may, in his discretion, issue either a summons or a warrant to compel the attendance of the accused person before a Summary Court:

Issue of summons or
warrant

Provided that a warrant shall not be issued in the first instance unless the complaint has been supported by an oath, either by the complainant or by a witness.

(2) A Justice of the Peace shall not refuse to issue a summons under this section unless he is of the opinion that the application for a summons is frivolous, vexatious or an abuse of the process of the court and if, in his discretion, he refuses to issue a summons the person applying for the same may require the Justice of the Peace to give him a written certificate of refusal and may apply to the Grand Court for an order directing such Justice of the Peace to issue the summons sought or such other summons as the Grand Court may direct.

(3) No warrant or summons shall be held to be invalid by reason only that the Justice of the Peace who issued the same has died or ceased to hold office.

16. (1) Every warrant of arrest may be issued at any time on any day, and shall be under the hand of the Justice of the Peace by whom it is issued and directed to the police officer in charge of the place in which the act complained of has been committed or in which the person to be apprehended is believed to be and to all other police officers of the Islands.

Form, validity and
execution of warrant of
arrest

(2) Every warrant shall state shortly the offence with which the person against whom it is issued is charged, or other reason for the arrest, and shall name or otherwise describe such reason and shall order the police officers to whom it is directed to bring such person before a Summary Court to answer to the charge

therein mentioned or to be further or otherwise dealt with according to law. Any such warrant may be executed by any one or more police officers and shall not be made returnable at any particular time but shall remain in force until executed or cancelled by the Justice of the Peace issuing the same or by order of a court having jurisdiction in the matter.

(3) The Commissioner of Police may certify and issue copies of any warrant received by him and any such certified copy shall be deemed to be of the same force and effect as the original.

Court may direct security to be taken

17. (1) When a warrant is issued for the arrest of any person for any offence other than a charge in respect of an offence of murder or treason it may, in the discretion of the Justice of the Peace issuing the same, be directed by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the police officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state-

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the time and place at which he is to attend before the court.

(3) Whenever security is taken under this section the police officer to whom the warrant is directed shall forward the bonds to the court.

Service of summons

18. Subject to section 19, every summons shall be served upon the person to whom it is directed by a police officer by delivering it to him personally, or, if he cannot conveniently be found, by leaving it with some adult inmate at his last or most usual place of abode, or with this employer.

Service on company.

19. Service of a summons on a body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by registered letter addressed to the body corporate at its registered address in the Islands. In the latter case service shall be deemed to have been effected when the letter would arrive in the ordinary course of post.

Proof of service of summons
2004 Revision

20. If the person who serves a summons does not attend before the court at the time and place mentioned in the summons to depose, if necessary, to the service thereof, proof of service of a summons shall be given in accordance with the Evidence Law (2004 Revision).

21. If a person served with a summons does not appear at the time and place mentioned in the summons and it is proved to the satisfaction of the court in accordance with section 20 that the summons was duly served seven days or more prior to the date appointed for the appearance of the person before the court, the court after taking such evidence on oath to substantiate the matter of the complaint as it may in any particular case consider necessary, may issue a warrant to apprehend the person so summoned as aforesaid and to bring him before the court to be dealt with according to law.

If summons disobeyed,
warrant may issue

22. Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is present in such court, the court may require such person to execute a bond, with or without sureties, or make a deposit of money in lieu thereof, for his appearance in such court on such date as may be appointed:

Power to take bond for
appearance

Provided that the court may, on the application of a surety at any time, release him wholly or partially and with or without conditions from his obligations under the bond if the court is satisfied that it would be just to do so.

23. When any person who is bound by any bond taken under section 22, or under this Code, to appear before a court, or who has made a deposit of money in lieu of executing such bond, does not so appear, the court may issue a warrant directing that such person be arrested and brought before the court.

Procedure in case of
non-appearance of
bonded person or
depositor

24. (1) Where a bond has been executed under section 22, or for the doing by a person of any other thing connected with a proceeding before a court, and it appears to the court that the bond should be forfeited, the court may, without prejudice to its power to issue a warrant under section 23, declare the bond to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to the sum in which they are respectively bound.

Forfeiture of bond

(2) The court which declares the bond to be forfeited may, at any time, instead of adjudging any person to pay the whole sum in respect of which he is bound, remit the whole or any part thereof either absolutely or on such conditions as it thinks just.

(3) Payment of any sum adjudged to be paid under this section may be enforced by any court as if it were a fine.

25. (1) Where any person for whose appearance or arrest a court is empowered to issue a summons or warrant is confined in prison, the court may issue an order to the officer in charge of such prison requiring him to bring such prisoner in proper custody, at a time to be named in the order, before such court.

Court may order
prisoner to be brought
before it

(2) The officer to whom an order issued under subsection (1) is directed, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the prison for the purpose aforesaid and shall thereafter return him to the prison unless otherwise ordered by a court, and such prisoner shall for all purposes be deemed to be in lawful custody during such absence.

Search warrants

26. Where a court or a Justice of the Peace is satisfied by information on oath that in fact or according to reasonable suspicion anything upon, by or in respect of which an offence has been committed or anything which is necessary to the conduct of an investigation into any offence is in any building, ship, vehicle, box, receptacle or place, such court or Justice of the Peace may, by warrant (called a search warrant), authorise a police officer or other person therein named to search the building, ship, vehicle, box, receptacle or place (which shall be named or described in the warrant) for any such thing and, if anything searched for is found, to seize it and carry it before the court issuing the warrant or some other court to be dealt with according to law.

Execution of search warrants

27. (1) Every search warrant may be issued at any time and may be executed on any day between the hours of sunrise and sunset, but the court or Justice of the Peace may, by the warrant, in its or his discretion, authorise the police officer or other person to whom it is addressed to execute it at any time.

(2) Whenever any building or other place liable to search is closed, any person residing in or being in charge of such building or place shall, on demand of the person executing the search warrant and on production of the warrant, allow him free ingress thereto and egress therefrom and afford all reasonable facilities for a search therein.

(3) If ingress into or egress from such building or other place cannot be so obtained, the person executing the search warrant may break open such place or building.

(4) Where any person in or about such building or place is reasonably suspected of concealing about this person any article for which search should be made, such person may be searched by a person of the same sex.

(5) When any such thing is seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(6) If any appeal is made, or the person is committed for trial, the court may order it to be further detained for the purposes of the appeal or trial.

(7) If no appeal is made or if no person is committed for trial, the court shall direct such thing to be restored to the person from whom it was taken, unless the court sees fit, and is authorised or required by law to dispose of it otherwise.

28. (1) Every search warrant shall be in the form set out in the Second Schedule and under the hand of the person issuing the same and, when issued by a court, shall bear the seal of such court.

Search warrants-further provisions

(2) Every search warrant shall remain in force until it is executed or until it is cancelled by the person or court issuing the same.

(3) A search warrant may be directed to one or more persons and may be executed by all or any one or more of them;

(4) A search warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

(5) A search warrant may be executed at any place in the Islands.

29. (1) A court before which a person appears or is brought or is committed for trial may grant the person bail in accordance with the Bail Law (1997 Revision).

Bail
1997 Revision

(2) A court may, by order, confirm or extend the period of bail granted by the court itself or under section 34 of the Police Law (1995 Revision).

(3) The Grand Court may in any case and at any stage of a case-

- (a) direct that a person be admitted to bail in accordance with the Bail Law (1997 Revision); or
- (b) vary any condition or requirement attached to the grant of bail by the Summary Court.

30. (1) As soon as the recognizance, with or without sureties as the case may be, has been entered into, a person admitted to bail under this Code shall be released and if he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison and such officer on receipt of the order shall release him.

Discharge from custody
when bail is granted

(2) Nothing in this section shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the recognizance was entered into.

Anonymity of
complainants in rape,
etc., cases

31. (1) After a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the woman against whom the offence is alleged to have been committed shall be published in a written publication available to the public or be broadcast, except as authorised by a direction of the court.

(2) In this section-

“rape offence” means rape, attempted rape, conspiracy to commit rape, aiding, abetting, counselling or procuring rape or attempted rape, and incitement to rape.

(3) For the purpose of this section, a person is accused of a rape offence if-

- (a) a charge is laid alleging that he has committed a rape offence;
- (b) he appears before a court charged with a rape offence;
- (c) a court before which he is appearing commits him for trial on a new charge alleging a rape offence; or
- (d) a bill of indictment charging him with a rape offence is preferred before a court in which he may lawfully be indicted for the offence.

(4) Nothing in this section-

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging a rape offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence;
- (b) affects any prohibition or restriction imposed by virtue of any other law upon a publication or broadcast,

and a direction under this section does not affect the operation of subsection (1) at any time before the direction is given.

(5) If any matter is published or broadcast in contravention of subsection (1), the following persons-

- (a) in the case of a publication in a newspaper or periodical, the proprietor, editor and publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it;
- (c) in the case of a broadcast, any person having functions, in relation to the programme in which it is made, corresponding to those of an editor of a newspaper,

are guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

32. A person who has been once tried by a court for an offence and acquitted or convicted of such offence, while such acquittal or conviction has not been reversed or set aside, shall not be liable to be tried again on the same facts for the same offence. Persons convicted or acquitted not to be tried again for same offence
33. A person acquitted or convicted of any offence may afterwards be tried for any other offence with which he might have been charged on the same facts and upon which he could not have been convicted at the previous trial. A person may be tried again for separate offence
34. A person convicted of an offence involving any act causing consequences which, together with such act, constitute a different offence from that for which such person was convicted may be afterwards tried for such last-mentioned offence if such consequences had not happened or were not known to the court to have happened at the time when he was convicted. Consequences supervening or not known at time of former trial
35. Subject to any other law, a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged. Where original court was not competent to try subsequent charge
36. (1) In any inquiry or other proceeding under this Code, in which it becomes necessary to prove the previous conviction of an accused person, a copy of the record of the conviction for the offence on summary trial, or a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction upon trial upon indictment, purporting to be signed by the officer having custody of the records of the court where the offender was convicted shall, upon proof of the identity of the person, be sufficient *prima facie* evidence of the said conviction without proof of the signature or official character of the person appearing to have signed such copy or certificate. Proof of previous conviction
- (2) Without prejudice to subsection (1), *prima facie* proof may be given of a previous conviction in any place within or without the Islands by the production of a certificate purporting to be issued under the hand of a police officer in the place where the conviction was had, containing a copy of the sentence or order and the fingerprints, or photographs of the fingerprints, of the person so convicted, together with evidence that the fingerprints of the person so convicted are those of the accused person.
37. If it is made to appear on the statement of the complainant or of the defendant or otherwise, that material evidence can be given by or is in the possession of any person, a court having cognisance of any criminal cause or matter concerned may issue a summons to such person requiring his attendance before such court or requiring him to bring and produce to such court for the Summons for witness

Criminal Procedure Code (2005 Revision)

	purpose of evidence all documents and writings in his possession or power which may be specified or otherwise sufficiently described in the summons.
Warrant for witness who disobeys summons	38. If, without sufficient excuse, a witness does not appear in obedience to a summons issued under section 37, the court, on proof of the proper service of the summons within a reasonable time beforehand, may issue a warrant to bring him before the court at such time and place as shall be therein specified.
Warrant for witness in first instance	39. If the court is satisfied by evidence on oath that a person summoned as a witness will not attend unless compelled to do so, such court may at once issue a warrant for the arrest and production of the witness before the court at a time and place to be therein specified.
Mode of dealing with witness arrested under warrant	40. When any witness is arrested under a warrant the court may, on his furnishing security, by recognizance or deposit of cash to the satisfaction of the court, for his appearance at the hearing of the case, order him to be released from custody, or shall, on his failing to furnish such security, order him to be detained in custody for production at such hearing.
Power of court to order prisoner to be brought up for examination	41. In any case in which a court requires to examine as a witness in any proceedings before such court a person confined in any prison the procedure provided by section 25 shall be followed.
Penalty for non-attendance of witness	42. (1) Any person summoned to attend as a witness who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the court, or fails to attend after adjournment of the court after being ordered to attend, shall be liable by order of the court to a fine of forty dollars. (2) Such fine, if not previously paid, may be levied by attachment and sale of any movable property belonging to such witness within the limits of the Islands. (3) In default of recovery of any such unpaid fine by attachment and sale of goods, the witness may, by order of the court, be imprisoned as a civil prisoner for fifteen days unless such fine is paid before the end of said term. (4) For good cause shown, the Grand Court may remit or reduce any fine imposed under this section by a Summary Court.
Power to summon material witness or examine person present	43. Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon or call any person as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and

re-examine any such person if his evidence appears to it essential to the just decision of the case:

Provided that the prosecutor or the counsel for the prosecution and the defendant or his counsel shall have the right to cross-examine any such person, and the court shall adjourn the case for such time, if any, as it thinks necessary to enable such cross-examination to be adequately prepared, if, in its opinion, either party may be prejudiced by the calling of any such person as a witness.

44. Every witness in any criminal cause or matter shall be examined upon oath or affirmation and the court before which any witness shall appear shall have full power and authority to administer the appropriate oath or affirmation in accordance with the Evidence Law (2004 Revision).

Evidence to be given on oath

2004 Revision

Provided that the court may, at any time, if it thinks it just and expedient (for reasons to be recorded in the proceedings), take without oath the evidence of any person declaring that the taking of any oath whatever is according to his religious belief unlawful, or who, by reason of immature age or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath; the fact of the evidence having been so taken shall be recorded in the proceedings.

45. (1) Whenever any person, appearing in obedience to a summons or by virtue of a warrant, or being orally required by the court to give evidence-

Refractory witness

- (a) refuses to be sworn;
- (b) having been sworn, refuses to answer any question put to him;
- (c) refuses or neglects to produce any document or thing which he is required to produce and which is in his possession or under his control; or
- (d) refuses to sign his deposition,

without in any such case offering any sufficient excuse for such refusal or neglect, the court may adjourn the case for any period not exceeding ten days, and may in the meantime commit such person to prison, unless he sooner consents to do what is required of him.

(2) If such person, upon being brought before the court at or before such adjourned hearing, again refuses to do what is required of him, the court may, if it sees fit, again adjourn the case and commit him for a like period, and so again, from time to time, until such person consents to do what is required of him.

(3) Nothing herein contained shall affect the liability of any such person to any other punishment or proceeding for refusing or neglecting to do what is so

required of him, or shall prevent the court from disposing of the case in the meantime, according to any other sufficient evidence taken before it.

Procedure where person charged is the only witness called

46. Where the only witness of 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.

Court to inquire into suspected incapacity of accused

47. Without prejudice to sections 158 and 159, when in the course of any trial or preliminary inquiry the court has reason to suspect that the accused person is of unsound mind so that he is incapable of making his defence, the court shall inquire into the fact of such unsoundness and for this purpose may receive evidence and may postpone the proceedings and remand the accused person for a medical report.

Procedure when accused found insane during proceedings

48. (1) If, in a case referred to in section 47, the court finds that the accused person is of unsound mind and incapable of making his defence it shall postpone further proceedings in the case.

(2) If the case is one in which bail may be taken, the court may release the accused person on sufficient surety being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance, if called upon, before the court or any officer of the court appointed in that behalf.

(3) If the case is one in which bail may not be taken or if sufficient surety cannot be given or the court, for any sufficient reason, considers that bail ought not to be granted, the court shall report the matter to the Governor who may order the accused person to be detained in any hospital or other place appointed by any law for the reception or custody of insane persons and the Governor may, from time to time, make such further order in the case for the detention, treatment or otherwise of the accused as the circumstances may require. Pending the order of the Governor in any such case the court shall direct that the accused person be remanded in custody.

Defence of insanity at preliminary investigation

49. When an accused person appears to be of sound mind at the time of a preliminary investigation, notwithstanding that it is alleged that, at the time when the act was committed in respect of which the accused person is charged, he was insane within the meaning of the law relating to capacity to commit a criminal offence, the court shall proceed with the case and, if the accused person ought, in the opinion of the court, to be committed for trial before the Grand Court, the court shall so commit him.

Resumption of proceedings if accused ceases to be incapable

50. Whenever any preliminary investigation or trial is postponed under section 47 or 48, the court may, at any time, resume the preliminary investigation or trial,

unless the accused person is detained in pursuance of an order by the Governor given under section 48(3), and require the accused to appear or be brought before such court, when, if the court finds him capable of making his defence, the preliminary investigation or trial shall proceed, but if the court considers the accused person still to be incapable of making his defence, it shall act as if the accused were brought before it for the first time.

51. If an accused person is confined in a hospital or other place appointed by law for the reception or custody of persons mentally ill, under any order made in exercise of any power conferred by this Code, and the medical practitioner in charge of such hospital or place certifies that the accused person is capable of making his defence, the Governor may order that such accused person shall be taken before the court having jurisdiction in the case to be dealt with according to law, and the certificate of such medical practitioner shall be receivable by the court as *prima facie* evidence of the capacity of the accused person.

Prima facie evidence of capacity of accused may be given by certificate

52. (1) Except as may be otherwise provided by any law, all evidence taken in any inquiry or trial under this Code shall be taken in the presence of the accused unless, with his consent, his absence has been dispensed with in accordance with this Code.

Provisions relating to the taking of evidence

(2) All evidence shall be recorded in English and if any evidence is given in any other language it shall be interpreted; and in the case of any documents tendered in evidence which are written in a foreign language a translation shall be provided. Any interpretation or translation shall be made by a person appointed or approved for the purpose by the court.

(3) If the accused does not understand English any evidence given shall be interpreted to him in a language which he understands.

53. (1) The Judge may, subject to this Law, give directions as to the manner in which evidence is recorded in any proceedings before any criminal court.

Recording of evidence

(2) Subject to subsection (3) hereof and section 80 and to any directions issued under subsection (1), in inquiries and trials in criminal matters before a Summary Court, the evidence of the witnesses shall be recorded in the following manner-

- (a) the evidence of each witness, or so much thereof as the Court deems material, shall be taken down by the Court or in its presence and under its direction and superintendence, and shall be signed by the Court and shall form part of the record; and
- (b) such evidence need not ordinarily be taken down in the form of question and answer but may be in the form of narrative:

Provided that the magistrate may, in his discretion, take down or cause to be taken down any particular question and answer or the evidence or any part thereof in any particular case in the form of questions and answers.

(3) Subject to this Law, except subsection (2) hereof, when a court reporter is employed to report verbatim any criminal trial or proceedings or any part of such trial or proceedings before any Summary Court, a transcript of the report, duly verified in accordance with subsection (4), shall constitute the record of the trial or proceedings or part thereof as the case may be.

(4) Verification of the transcript of any record made in accordance with subsection (3) shall be by a certificate given by the person making the transcript-

- (a) that to the best of his skill and ability he has made a correct and complete transcript of the trial or proceedings; and
- (b) that the report transcribed was taken by him and was, to the best of his skill and ability, a complete and correct account of the trial or proceedings or so much thereof as is specified in the certificate.

(5) If, for any reason, a record of any trial or proceedings made pursuant to subsection (3) is not available, or if for any other reason the Grand Court so requires, the Clerk shall, if the Grand Court directs him to do so, request the magistrate of the Summary Court to furnish him with a certified copy of the whole or any part of the notes of the trial or with a report in writing, giving his opinion upon the case generally or upon any point arising upon the case or both, and the magistrate shall furnish the same to the Clerk.

(6) At the request of a witness his evidence shall be read over to him.

Mode of delivering
judgement

54. (1) Except in a case in which the personal attendance of the accused person has been dispensed with under any law or by leave of the court, the judgment of any court in the exercise of its original jurisdiction in any criminal trial shall be pronounced, or the substance of such judgment explained, in open court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties and their legal representatives, if any:

Provided that the whole judgment shall be read out by the Court if so requested by the prosecution or the defence.

(2) In any case in which judgment is required by subsection (1) to be read, or the substance thereof explained, in open court the accused person shall be required to be present to hear the same.

55. (1) Every judgment in a summary trial, except as otherwise expressly provided by this Code or any other law, shall be written by the magistrate and shall be dated and signed by such magistrate in open court at the time of pronouncing it. Contents of judgment

(2) In the case of a conviction the judgment shall specify the offence of which, and the section of the law under which the accused person is convicted, and the punishment to which he is sentenced or other lawful order of the court upon such conviction.

(3) In the case of an acquittal the judgment shall state the offence of which the accused person is acquitted, and the section of the law under which the charge was preferred, and shall direct that he be set at liberty in respect of that offence.

56. On the application of the accused person a copy of the judgment in any criminal trial shall be given to him without delay and free of any charge. Accused person entitled to copy of judgment on application

57. Where, upon the apprehension of a person charged with an offence, any property is taken from him, the court before which it is tried may order- Property found on accused person

- (a) that the property or any part thereof be restored to the person who appears to the court to be entitled thereto, and, if he be the person charged, that it be restored either to him or to such other person as he may direct; or
- (b) that the property or a part thereof be applied to the payment of any fine or any costs or compensation directed to be paid by the person charged.

58. Where a person has been convicted of an offence involving theft, obtaining property by deception, obtaining pecuniary advantage by deception, handling stolen goods or any other offence by which he has wrongfully come into possession of any property, the court may direct the restitution to the owner thereof or his representative of the property to which that offence relates or of any property which is the subject of any other similar offence admitted by the convicted person which is taken into consideration by the court in determining sentence. Any such restitution may be in addition to or in substitution for any other punishment. Restitution of stolen property after conviction

59. (1) On an indictment for murder a person found not guilty of murder may be found guilty of- Alternative convictions

- (a) manslaughter, or causing grievous bodily harm;
- (b) being an accessory after the fact;
- (c) an attempt to commit murder;
- (d) infanticide;
- (e) killing an unborn child; or

- (f) concealing the birth of a child (where the murder charged is that of a child),

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

(2) Where, on the trial of a person on indictment for any offence except treason or murder, the court finds him not guilty of the offence specifically preferred 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, the court may find him guilty of that other offence or of an offence of which he could be found guilty, on the facts found to be proved, on an indictment specifically preferring that other offence.

(3) For the purposes of subsection (2), any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence, then (subject to the discretion of the court to discharge the jury with a view to the preferment of an indictment for the complete offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

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

Accused persons entitled to be present at trial and may be represented by legal practitioner

60. (1) Every person accused of any criminal offence shall be entitled to be present in court during the whole of his trial unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impossible. The court may, however, in its discretion and subject to section 54(2), allow any part of any trial to take place in the absence of the accused with the consent of the accused, and may permit the accused to be absent in such case upon such terms as it thinks proper.

(2) For the purposes of this section the consent of the accused person to the conduct of the trial in his absence may be deemed to have been given in a case in which he enters a written plea of guilty under any law or in any case in which the court is satisfied that, having been duly summoned to appear before the court a reasonable time before the date appointed, the accused person wilfully refuses to attend at any time appointed by the court.

(3) Every person accused of any criminal offence, whether present in person or absent in accordance with this section, may be defended before any court by a legal practitioner.

PART IV - Procedure in Trials before the Summary Court

61. If, in any case which the Summary Court has jurisdiction to hear and determine, the accused person appears at the time and place appointed in the summons for the hearing of the case, or is brought before the court under arrest, then, if the complainant, having had notice of the time and place appointed for the hearing of the charge, does not appear, either in person or by counsel or other person authorised to represent him, the court shall dismiss the charge, unless for some reason the court shall think proper to adjourn the hearing of the case to some other date, upon such terms as it shall think fit, in which event it may, pending such adjourned hearing, either admit the accused to bail or remand him in custody, or take such security for his appearance as the court shall think fit.

Non-appearance of complainant at trial

62. If, at the same time and place of hearing appointed in a summons an accused person does not appear, and it be proved that the summons was duly served a reasonable time before the time appointed for his appearance, and if the court is satisfied on any sufficient evidence that the accused has wilfully refused to attend or otherwise may be deemed to have consented to the trial taking place in his absence, the court may either proceed to adjudicate on the case as if the accused had appeared or, if the court is not satisfied that the accused has so consented or considers that it is inexpedient for any other reason that the trial should proceed in the absence of the accused, the court may issue a warrant for the arrest of the accused in accordance with section 21 and may adjourn the trial to some other date.

Non-appearance of defendant at trial

63. If, at the time and place appointed for a trial under this Part neither party appears, the court may dismiss or adjourn the case as shall seem fit.

When neither party appears

64. At the time and place appointed for any adjourned hearing, the Summary Court shall have the same powers to proceed with, dismiss or adjourn the case as if the complaint was before the court for the first time.

Court to have same powers at adjourned hearing as at first hearing

65. If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may, from time to time, in addition to any other powers it may have postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may remand the accused to the prison or other place of security, or may admit the

Power to postpone or adjourn trial

	accused to bail. During any remand the court may, at any time, order the accused to be brought before it.
Appearance of both parties	66. (1) If both parties appear, the court shall proceed to hear the case and the substance of the charge or complaint shall be read to the accused person by the court and he shall be asked whether he admits or denies it. (2) In a case in which the accused is a corporation, it shall be sufficient if the corporation appears by a representative appointed in writing purporting to be signed by a person (by whatever name called) having or being one of the persons having the management of the affairs of the corporation.
If accused pleads guilty	67. If the accused person admits the charge, his admission shall be recorded and the court shall convict him and pass sentence upon or make an order against him unless, after hearing anything which may be said by or on behalf of the accused, whether in mitigation or otherwise, there shall appear to the court to be sufficient cause to the contrary.
Pleas in other cases	68. If the accused person pleads not guilty, the court shall proceed to try the case as hereinafter provided. If the accused person refuses to plead, the court shall direct that a plea of not guilty be entered for him, or in an appropriate case may act in accordance with section 47.
Procedure after plea of not guilty	69. If the accused person does not admit the truth of the charge, the court shall proceed to hear the witnesses for the prosecution. The accused person or his counsel may cross-examine each witness called by the prosecution and if the accused person is not represented by counsel the court shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any question to that witness and shall record his answer.
Acquittal of accused person if no case to answer	70. If at the close of the case for the prosecution the court considers that, subject to any fresh matter which might be revealed in the conduct of the defence, the prosecution has established a <i>prima facie</i> case, the court shall, if no defence is offered, convict the accused, but, if the court considers that a <i>prima facie</i> case on the evidence presented has not been established and the accused offers no defence, or submits that there is no case to answer, the court shall acquit the accused.
The defence	71. (1) At the close of the evidence in support of the charge, if it appears to the court that a <i>prima facie</i> case is made out against the accused person the court shall again where the case is not defended by counsel explain the substance of the charge to the accused and shall inform him that he has a right to give evidence on oath from the witness box and that, if he does so, he will be liable to cross-examination; and the court shall ask him whether he has any witnesses to

examine or other evidence to adduce in his defence, and shall then hear the accused and his witnesses, if any.

(2) If the accused person states that he has witnesses to call but that they are not present in court, and the court is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the court shall adjourn the trial and issue process or take other steps, as necessary, to compel the attendance of such witnesses.

72. If the accused person adduces evidence in his defence introducing new matter which the prosecutor could not reasonably have foreseen, the court may allow the prosecutor to adduce evidence in reply to rebut the said new matter.

Evidence in reply

73. (1) Subject to subsection (2), the prosecutor shall be entitled to address the court at the commencement of his case, and the accused person or his counsel shall be entitled to address the court at the commencement and in conclusion of his case.

Opening and closing of cases for prosecution and defence

(2) If the accused person, or any one of several accused persons adduces any evidence, the prosecutor shall be entitled to address the court again, prior to the closing address, if any, of the accused person or persons or his or their counsel.

74. (1) Where, at any stage of a trial it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration or addition of a charge, as the court thinks necessary to meet the circumstances of the case:

Amendment of charge and variance between charge and evidence

Provided that where a charge is altered, added or substituted as aforesaid, the court shall thereupon call upon the accused person to plead to the altered or new charge:

Provided further that in such case the accused person shall be entitled, if he so wishes, to have the witnesses (or any of them) recalled to give evidence afresh or to be further cross-examined by the defence, and, in such last mentioned event, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.

(2) Variance between a charge and the evidence adduced in support of it with respect to the day upon which the alleged offence was committed is not ordinarily material and the charge need not be amended for such variance if it is proved that the proceedings were in fact instituted within the time, if any, limited

by law for the institution thereof and the actual date is not material on any other ground.

(3) Where an alteration, addition or substitution of a charge is made under subsection (1) or there is a variance between the evidence and the charge as described in subsection (2), the court shall, if it is of the opinion that the accused has been thereby misled or deceived or may be prejudiced in the conduct of his defence, adjourn the trial for such period as may be reasonably necessary in the interest of justice.

The decision of the court 75. The court, having heard both the prosecutor and the accused person and their witnesses, shall either convict the accused and pass sentence upon or make an order against him according to law or shall acquit him, at its discretion, or may with or without recording a conviction, if it is of the opinion that it is not expedient to inflict any punishment notwithstanding that it finds the charge against the accused is proved, make an order discharging the accused absolutely or conditionally:

2003 Revision Provided that no such order of discharge shall be made in respect of any prosecution instituted under section 71 of the Traffic Law (2003 Revision).

Drawing up conviction 76. If the court convicts the accused person, a minute or memorandum thereof shall be then made and the conviction shall afterwards be drawn up by the magistrate under his hand.

Acquittal of accused person to bar further proceedings 77. If the court acquits the accused person, the magistrate shall, when requested to do so, make an order for the dismissal of the charge and give the accused person a certificate thereof which, subject to sections 33, 34 and 35, shall without further proof be a bar to any subsequent charge for the same matter against the same person.

Limitation of time for proceedings for summary offences 78. Except where a longer time is specially allowed by law, no offence which is triable summarily shall be triable by a Summary Court unless the charge or complaint relating to it is laid within six months from the date on which evidence sufficient to justify proceedings came to the actual or constructive knowledge of a competent complainant:

Provided that if the circumstances giving rise to the complaint or charge occurred upon a vessel upon the high seas, then the court shall have jurisdiction in respect thereof if the complaint or charge was laid within six months after the arrival of the vessel at her port of discharge in the Islands.

Power of court in cases triable both summarily and on indictment 79. If, during the course of a trial before a Summary Court, in any case which may be tried summarily or on indictment it appears to the magistrate that the case

is one which ought to be tried on indictment, the court may, upon application made by the prosecution or the accused person, stay all further proceedings in respect of the trial and in lieu thereof may hold a preliminary inquiry in accordance with this Code.

80. (1) Notwithstanding anything contained in this Code, but subject to any directions given by the Judge under section 53(1), a magistrate may, in any case in which the accused person admits the offence, record the proceedings in accordance with this section.

Special procedure in minor cases where the charge is admitted

(2) Where subsection (1) applies it shall be sufficient compliance with the requirements of this Code relating to the manner of recording of evidence if the magistrate, when the accused makes a statement admitting the truth of the charge, instead of recording the accused person's statement in full, enters in the record a plea of guilty, and it shall be sufficient compliance with section 55 relating to the contents of the judgment, if the judgment of the court consists only of the finding, the specific offence to which it relates and the sentence or other order:

Provided that a magistrate may be required by the Grand Court to state in writing the reasons for his decision in any particular case.

81. Where a Summary Court convicts a person and orders him to be imprisoned without the option of a fine, the court shall, by warrant, commit him to prison, there to be imprisoned for the period mentioned in the warrant.

Where court awards imprisonment without option of fine, prisoner shall be committed to prison

82. (1) A Summary Court, upon recording a conviction by which any sum is adjudged to be paid, may-

Powers of magistrate when imposing a fine

- (a) order imprisonment in the first instance unless such sum be paid forthwith;
- (b) allow time for the payment of the said sum;
- (c) direct payment to be made of the said sum by instalments;
- (d) direct that the person liable to pay the said sum shall be at liberty to give, to the satisfaction of the court or such person as may be specified by him, security, with or without a surety or sureties, for the payment of the said sum or of any instalment thereof, and such security may be enforced in the same manner as the payment of a fine;
- (e) issue a warrant of distress for the levying of the said sum; and
- (f) order imprisonment in default of sufficient distress or of the payment of any instalment:

Provided that, subject to any other law, a sentence of imprisonment imposed by a Summary Court for non-payment of a fine shall not exceed five years.

(2) Where a Summary Court has allowed time for the payment of any sum under paragraph (b) of subsection (1), it may, on application by or on behalf of the person liable to make the payment, allow further time for payment, or may direct payment of such sum by instalments.

Withdrawal of complaint

83. (1) With the leave of the court and notwithstanding any other provisions in this Part, the prosecutor may, at any time before a final order is passed, in any case triable summarily and in which the accused person has pleaded not guilty, withdraw the complaint.

(2) On any withdrawal as aforesaid-

- (a) where the withdrawal is allowed after the accused person is called upon to make his defence, the court shall acquit the accused; or
- (b) where the withdrawal is allowed before the accused person is called upon for his defence, the court shall, subject to section 70, in its discretion make-
 - (i) an order acquitting the accused; or
 - (ii) an order discharging the accused.

(3) An order discharging the accused under paragraph (b)(ii) of subsection (2) shall not operate as a bar to subsequent proceedings against the accused person on account of the same facts.

PART V - Procedure for Committal of Accused for Trial before the Grand Court

Power to commit for trial
2004 Revisions

84. Subject to this Code, the Evidence Law (2004 Revision) and the Summary Jurisdiction Law (2004 Revision), a Summary Court may commit any person for trial before the Grand Court.

Court to hold preliminary inquiry

85. Whenever any charge has been brought in a Summary Court against any person in respect of an offence-

- (a) not triable summarily; or
- (b) which may be tried either summarily or on indictment and which the prosecution or the accused person desires to have tried on indictment,

the court shall hold a preliminary inquiry subject to this Code and the Evidence Law (2004 Revision).

Magistrate to read charge to accused and explain purpose of the proceedings

86. A magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held and shall explain to the accused person that he

will have an opportunity later on in the inquiry, if he so desires, of making a statement or calling witnesses (or both) and shall further explain to the accused person the purpose of the proceedings, namely to determine whether there is sufficient evidence to put him on his trial before the Grand Court.

87. (1) When an accused person is brought before a Summary Court, whether on summons, warrant or otherwise charged with an offence in respect of which a preliminary inquiry is to be held the magistrate shall, in the presence of the accused, take down in writing, or cause to be taken down in writing, the statements on oath of witnesses called in support of the charge by the prosecution. Such statements shall be deemed to be and are hereafter in this Code referred to as depositions, and shall ordinarily be taken down in narrative form, unless the magistrate deems it expedient in any particular case to record the evidence or any part of the evidence in the form of question and answer.

Taking of depositions

(2) The accused person or his counsel shall be entitled to cross-examine any such witness and the answers of a witness thereto shall form part of the depositions of such witness.

(3) If the accused person does not have a counsel, the magistrate shall, at the close of the examination of each witness for the prosecution, ask the accused person whether he wishes to put any question to that witness.

(4) As soon as the deposition of a witness taken down under this section is completed, it shall be read over to him in the presence of the accused and, subject to subsection (5) shall, if necessary, be corrected.

(5) If any witness denies the correctness of any part of the deposition when the same is read over to him, the magistrate may, instead of altering the deposition as written down, make a memorandum thereon of the objection made to it by the witness and shall add any remarks as to the matter as he thinks necessary.

(6) If a statement is made by a witness in a language other than that in which it is taken down and the witness does not understand the language in which it is taken down, it shall be interpreted to him in a language which he understands, and the identity of the interpreter shall be recorded thereon by the magistrate.

(7) The deposition of each witness shall upon completion be signed by the witness, or attested by his mark, and by the magistrate before whom it was taken.

88. Notwithstanding the other provisions of this Part and section 33(5) of the Evidence Law (2004 Revision), a magistrate holding a preliminary enquiry may,

Committal for trial on written statements
2004 Revision

if satisfied that all the evidence before him (whether for the prosecution or the defence) consists of written statements tendered to the court under section 33 of the Evidence Law (2004 Revision), with or without exhibits, commit the accused person for trial for the offence without consideration of the contents of those statements, unless-

- (a) the accused person or one of the accused persons does not have a counsel; or
- (b) the counsel for the accused person or one of the accused persons, as the case may be, has objected to committal in this form or has requested the court to consider a submission that the statements disclose insufficient evidence to commit the accused person for trial before the Grand Court.

Variance between evidence and charge

89. No objection to a charge, summons or warrant for defect in substance or in form, or for variance between it and the evidence for the prosecution, shall be allowed at a preliminary inquiry; but if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person, adjourn the inquiry or may allow any witness to be recalled and such questions to be put to him as by reason of the terms of the charge may have been omitted.

Remand

90. (1) If, from the absence of witnesses or any other sufficient cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn the inquiry, the court may, from time to time by warrant, remand the accused for a reasonable time, not exceeding eight clear days at any one time, to some prison or other place of security; or, if the remand is not for more than three days, the court may, by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody, and to bring him up at the time appointed for the commencement or continuance of the inquiry.

(2) During a remand the court may, at any time, order the accused to be brought before it and, subject to section 29 may, on a remand at any time, admit the accused to bail:

Provided that the court shall grant no remand or sequence of remands exceeding in all fifteen clear days, otherwise than at the request of or with the consent of the prosecutor.

Provisions as to taking statement of accused person

91. (1) If, after the examination of the witnesses called on behalf of the prosecution, the court considers that on the evidence as it stands there are sufficient grounds for committing the accused for trial, the magistrate shall satisfy

himself that the accused understands the charge and shall ask the accused whether he wishes to make a statement in his defence on oath or remain silent.

(2) Everything which the accused person says shall be recorded in full and shall be shown or read over to him, and he shall be at liberty to explain or add to anything contained in the record thereof.

(3) The record of the accused's statement shall be attested by the magistrate, who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign, or attest by his mark, such record. If he refuses, the court shall add a note of his refusal, and the record may be used as if he had signed or attested it.

92. (1) Immediately after complying with section 91, relating to the statement of the accused person, and whether or not the accused person has made a statement, the magistrate shall ask him whether he desires to call witnesses on his own behalf.

Evidence and address in defence

(2) The magistrate shall take the evidence of any witnesses called by the accused person in like manner as in the case of the witnesses for the prosecution, and every such witness, not being merely a witness to the character of the accused person, shall be bound by recognizance to appear and give evidence at the trial of such accused person.

(3) If the accused person states that he has witnesses to call, but that they are not present in court, and the magistrate is satisfied that the absence of such witnesses is not due to any fault or neglect of the accused person, and that there is a likelihood that they could, if present, give material evidence on behalf of the accused person, the magistrate shall adjourn the inquiry and issue process, or take other steps, to compel the attendance of such witnesses, and on their attendance shall take their depositions and bind them by recognizance in the same manner as witnesses under subsection (2).

(4) In any preliminary inquiry under this Part the accused person or his counsel, if any, shall be at liberty to address the court-

- (a) after the examination of the witnesses called on behalf of the prosecution;
- (b) if no witnesses for the defence are to be called, immediately after the statement on oath of the accused person; or
- (c) if witnesses for the defence are called, immediately after the evidence of such witnesses.

(5) If the accused person or his counsel addresses the court in accordance with subsection (4) the prosecution shall have the right of reply.

(6) Where the accused person reserves his defence, or at the conclusion of any statement in answer to the charge, as the case may be, the magistrate shall ask him whether he intends to call witnesses at the trial, other than any whose evidence has been taken under this section, and, if so, whether he desires to give their names and addresses so that they may be summoned. The magistrate shall thereupon record the names and addresses of any such witnesses whom he may mention.

Discharge of accused person

93. If, at the close of the case for the prosecution, or after hearing any evidence in defence, the magistrate considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided that nothing contained in this section shall prevent the court from proceeding either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, to investigate any other charge upon which the accused person may have been summoned or otherwise brought before it, or which, from the evidence given in the course of the hearing of the charge so dismissed as aforesaid, it may appear that the accused person has committed.

Summary adjudication in certain cases

94. If, at the close of or during the preliminary inquiry, it shall appear to the court that the offence is of such a nature that it may suitably be dealt with under the powers possessed by the court and is not a case in which the accused having a right to elect to be tried on indictment has so elected, the court may, subject to this Code, hear and finally determine the matter and either convict the accused person or dismiss the charge:

Provided that in every such case the accused shall be entitled to have recalled for further examination all witnesses whom he may require.

Committal for trial 2004 Revision

95. (1) Subject to the Evidence Law (2004 Revision), if the court considers the evidence sufficient to put the accused person on his trial, the court shall commit him for trial at the next session of the Grand Court and shall, until the trial, either admit him to bail or send him to prison for safekeeping. The warrant of such court shall be sufficient authority for the detention of the person therein named by the officer in charge of any prison.

(2) In the case of a corporation the court may, if it considers the evidence sufficient to put the accused corporation on trial, make an order authorising the

Attorney-General to file an indictment against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.

96. When an accused person is committed for trial before the Grand Court, subject to this Code and the Evidence Law (2004 Revision), with regard to witnesses who are about to leave the Islands or who are ill, the court committing him shall bind by recognizance, with or without sureties as the court may deem requisite, the complainant and every witness to appear at the trial to prosecute or to prosecute and give evidence or to give evidence, as the case may be, and also to appear and give evidence, if required at any further examination concerning the charge which may be held by direction given by the Attorney-General under section 106:

Complainant and witnesses to be bound over
2004 Revision

Provided that if the complainant is acting on behalf of the Crown, the Attorney-General, the Commissioner of Police or any department of the Government or is a public officer acting in his official capacity he shall not be required to be bound by any recognizance or to give any security.

97. If a person refuses to enter into such recognizance, the court may commit him to prison or into the custody of any officer of the court, there to remain until after the trial, unless in the meantime he enters into a recognizance. If afterwards, from want of sufficient evidence or other cause, the accused is discharged, the court shall order that the person imprisoned for so refusing be also discharged.

Refusal to be bound over

98. A person who has been committed for trial before the Grand Court shall be entitled at any time before the trial to have a copy of the depositions without payment.

Accused person entitled to copy of depositions

99. (1) Where any person charged before a Summary Court with an offence triable upon indictment before the Grand Court is committed for trial, and it appears to the court after taking into account anything which may be said with reference thereto by the accused or the prosecutor, that the attendance at the trial of any witness who has been examined before it is unnecessary by reason of anything contained in any statement by the accused person, or of the evidence of the witness being merely of a formal nature, the court shall, if the witness has not already been bound over, bind him over to attend the trial conditionally upon notice given to him and not otherwise, or shall, if the witness has already been bound over, direct that he shall be treated as having been bound over, to attend only conditionally as aforesaid, and shall transmit to the Grand Court a statement in writing of the names, addresses and occupations of the witnesses who are, or who are to be treated as having been bound over to attend the trial conditionally.

Binding over of witness conditionally

(2) Where a witness has been, or is to be treated as having been bound over conditionally to attend the trial, the Attorney-General or the person

committed for trial may give notice, at any time before the opening of the sessions of the Grand Court, to the Summary Court and at any time thereafter to the Clerk that he desires the witness to attend at the trial, and any such court or Clerk to whom any such notice is given shall forthwith notify the witness that he is required so to attend in pursuance of his recognizance.

(3) The Summary Court shall, on committing the accused person for trial, inform him of his right to require the attendance at the trial of any such witness as aforesaid, and of the steps which he must take for the purpose of enforcing such attendance.

2004 Revision

(4) Any documents or articles produced in evidence before the Summary Court by any witness whose attendance at the trial is stated to be unnecessary in accordance with this section or the Evidence Law (2004 Revision), and marked as exhibits shall, unless in any particular case the magistrate otherwise orders, be retained by the Summary Court and forwarded with the depositions to the Clerk.

Deposition of witness who is ill or about to leave the Islands

100. If it is proved upon oath before any magistrate that any person is dangerously ill and unable to travel, or is about to leave the Islands for a period extending beyond the time when the accused, if committed for trial, would be tried, and that such person is able and willing to give material information as to any offence which the Magistrate is not empowered to try summarily, and with which any person has been charged (whether the preliminary inquiry has or has not been held or is in progress but not after the accused has been discharged) the magistrate may take the deposition of such person at the place where such person is lying sick or, if such person is about to leave the Islands as aforesaid, in the court, in the manner prescribed by this Code, and shall, after taking it, sign it, adding to it by way of heading a statement of the reason for taking it, and of the day upon which and place at which it was taken, and of the names of the persons, if any, present at the taking thereof.

Notice to be given

101. Whenever it is intended to take any such deposition as aforesaid, reasonable notice that it is intended so to be taken shall, if the accused is in prison be served upon him in prison, or if he is on bail shall be either served upon him or left with an adult inmate at his last or most usual place of abode. If the accused is in prison, the magistrate shall, by an order in writing, direct the gaoler having the custody of the accused to cause him to be conveyed to the place where the deposition is to be taken, for the purpose of being present when the same is taken, and to be conveyed back to prison when it has been taken, but no accused person shall be taken to any such place (other than the court) for such a purpose without his consent.

Magistrate to deal with the deposition as with any other deposition

102. If such deposition relates to an offence, the preliminary inquiry into which has ended, the magistrate taking it shall send it to the Clerk to be placed with the

other depositions taken in the case, and if it relates to an offence with which some person has been charged, and as to which a preliminary inquiry is in progress, the magistrate shall deal with it as with any other deposition taken in the matter under preliminary inquiry; but such person as aforesaid so making a deposition shall not be called upon to enter into a recognizance to give evidence at the trial of the accused.

103. Every deposition taken under section 100 shall be a deposition taken in the case to which it relates, and shall be admissible in evidence on the same conditions as other depositions:

Such deposition to be admissible in evidence

Provided that it shall be admissible against the accused although it may have been taken in his absence, and may not have been read over to the witness in his presence, and although neither he nor his counsel had any opportunity of cross-examining the witness, if it is proved that the accused having received such notice aforesaid that such deposition was about to be taken, refused or neglected to be present, or to cause his counsel to be present when it was taken:

Provided also that if it is proved that the person whose evidence has been taken as aforesaid has so recovered from his sickness or returned to the Islands as to be able to be present at the sessions at which the accused is tried, such deposition so taken as aforesaid shall not be read.

104. Any person charged with having committed an offence not punishable summarily may, on notice to the complainant, require that the evidence of any such person as in section 100 mentioned may be taken on behalf of the defence in like manner, and any deposition so taken shall be dealt with and be admissible in evidence on the same conditions as other depositions and on conditions corresponding to those mentioned in section 103.

Accused to have the same privileges as prosecutor under section 103

105. In the event of a committal for trial the written charge, the depositions, the statement, if any, of the accused person, the recognizances of the complainant and the witnesses, the recognizances of bail, if any, and any documents or things which have been put in evidence shall be transmitted without delay by the committing court to the Clerk, and an authenticated copy of the depositions, the statement aforesaid and any documentary exhibits shall be supplied to the Attorney-General at the same time by the Summary Court.

Transmission of records to Grand Court and Attorney-General

106. (1) After the receipt by the Attorney-General of an authenticated copy of the depositions, recognizances and other documents forwarded to him in relation to any case committed for trial, the Attorney-General may, at any time, refer back such documents to the Summary Court with directions to re-open the inquiry for the purpose of taking evidence or further evidence on a certain point or points to be specified, and with such directions as the Attorney-General may think proper.

Power of Attorney-General to refer case back to magistrate for further preliminary inquiry

(2) Subject to any express directions which may be given by the Attorney-General, the effect of any such reference back to the Summary Court shall be that the inquiry shall be reopened and dealt with in all respects as if the accused person had not been committed for trial.

Mode of trial upon committal to the Grand Court and preferment of indictment
2004 Revision

107. (1) Every person committed for trial before the Grand Court shall be tried on an indictment preferred by the Attorney-General, and such a trial shall be had by and before a Judge and a jury to be summoned, drawn and empanelled according to the Judicature Law (2004 Revision).

(2) Every such indictment shall be drawn up in accordance with this Code and when signed by the Attorney-General shall be filed in the office of the Grand Court together with such additional copies thereof as are necessary for service upon the accused person or persons.

(3) In any such indictment the Attorney-General may charge the accused person with any offence which, in his opinion, is disclosed by the depositions either in addition to or in substitution for the offence upon which the accused person has been committed for trial.

Voluntary indictment

108. (1) Notwithstanding section 107, a person may be tried before the Grand Court on an indictment preferred by the direction, or with the consent, of the Grand Court.

(2) An indictment under subsection (1) shall be preferred in accordance with rules set out in the Fourth Schedule.

Notice of trial

109. The Clerk shall endorse or annex to every indictment filed as aforesaid, and to every copy thereof delivered to the officer of the court for service thereof, a notice of trial, which notice shall specify the particular session of the Grand Court at which the accused person is to be tried on the said indictment, and shall be in the following form, or as near thereto as may be-

“A.B.

Take notice that you will be tried on the indictment whereof this is a true copy at the sessions of the Grand Court to be held at _____ commencing on the _____ day of _____, 19 ____.”.

Service of copy of indictment and notice of trial

110. (1) The Clerk shall deliver or cause to be delivered to the officer of the court serving the indictment a copy thereof with the notice of trial endorsed on the same or annexed thereto, and, if there are more accused persons committed for trial than one, then as many copies as there are such accused persons; and the officer of the court aforesaid shall, as soon as may be after having received the

copy or copies of the indictment and notice or notices of trial, and three days at least before the day for trial, by himself or his deputy or other officer, deliver to the accused person or persons committed for trial the said copy or copies of the indictment and notice or notices, and explain to him or them the nature and exigency thereof; and when any accused person shall have been admitted to bail and cannot readily be found, he shall leave a copy of the said indictment and notice of trial with someone of his household for him at his dwelling house or with someone of his bail for him, and if none such can be found, shall affix the said copy and notice to the outer or principal door of the dwelling house or dwelling-houses of the accused person or of any of his bail:

Provided that nothing herein contained shall prevent any person committed for trial, and in custody at the opening of or during any sessions of the Grand Courts from being tried thereat, if he shall express his assent to be so tried and no special objection be made thereto on the part of the Crown.

(2) The officer serving the copy or copies of the indictment and notice or notices of trial shall forthwith make to the Clerk a return of the mode of service thereof.

111. (1) The Grand Court upon the application of the prosecutor or the accused persons, if the court considers that there is sufficient cause for the delay, may postpone the trial of any accused person to the next session of the court or to a subsequent session and may, respite the recognizances of the prosecutor and witnesses, in which case the respited recognizances to prosecute and give evidence at such subsequent session shall have the same effect as the original recognizances would have had.

Postponement of trial

(2) The Grand Court may give such directions for the amendment of the indictment and the service of any notices as the court may deem necessary in consequence of any order made under subsection (1).

112. (1) Except as provided in this section, it shall not be lawful to publish in the Islands a written report, or to broadcast a report, of any committal proceedings containing any matter other than that permitted by subsection (6).

Restrictions on reports of committal proceedings

(2) Subject to subsection (3), the court shall, on an application for the purpose made with reference to any such committal proceedings by the accused person or one of the accused persons, as the case may be, order that subsection (1) shall not apply to reports of those proceedings.

(3) Where, in the case of two or more accused persons, one of them objects to the making of an order under subsection (2), the court shall make the

order only if it is satisfied after hearing the representations of the accused persons, that it is in the interests of justice to do so.

(4) An order under subsection (2) shall not apply to reports of proceedings under subsection (3), but any decision of the court to make or not to make such an order may be contained in reports published or broadcast before the time authorised by subsection (5).

(5) It shall not be unlawful under this section to publish or broadcast a report of committal proceedings containing any matter other than that permitted by subsection (6)-

- (a) where the court determines not to commit the accused person, or determines to commit none of the accused persons, for trial, after it so determines; or
- (b) where the court commits the accused person or any of the accused persons for trial, after the conclusion of his trial or as the case may be, the trial of the last to be tried,

and where at any time during a summary trial the court determines to commit the accused person or persons for trial under section 79, it shall not be unlawful under this section to publish or broadcast as part of a report of the summary trial, after the court so determines, a report of so much of the committal proceedings containing any such matter as takes place before such determination.

(6) The following matters may be contained in a report of committal proceedings published or broadcast without an order under subsection (2) before the time authorised by subsection (5)-

- (a) the identity of the Court and the name of the magistrate;
- (b) the names, addresses and occupations of the parties and witnesses, and the ages of the accused persons and witnesses;
- (c) the offence or offences, or a summary of them, with which the accused person or persons is or are charged;
- (d) the names of counsel engaged in the proceedings;
- (e) any decision of the court to commit the accused person or any of the accused persons for trial, the charge or charges, or a summary of them, on which he or they is or are committed;
- (f) where the committal proceedings are adjourned, the date and place to which they are adjourned;
- (g) any arrangements as to bail on committal or adjournment; and
- (h) whether a legal aid certificate under the Legal Aid Law (1999 Revision) was granted to the accused persons or any of them.

1999 Revision

(7) If a report is published or broadcast in contravention of this section, the following person -

- (a) in the case of a publication of a written report as part of a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) in the case of a publication of a written report otherwise than as a part of a newspaper or periodical, the person who publishes it; or
- (c) in the case of a broadcast of a report, any body corporate which transmits or provides the programme in which the report is broadcast and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical,

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

(8) Subsection (1) shall be in addition to, and not in derogation from, the provisions of any other law with respect to the publication of reports and proceedings of courts.

(9) In this section-

“broadcast” means broadcast by wireless telegraphy sounds or visual images intended for general reception;

“committal proceedings” shall be deemed to include any proceedings in the court before it proceeds to hold the preliminary enquiry; and

“publish” in relation to a report, means publish the report or any part thereof, either by itself or as a part of a newspaper or periodical, for distribution to the public.

(10) Proceedings for an offence under this section shall not be instituted otherwise than by or with the consent of the Attorney-General.

PART VI - Procedure in Trials before the Grand Court

113. Subject to this Code and to any other law for the time being in force in the Islands, the practice of the Grand Court in the exercise of its criminal jurisdiction and the mode of conduct and procedure at the trial of any person upon indictment shall be assimilated so far as circumstances admit to the practice of courts of equivalent jurisdiction in England.

Practice of Grand Court
in the exercise of its
criminal jurisdiction

114. Where any person against whom an indictment has been preferred, and who is at large, does not appear to plead to the indictment, whether he is under recognizance or not, the court may issue a warrant for his arrest.

Bench warrant where
accused does not appear

Criminal Procedure Code (2005 Revision)

Bringing up prisoner for trial	115. If any person against whom an indictment is preferred is at the date appointed for the trial thereof confined in prison for some other cause, the court, by order in writing, may direct the gaoler to bring up the accused as often as may be required for the purpose of the trial and such order shall be sufficient authority therefor and shall be obeyed by the gaoler. Any such person shall for all purposes be deemed to be in lawful custody during the period when he is absent from prison in accordance with any such order.
Arraignment of accused	116. (1) An accused person to be tried before the Grand Court upon an indictment shall be placed at the bar unfettered, unless the court shall see cause otherwise to order, and the indictment shall be read over to him by the Clerk or other officer of the court and explained or interpreted to him if need be, and such accused person shall be required to plead instantly thereto, unless he shall object that a copy of the indictment has not previously been served upon him under section 110 or he raises objection to the indictment as hereafter in this Code provided. (2) In the case of a corporation, the corporation may, by its representative, enter a plea in writing, and if either the corporation does not appear by its representative, or, though it does so appear, fails to enter a plea, the court shall cause a plea of not guilty to be entered. (3) For the purposes of subsection (2), a representative of a corporation need not be appointed under the seal of the corporation, and a statement in writing to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having, the management of the affairs of the corporation, to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section shall be admissible without further proof as <i>prima facie</i> evidence that that person has been so appointed.
Objection to indictment on grounds of insufficiency of particulars	117. No count in an indictment shall be quashed upon the ground only that it contains insufficient particulars, but in any such case if objection is taken to any count by the accused person, or if in default of such objection it appears to the court that the interest of justice so requires, the court may order that the prosecution furnish such particulars in support of the charge as it may consider necessary for a fair trial and a copy of any such particulars shall be given to the accused or his counsel without charge, and the trial shall proceed thereafter as if the indictment had been amended in conformity with the particulars.
Amendment of indictment, separate trial and postponement of trial	118. (1) Where, before a trial upon indictment or at any stage of such trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court considers necessary to meet the circumstances unless, having regard to the merits of the case, the

required amendments cannot be made without injustice. Any such amendments shall be made upon such terms as to the court shall seem just.

(2) When an indictment is amended under this section, a note of the order for amendment shall be endorsed on the indictment and thereafter the indictment shall be treated for the purposes of all proceedings in connection therewith as having been filed in the amended form.

(3) Where, before a trial upon indictment or at any stage of such trial, the court is of the opinion that the accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any reason it is desirable to direct that where there are two or more accused persons they should be tried separately, the court may order the separate trial of any count or counts in such indictment or the separate trial of any accused persons charged in the same indictment.

(4) Where, before a trial upon indictment or at any stage of such trial, the court is of the opinion that the postponement of the trial is expedient as a consequence of the exercise of any power of the court under this section or any other provisions of this Code, the court shall make such order as to the postponement of the trial as appears necessary.

(5) Where an order of the court is made under this section for a separate trial or for postponement of a trial-

- (a) the procedure on the separate trial of a count shall be the same in all respects as if the count had been found in a separate indictment, and the procedure on the postponed trial shall be the same in all respects as if the trial had not commenced; and
- (b) the court may make such order as to admitting the accused to bail and as to the enlargement of recognizances and otherwise as the court may think fit.

(6) Any power conferred upon the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

119. (1) No objection to an indictment shall be taken by way of demurrer, but if any indictment does not state in substance an indictable offence or states an offence not triable by the court, the accused may move the court to quash it or in arrest of judgment.

Quashing of indictment

(2) If the motion is made before the accused pleads, the court shall either quash the indictment or amend it, if having regard to the interest of justice it considers that it is proper that it should be amended.

(3) If the defect in the indictment appears to the court during the trial and the court does not think fit to amend it, it may, in its discretion, quash the indictment or leave the objection to be taken in arrest of judgment.

(4) If the indictment is quashed, the court may direct the accused to plead to another indictment founded on the same facts when called on at the same session of the court.

Charge of previous conviction

120. Where an indictment contains a count charging the accused with having been previously convicted of or charged with an offence, he shall not, at the time of his arraignment, be required to plead to it unless he pleads guilty to the rest of the indictment, nor shall the count be mentioned to the jury when the accused is given in charge to them, or when they are sworn, nor shall he be tried upon it if he is acquitted on the other counts; but, if he is convicted on any other part of the indictment he shall be asked whether he has been previously convicted or charged as alleged or not, and, if he says that he has not or does not say that he has been so convicted or charged, the jury shall be charged to inquire into the matter as in other cases.

Pleading to the indictment

121. When the accused is called upon to plead, he may plead either guilty or not guilty, or such other special pleas as are provided in this Code.

Refusal or incapacity to plead

122. (1) If an accused person upon being arraigned upon any indictment stands mute of malice or will not, or by reason of infirmity cannot, answer directly to the indictment, the court may, if it thinks fit, order the Clerk or other proper officer of the court to enter a plea of not guilty on behalf of such person and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

(2) If it appears, before or upon arraignment, that an accused person may be insane, the court may order a jury to be empanelled to try his sanity, and the jury shall thereupon, after hearing evidence for that purpose, find whether he is or is not insane and unfit to stand his trial. If the finding of the jury is that the accused person is insane and unfit to stand his trial, section 159 shall apply.

Proceedings when plea made

123. (1) If upon arraignment the accused pleads guilty he may be convicted thereon.

(2) If upon arraignment the accused pleads not guilty, or if a plea of not guilty is entered upon his behalf in accordance with section 122, the court shall proceed to try the case.

(3) Every plea, including any special plea hereafter in this Code provided for shall be entered by the Clerk, or other proper officer of the court, on the back of the indictment or on a sheet of paper annexed thereto.

124. (1) The following special pleas, and no others, may be pleaded, that is to say, a plea of *autrefois acquit*, a plea of *autrefois convict* and a plea of pardon.

Special pleas allowed to be pleaded

(2) All other grounds of defence may be relied on under the plea of not guilty.

(3) The pleas of *autrefois acquit*, *autrefois convict* and pardon may be pleaded together, and shall, if pleaded, be disposed of before the accused is called on to plead further; and if every such plea is disposed of against the accused, he shall be allowed to plead not guilty.

(4) In any plea of *autrefois acquit* or *autrefois convict* it shall be sufficient for the accused to state that he has been lawfully acquitted or convicted, as the case may be, of the offence charged in the count to which the plea is pleaded.

(5) Every special plea shall be in writing, or, if pleaded orally, shall be reduced to writing, and shall be filed with the Clerk.

125. (1) If, on the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, it appears that the matter on which the accused was tried on the former trial is the same in whole or in part as that on which it is proposed to try him, and that he might, on the former trial, have been convicted of any of the offences of which he may be convicted on the count to which the plea is pleaded, subject to sub-section (2), the court shall give judgment that he be discharged from those counts which relate to such offences of which he might on the former trial have been convicted.

General effect of pleas of *autrefois acquit* and *convict*

(2) If it appears that the accused might, on the former trial, have been convicted of any offence of which he may be convicted on the count to which the plea is pleaded, but that he may be convicted also on that count of some offence of which he could not have been convicted on the former trial, the court shall direct that he shall not be convicted on that count of any offence of which he might have been convicted on the former trial, but that he shall plead over as to the other offence charged.

(3) Upon the trial of an issue to which this section refers, the Judge shall determine whether in law the accused was convicted or liable to be convicted of any offence of which he stands charged or may be convicted on the count to which he has pleaded *autrefois acquit* or *autrefois convict*; but any issue of fact arising in relation thereto shall be for determination by the jury and the Judge

may, if he shall think fit, require the jury to return a special verdict in relation thereto.

Effect where previous offence charged was without aggravation

126. (1) Subject to section 34, where an indictment charges substantially the same offence as that charged in the indictment on which the accused was given in charge on a former trial, but adds a statement of intention or circumstances of aggravation tending, if proved, to increase the punishment, the previous acquittal or conviction shall be a bar to the subsequent indictment.

(2) A previous acquittal or conviction on an indictment for murder shall be a bar to a second indictment for the same homicide charging it as manslaughter; and a previous acquittal or conviction on an indictment for manslaughter shall be a bar to a second indictment for the same homicide charging it as murder.

Use of depositions, etc., on former trial, or trial of special plea

127. On the trial of an issue on a plea of *autrefois acquit* or *autrefois convict*, the depositions transmitted to the court on the former trial, together with the Judge's notes, if available, and the depositions transmitted to the court on the subsequent charge or the copy of the record of the Summary Court, as the case may be, shall be admissible in evidence to prove or disprove the identity of the charges.

Power to postpone or adjourn trial

128. (1) If, from the absence of witnesses or any other reasonable cause to be recorded in the proceedings, the court considers it necessary or advisable to postpone the commencement of or to adjourn any trial, the court may, from time to time, postpone or adjourn the same on such terms as it thinks fit for such time as it considers reasonable, and may remand the accused to the prison or other place of security, or may admit the accused to bail. During any remand the court may, at any time, order the accused to be brought before it.

(2) Subject to subsection (1), when the accused is given in charge to the jury the trial shall proceed continuously.

Election of trial by Judge alone

129. (1) If an accused person is of the opinion that, due to the nature of the case or of the surrounding circumstances, a fair trial with a jury may not be possible, he may, at least twenty-one days before the date of the trial or the date of arraignment, whichever is earlier, elect to be tried by a Judge alone; and such election shall be made by notice in writing addressed to the Clerk.

(2) Notwithstanding subsection (1), a judge may permit an accused person to make an oral or written election at any time before a jury is empanelled where such accused person has proven that, because of exigent circumstances, it was not possible for him to make an election within the time limit specified in subsection (1).

(3) Thereupon the trial shall proceed before a Judge alone, and, *mutatis mutandis*, Part IV shall apply thereto:

Provided that nothing in this section shall abridge or derogate from the powers conferred on a Judge by this or any other law.

(4) If any difficulty shall arise in respect of any such trial by a Judge alone, the court may give directions as to the procedure to be followed for the removal of such difficulty.

(5) Where there are two or more accused persons joined in the same indictment, the election mentioned in subsection (1) shall only be exercisable by all such accused persons jointly.

130. All matters relating to the calling, challenging, empanelling or swearing of jurors, or otherwise in respect of any matter relating to juries for which no express provision is made in this Code, shall be conducted in accordance with the Judicature Law (2004 Revision).

Procedure relating to jurors
2004 Revision

131. When a full jury have been sworn, the Clerk shall call the prisoner to the bar and, addressing the members of the jury, shall state the substance of the offences charged in the indictment and shall say “to this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence, whether he be guilty or not guilty”.

Giving prisoner in charge of the jury

132. After the accused has been given in charge to the jury or when the jury have been sworn, the counsel for the prosecution may open the case against the accused, and adduce evidence in support of the charge.

Case for the prosecution

133. (1) No witness who has not given evidence at the preliminary inquiry shall be called by the prosecution at any trial unless the accused person has received reasonable notice in writing of the intention to call such witness.

Additional witnesses for the prosecution

(2) A notice under subsection (1) shall state the witness’s name and give the substance of the evidence which he intends to give. It shall be for the court to determine in any particular case what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness’s evidence and decided to call him as a witness.

134. Subject to the Evidence Law (2004 Revision), the witnesses called for the prosecution shall be subject to cross-examination by the accused person or his counsel, and to re-examination by the prosecution.

Cross-examination of prosecution witnesses
2004 Revision

Depositions may be read
in certain cases

135. Where any person has been committed for trial for any offence, the deposition of any person taken before the committing court may, if the conditions hereinafter set out are satisfied, without further proof be read as evidence on the trial of that person whether for that offence or for any other offence arising out of the same transaction, or set of circumstances, as that offence. The conditions hereinafter referred to are the following-

- (a) the deposition must be the deposition either -
 - (i) of a witness whose attendance at the trial is stated to be unnecessary in accordance with section 99;
 - (ii) of a witness who is proved at the trial, by the oath of a credible witness, to be dead, insane, absent from the Islands, so ill as not to be able to travel or otherwise incapable of giving evidence;
 - (iii) of a witness who is proved to the satisfaction of the court, by evidence on oath, to be kept away by means of the procurement of the accused or on his behalf; or
 - (iv) under the Evidence Law (2004 Revision); and
- (b) the deposition must purport to be signed by the magistrate before whom it purports to have been taken:

Provided that this section shall not, subject to the Evidence Law (2004 Revision), have effect in any case in which it is proved-

- (i) that the deposition was not in fact signed by the magistrate before whom it purports to have been signed; or
- (ii) that the deposition is that of a witness whose attendance at the trial was stated to be unnecessary as aforesaid, and the witness has been duly notified subsequently that he is required to attend the trial.

Statement of accused

136. The statement or evidence, if any, of the accused person duly recorded by or before the committing court, and whether signed by the accused person or not, may be given in evidence without further proof thereof, unless it is proved that the magistrate purporting to sign the statement or evidence did not in fact sign it.

Close of case for
prosecution

137. (1) When the evidence of the prosecution witnesses has been concluded the court may, before or after considering any statement or hearing any evidence of the accused, invite first the prosecution and thereafter (at its discretion) the defence to address it upon the question of whether there is sufficient evidence before the court to warrant conviction of the accused, or any one or more of several accused of the offence charged or any relevant offence and if, either before or after hearing the address by the defence, it considers there is no such evidence it shall discharge the accused concerned and enter a verdict of not guilty with respect to such accused.

(2) When the evidence of the witnesses for the prosecution has been concluded, and the statement or evidence, if any, of the accused person before the committing court has been given in evidence, the court, if it considers that there is evidence that the accused person or any one or more of several accused persons committed the offence, shall, if they are not being defended by counsel, inform each such accused person of his right to address the court, either personally or by his counsel, if any, to give evidence on his own behalf and to call witnesses in his defence, and in all cases shall require him or his counsel to state whether it is intended to call any witnesses as to fact other than the accused person himself. Upon being informed thereof, the Judge shall record the same.

138. The accused person or his counsel may then open his case, stating the facts and law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. The accused person and his witnesses may then give evidence and the accused person or his counsel may examine such witness, if any, and, after their cross-examination by the prosecution and re-examination, if any, and any address by the prosecution under section 13, may sum up his case.

Case for the defence

139. The accused person shall be allowed to examine any witness not previously bound over to give evidence at the trial if such witness is in attendance. If he apprehends that any such witness will not attend the trial voluntarily, he shall be entitled to apply for the issue of process to compel such witness's attendance:

Additional witnesses for the defence

Provided that no accused person or prosecutor shall be entitled as of right to any adjournment to secure the attendance of any witness unless he shows that he could not, by reasonable diligence, have taken earlier steps to obtain the presence of the witness.

140. If the accused person adduces evidence in his defence introducing new matter which the prosecution could not have foreseen, the court may allow the prosecution to call evidence in reply to rebut such new matter.

Evidence in reply *ex improviso*

141. If the accused person says that he does not desire to call evidence and the court considers that there is evidence on which he could be convicted of the offence, counsel on both sides or the accused person, if he is unrepresented, may address the court.

Where accused adduces no evidence

142. Upon the trial of any person on indictment, the time at which the prosecution is entitled to exercise any right of reply shall, notwithstanding any other law or practice, be after the close of the evidence for the defence and before the closing speech, if any, by or on behalf of the accused.

Right of reply

Criminal Procedure Code (2005 Revision)

Court may require witness to be called	143. If the court is of the opinion that any witness who is not called for the prosecution ought to be so called, it may require the Crown to call him and, if the witness is not in attendance, may make an order that his attendance be procured and adjourn the further hearing of the case until the witness attends, or may on the application of the accused discharge the jury and postpone the trial.
Recalling a witness	144. The Judge shall have power in his discretion at any stage of the trial, prior to the conclusion of the summing up, to call any witness, whether or not such witness has been called before the court in the course of the trial or not and to examine such witness. If a witness for the Crown is recalled by the Judge or by leave of the Judge, the accused or his counsel shall be allowed to cross-examine him on the new evidence given. In any other case a witness called under this section may only be cross-examined by either party with the leave of the Judge.
Summing up by the Judge	145. When the case on both sides is closed the Judge shall, as necessary, sum up the law and the evidence in the case.
Consideration of verdict by jury	146. After the summing up, the jury shall consider the verdict either as a whole or in answer to specific questions put by the Judge.
Recording of verdict	147. The verdict, when returned by the jury and accepted by the court, shall be entered by the Clerk, on the back of the indictment, or on a sheet of paper annexed thereto, before the jury are discharged.
Verdict of not guilty	148. If the jury find the accused not guilty, he shall be immediately discharged from custody on that indictment.
Calling upon the accused	149. If the accused person is convicted, or if the accused pleads guilty, the Clerk shall ask him if he has anything to say why sentence should not be passed upon him according to law, but the omission so to ask him shall have no effect upon the validity of the proceedings.
Motion in arrest of judgment	150. (1) The accused person may, at any time before sentence whether on his plea or otherwise, move in arrest of judgment on the ground that the indictment does not, after any amendment which the court is willing and has power to make, state any offence which the court has power to try. (2) The court may, in its discretion, either hear and determine the matter during the same sitting or adjourn the hearing thereof to a future date to be fixed for that purpose. (3) If the court decides in favour of the accused he shall be discharged from that indictment.

151. The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigation or other circumstances which may be relevant.

Evidence for arriving at proper sentence

152. If no motion in arrest of judgment is made, or if the court decides against the accused person upon such motion, the court may sentence the accused person at any time during the session of the court in which the trial took place or may, in its discretion, discharge him on his own recognizances or on that of such sureties as the court may think fit, or both, to appear and receive judgment at the same or some future sitting of the court or when called upon.

Sentence

153. The judgment or sentence of the court shall be entered by the Clerk on the back of the indictment or on a sheet of paper annexed thereto.

Recording of judgment

154. Where, upon conviction of the accused person, the court adjudges the payment of any sum, it may-

Power to allow time for payment

- (a) require immediate payment of the full amount;
- (b) allow time for payment; or
- (c) direct that payment be made in instalments,

and where time is allowed for payment it may, on application by or on behalf of the person liable to make the payment, allow further time.

155. No judgment shall be stayed or reversed on the ground of any objection, which if stated after the indictment was read over to the accused person, or during the progress of the trial, might have been amended by the court, nor for any informality in swearing the witnesses or any of them.

Objections cured by verdict

156. The proper time for making objections at a trial on the grounds of improper admission or rejection of evidence, or any irregularity or informality in the proceedings (other than defects in the indictment) is-

Time for raising objections

- (a) if the objection is to admission or rejection of evidence, at the time of such admission or rejection;
- (b) if the irregularity or informality occurs before verdict, before such verdict; or
- (c) if the irregularity or informality occurs in the giving of the verdict or at any time before sentence is pronounced, before sentence is pronounced,

and the court shall so far as possible correct any irregularity or informality which occurs in the proceedings and may direct the trial to be recommenced, for this purpose, at any stage before the verdict is given:

Provided that nothing in this section shall be construed as being in derogation of any powers conferred upon the Court of Appeal to entertain any

appeal in the exercise of its criminal jurisdiction under the Court of Appeal Law (1996 Revision).

Minute of proceedings in trial before Grand Court

157. (1) The Clerk shall cause to be preserved all indictments and all depositions filed with or transmitted to him, and he shall keep a book, to be called the Court Minute Book, and such a book shall be the property of the court and shall be deemed a record thereof.

(2) The indictment, the plea or pleas thereto, the verdict and the judgment or sentence of the court, the date thereof, the name of the Judge and the number of the case shall form and constitute the record of the proceedings in each case and shall be kept and preserved in the office of the court.

PART VII - Procedure Relating to Persons Found Insane

Special verdict where accused found insane at time of offence charged

158. Where, in any indictment, any act or omission is charged against any person as an offence and it is given in evidence on his trial for that offence that he was insane so as not to be responsible, according to law, for his actions at the time when the act was done or omission made, then, if it appears to the jury before whom he is tried that he did the act or made the omission charged but was insane as aforesaid at the time when he did or made the same, the jury shall return a special verdict that the accused was not guilty of the act or omission charged against him by reason that he was insane at the material time.

Provision for custody of accused person found insane

159. (1) Where any person is found to be insane before or upon arraignment, in accordance with section 122(2), or a special verdict is found against him under section 158, the court shall order him to be conveyed to any hospital or other place for the time being appointed under any law to be a mental hospital or for the reception of criminally insane persons there to be kept until discharged by order of the Governor.

(2) Whenever any such person is sent to any hospital or other place under this section, it shall be lawful for the officers of such hospital or place to exercise the same and powers and authorities for the restraint of such person as can by law be exercised by or are vested in the gaoler or any other officers in respect of persons sentenced to imprisonment.

(3) The Governor in Cabinet may, from time to time, issue all necessary orders for the care, control and custody of any such insane person.

PART VIII - Provisions Relating to the Framing of Indictments

160. Every indictment shall contain, and subject to this Law, shall be sufficient if it contains a statement of the specific offence or offences with which the accused is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence alleged and the acts or omissions alleged to have given rise to the offence, showing as nearly as possible the place and date of the offence and that it lies within the court's jurisdiction.

Offence to be specific in indictment

161. (1) Any offences other than murder may be charged together in the same indictment if the offences charged are founded on the same facts or form or are part of a series of offences of the same or a similar character.

Joinder of counts in indictment

(2) Where more than one offence is alleged in an indictment a description of each offence so charged shall be set out in a separate paragraph of the charge or indictment called a count.

(3) Where, before trial or at any stage of a trial, the court is of opinion that a person accused may be embarrassed in his defence by reason of being charged with more than one offence in the same charge or indictment or that for any other reason it is desirable to direct that the accused person be tried separately for any one or more offences alleged in a charge or indictment the court may order a separate trial of any count or counts of such charge or indictment.

162. The following may be joined in one indictment and tried together-

Joinder of two or more accused in one indictment

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment or of an attempt to commit such offence;
- (c) persons accused of different offences committed in the course of the same transaction; and
- (d) persons accused of different offences all of which are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

163. (1) The Rules set out in the Third Schedule shall apply with respect to all indictments, and notwithstanding any rule of law or practice to the contrary, an indictment shall not be open to objection in respect of its form or contents if it is framed in accordance with those Rules.

Rules for the framing of indictments
Third Schedule

(2) Without prejudice to subsection (1), no count shall be deemed objectionable or insufficient on the grounds, that -

- (a) it contains only one name of the accused;
- (b) one name only or no name of the injured person is stated;
- (c) the name or identity of the owner of any property is not stated;

- (d) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;
- (e) it does not set out any document which may be the subject of the charge;
- (f) the means by which the offence was committed is not stated;
- (g) provided there is sufficient allegation of *locus* to confer jurisdiction, the district in which the offence was committed is not stated; or
- (h) any person or thing is not described with precision:

Provided that, if it appears to the court that the interest of justice and the avoidance of prejudice to the accused person so require, the court shall order that the complainant or the prosecutor shall furnish particulars further describing or specifying any of the foregoing matters.

Application of Part VIII and Rules to charges before Summary Court

164. This Part and the Rules shall apply *mutatis mutandis* with respect to charges triable summarily before the Summary Court:

Provided that rules 1, 2 and 12 shall not apply to such charges and the formal matters and commencement in the case of such charges shall be in conformity with the practice heretofore in use in courts of summary jurisdiction in the Islands.

PART IX - Appeals from Summary Court

Appeals from decisions of Summary Court

165. (1) Save as hereafter in this Code provided, any person who is dissatisfied with any judgment, sentence or order of the Summary Court in any criminal cause or matter to which he is a party may appeal to the Grand Court against such judgment, sentence or order either by motion on matters of law or fact (or both) or by way of case stated on a point of law only as hereafter provided:

Provided that in no case shall the complainant appeal from a decision dismissing a complaint except by way of a stated case on a point of law.

(2) For the purposes of any appeal the Attorney-General shall be deemed to be a party to any criminal cause or matter other than those in which the proceedings were instituted and carried on as a private prosecution and in which the conduct of such proceedings has not been taken over by the Attorney-General under section 12(5).

Magistrate to inform accused person of right of appeal

166. (1) When any person is convicted by a Summary Court, the magistrate shall inform him, at the time when the sentence is passed, of his right of appeal and the steps which must be taken by a party wishing to appeal and a note shall be made at the time by the magistrate that such information has been given by

him to such person and such note shall be conclusive as to this section having been complied with.

(2) Upon being so informed, the convicted person may then and there give oral notice of his intention to appeal, and such notice shall be recorded by the magistrate and by the prosecutor.

167. No appeal shall be allowed in a case in which the accused person has pleaded guilty and has been convicted by the Summary Court on such plea, except as to the extent or legality of the sentence. Limitations on right of appeal

168. (1) An appeal shall not in itself have the effect of suspending the execution of the decision appealed and shall be on motion or by special case stated as hereafter in this Code provided. Appeal not to operate as a stay

(2) An appellant who has failed to give notice of appeal under section 166(2) may, within seven days after the day upon which the decision was given from which the appeal is made, serve a notice in writing, signed by the appellant or his counsel, on the other party and on the Summary Court of his intention to appeal and of the general grounds of his appeal:

Provided that any person aggrieved by the decision of the Summary Court may upon notice to the other party apply to the Grand Court for leave to extend the time within which such notice of appeal prescribed by this subsection may be served. and the court upon the hearing of such application may extend such time as it deems fit.

169. The appellant shall, within three days after the day on which he gave or served notice of his intention to appeal, enter into a recognizance before the Clerk, with or without sureties as the Clerk may direct, conditioned to prosecute the appeal to judgment thereon of the court, and to pay such costs as may be awarded by it or, if the Clerk thinks it expedient, the appellant may, instead of entering into recognizances, give such other security by deposit of money with the Summary Court or otherwise as the Clerk deems sufficient. Recognizance on security to be taken

Provided that if the complainant is acting on behalf of the Crown, the Attorney-General, the Commissioner of Police or any department of the Government or is a public officer acting in his official capacity he shall not be required to be bound by any recognizances or to give any security.

170. As soon as the appellant has given or filed the notice of appeal and has complied with section 169, the Summary Court shall without delay transmit to the Grand Court a copy of the conviction, order or judgment and all papers relating to the appeal. The appellant shall lodge with the Clerk and serve upon the Transmission of appeal papers

respondent, not less than three days before the date appointed for the hearing of the appeal, a notice containing particulars of matters of law or fact in regard to which the Summary Court is alleged to have erred.

Admission of appellant to bail

171. (1) Where the appellant is in custody the appellate court or the Summary Court may, if the circumstances appear exceptional, order that he be released on bail, with or without sureties, pending the determination of the appeal:

Provided that if the appeal is abandoned, withdrawn or dismissed, any such order for bail shall forthwith be cancelled.

(2) Where the appellant is released on bail or the sentence is suspended pending an appeal, any time during which he is at large after being so released or during which the sentence has been suspended shall be excluded in computing the term of any sentence to which he is subject.

(3) An appellant who has given oral or written notice of appeal may elect to remain on remand in custody, or begin to serve his sentence pending the hearing of his appeal. Any period of remand in custody shall not count as part of the sentence. A person electing to be so remanded in custody shall be treated as a person awaiting trial.

Case stated

172. In all cases of appeal by way of case stated the appellant shall, within the times and in the manner and form hereinbefore prescribed, serve a notice of appeal and enter into recognizances, and shall, within fourteen days after the day on which the Summary Court gave the decision from which the appeal is made, apply to such court to state a special case for the purpose of the appeal, setting forth the facts of the case and the grounds of the court's decision.

Remedy if case stated refused

173. A magistrate may refuse to state a case if he considers the matter is frivolous, and shall, on request, deliver to the appellant a certificate of refusal, and thereupon the appellant may apply to the Grand Court for an order requiring the case to be stated:

Provided that a magistrate shall not refuse to state a case where the application for that purpose is made to him by or under the direction of the Attorney-General.

Duty of Summary Court as to case stated

174. (1) The magistrate, upon receiving the application of the appellant or an order of the Grand Court in that behalf, as the case may be, shall, subject to section 173, draw up the special case concisely setting forth such facts and documents, if any, as may be necessary to enable the court to decide the questions raised in the case, and shall forthwith transmit the same together with a copy of the conviction, order or judgment appealed from and all documents alluded to in

the special case to the Clerk who, on application of either party, shall supply such applicant with a copy of the case stated on payment for the same of any prescribed charge.

(2) A case stated under subsection (1), in addition to any other matter which appears to the magistrate to be relevant, shall set out-

- (a) the charge, summons, information or complaint in respect of which the proceedings arose;
- (b) the facts found by the Summary Court to be admitted or proved;
- (c) any submission of law made by or on behalf of the complainant during the trial or inquiry;
- (d) any submission of law made by or on behalf of the accused person during the trial or inquiry;
- (e) the finding and, in the case of conviction, the sentence of the Summary Court;
- (f) any question of law which the magistrate or any of the parties desires to be submitted for the opinion of the Grand Court; and
- (g) any questions of law which the Attorney-General may require to be submitted for the opinion of the Grand Court.

175. On an appeal by motion, the appellant, on serving written notice on or giving oral notice to the Summary Court of his intention to appeal, and on entering into recognizances as aforesaid shall be entitled to receive with all convenient speed a copy of the evidence taken by the court in the case, and also a copy of the conviction, order or judgment made or given. A copy of the evidence and of the conviction, order or judgment shall also be supplied by the Summary Court to the respondent as soon as the appellant has complied with the requirements of section 169.

Appellant entitled to copies of evidence

176. The Grand Court shall, in either case, set the appeal down for hearing on such day, and shall cause notice of the same to be published in such manner, as the court may direct:

Court to set appeal down for argument

Provided that, except when otherwise agreed by the parties, not less than five days' notice shall be given by the court of the date appointed for the hearing of an appeal.

177. On an appeal by motion, unless the Court considers the justice of the case required a re-hearing, the appellant shall begin, and unless he satisfies the Court that it is necessary to call on the respondent, the conviction, order or judgment shall be confirmed:

Appeal not a re-hearing unless the court so decides

Provided that, if the Court directs a re-hearing the respondent, if the issue is with him, shall begin and prove his case, and the Court may, if the justice of the case requires it, adjourn the hearing to some convenient day.

Procedure on hearing of appeal

178. At the hearing of an appeal on motion, the appellant shall, before going into the case, state all the grounds of appeal on which he intends to rely, and shall not, unless by leave of the court, go into any matters not raised by such statement, nor shall he be entitled to examine any witnesses not examined at the hearing of the case before the Summary Court unless he has given to the respondent three clear days' notice in writing of the names and addresses of such witnesses and of the substance of the evidence they will give and unless he has subsequently obtained the leave of the court to the examination thereof.

Court on hearing appeal to decide on facts as well as law

179. On an appeal by motion, the court may draw inferences of fact from the evidence given before a Summary Court, and, subject to the due notice having been given as hereinbefore mentioned, may hear any further evidence tendered by the appellant, and may take and admit, if it thinks fit, any further evidence tendered in reply and also such other evidence as it may require, and it may decide the appeal with reference both to matters of fact and to matters of law.

On appeal, court confined to facts and evidence stated therein

180. On appeal by special case, the court shall entertain such appeal on the ground only that the decision of the Summary Court was erroneous in points of law, or in excess of jurisdiction, and upon the facts stated and the evidence mentioned in the special case. The court may remit the case to the Summary Court for amendment or restatement if necessary, or for re-trial and determination in accordance with such directions as may be deemed necessary.

Powers of court on hearing appeals

181. The court may adjourn the hearing of the appeal, and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Summary Court, including the passing of some other sentence (whether more or less severe) or remit the matter to the Summary Court for retrial, or may make such other order in the matter as it may think just, and may, by such order, exercise any power which the Summary Court might have exercised, and such order shall have the same effect and may be enforced in the same manner as if it had been made by the Summary Court:

Provided that the court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if the court considers that no substantial miscarriage of justice has actually occurred.

Costs

182. The court hearing any appeal may make such order as to the costs to be paid by either party as it may think just:

Provided that no magistrate shall be liable to any costs in respect of any appeal against his decision.

183. Where an appeal is abandoned or withdrawn the court, on proof of notice of appeal having been given to the respondent, may make an order that the respondent shall receive such costs as the court may allow.

Where appeal is abandoned court may give respondent his costs

184. No judgment shall be given in favour of the appellant if the appeal is based on an objection to any charge, complaint, summons or warrant for any alleged defect therein in matter of substance or for any variance between such charge, complaint, summons or warrant and the evidence adduced in support thereof, unless it be proved that such objection was raised before the Summary Court.

No appeal on point of form or matter of variance

185. In any case of appeal, the court may hear and determine the case upon the merits, notwithstanding any defect in form or otherwise in the conviction, order or judgment, and if the appellant is found guilty the conviction, order or judgment shall be confirmed and, if necessary, amended.

Court may decide on merits notwithstanding any defect in form

186. No conviction or order shall, for want of form, be quashed or removed by *certiorari* into the Grand Court, and no warrant or commitment shall be held void by reason of any defect therein, if it be therein alleged that the party has been convicted or ordered to do or abstain from doing any act or thing required to be done or left undone, and there be a good and valid conviction or order to sustain the same.

Defect in order or warrant of commitment not to render void

187. (1) Whenever the decision of a Summary Court is confirmed on appeal the Clerk shall inform the Summary Court of such confirmation, and thereupon the Summary Court may issue a warrant of distress, commitment or writ of execution, as the case may be, for enforcing such decision in the same manner as though no appeal had been brought.

Where conviction confirmed, warrant may issue as though no appeal had been made

(2) Whenever the decision is not confirmed, the Clerk shall send to the Summary Court, for entry in the register of that Court and shall also endorse on the conviction, order or judgment appealed against, a memorandum of the decision of the appellate court, and whenever any copy or certificate of such conviction, judgment or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the decision on appeal in every case where such copy or certificate would be sufficient evidence of such conviction, order or judgment.

PART X - Miscellaneous

Criminal Procedure Code (2005 Revision)

Powers of Grand Court
in respect of *habeas
corpus*, etc.

188. Nothing in this Code shall be construed to affect or limit the powers of the Grand Court to issue orders of *certiorari*, *habeas corpus* and *mandamus* in respect of proceedings thereupon and for any purposes connected therewith.

Abolition of right of
accused person to make
unsworn statement

189. (1) Subject to subsection (2), an accused person shall not be entitled to make an unsworn statement from the dock, and accordingly if he gives evidence, he shall do so on oath from the witness box and be liable to cross-examination; but this subsection shall not affect the right of an accused person, if he is not represented by counsel, to address the court or Jury otherwise than on oath on any matter on which, if he were so represented, counsel could address the court or jury on his behalf.

(2) Nothing in subsection (1) shall prevent an accused person making a statement without being sworn-

- (a) if it is one which he is required by law to make personally; or
- (b) if he makes it by way of mitigation before the court passes sentence upon him.

Code does not limit
powers of courts relating
to probation of young
persons

1999Revision
2005 Revision
General power to require
recognizance to keep the
peace

190. Nothing in this Code shall be construed to limit the powers conferred on any court under the Probation of Offenders Law (1999 Revision) or with respect to young persons under the Youth Justice Law (2005 Revision).

191. (1) Any person may, by complaint made to the Summary Court, call upon any other person to show cause why that other person should not be bound over in recognizances-

- (a) to keep the peace; or
- (b) to be of good behaviour toward any particular person,

and the court may make an order adjudging the person complained against to enter into recognizances and find sureties in that behalf and the complainant and defendant and witnesses may be called and examined and cross-examined, and the parties and witnesses in such case shall be subject to this Code relating to trial before such court.

Seizure of property
obtained by offence

192. (1) Any court may order the seizure of any property which there is reason to believe has been obtained by or is the proceeds or part of the proceeds of any offence, or into which the proceeds of any offence have been converted, and may direct that the same shall be kept or sold and that the same, or the proceeds thereof if sold, shall be held as such court directs until some person establishes a right thereto to the satisfaction of such court. If no person establishes such a right within twelve months from the date of such seizure, the property or the proceeds thereof, shall vest in the Financial Secretary for the use of the Islands and shall be disposed of accordingly.

(2) Any court may order the seizure of any instruments, materials or things which there is reason to believe are provided or prepared or being prepared with a view to the commission of any offence and may direct them to be held and dealt with in the same manner as property seized under subsection (1).

(3) Any order made under this section may be enforced by means of a search warrant which, upon being satisfied by evidence on oath that there is reasonable cause for the issue of such warrant, any such court is hereby authorised to issue for the purpose.

193. If any person affected by any order made or judgment passed in any proceedings under this Code desires to have copy of such order or judgment, or of any deposition or other part of the record in any such proceedings, he shall, upon making application for such copy, be furnished therewith, provided he pays for the same according to such scale as may be prescribed unless, in any particular case, the court directs that it be furnished free of cost. Copies of proceedings

194. Any power to bring proceedings for an offence by criminal information in the Grand Court is abolished. Criminal informations abolished

195. The Rules Committee established under the Grand Court Law (1995 Revision) may make rules prescribing anything required to be prescribed under this Code and generally for carrying into effect this Code. Rules
1995 Revision

FIRST SCHEDULE

**Mode of Trial and Arrestable Offences
(Sections 5 and 14(7))**

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	46	Treason by the Law of England	Life imp.
A	A	47	Instigating treason	Life imp.
A	A	48	Concealment of treason	Life imp.
A	A	49	Treasonable offences (depose, levy war against the sovereign) (invade the realm)	Life imp.
B	A	54(1)	Importing, etc., prohibited publication	Three years \$1000
B	A	54(2)	Possession, etc., prohibited publication	Two years \$500
B	A	55(1)	Failing to deliver up prohibited publication	Two years \$500
B	A	58(1)	Sedition	Five years \$1000
B	A	58(2)	Possession of seditious publication	Three years \$500
B	A	58(10)	Unlawful use of confiscated printing machine	Three years \$500
B	A	58(11)	Publication of newspaper in contravention of order	Three years \$500

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	61	Unlawful oath to commit offences punishable with imprisonment for life	Life imp.
A	A	62	Other unlawful oath to commit crime, etc.	Ten years
B	A	63(1)	Unlawful drilling	Seven years
B	A	63(2)	Presence at unlawful drilling	Two years
C		64(1)	Publication of false statement, etc., to cause alarm	Five years \$5000
A		65	Defamation of foreign princes	Two years
B		66	Foreign Enlistment	Two years
A	A	67	Piracy	As English law
B	A	69	Unlawful assembly	One year
B	A	70	Riot	Two years
A	A	73	Rioting after proclamation	Life imp.
A	A	74	Obstructing making of proclamation	Life imp.
A	A	75	Rioters demolishing buildings	Life imp.

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B	A	76	Riotously preventing the sailing of a ship	Four years
B	A	77	Vandalising the flag of the Islands	Four years
B	A	79	Importing or carrying prohibited weapon	Ten years \$10,000
C	A	80	Carrying offensive weapon	Two years \$2000
C		81	Refusal to accompany a constable	\$100
C	A	83(1)	Forcible entry	Four years
C	A	84	Forcible detainer	four years
C	A	85	Affray	Two years
C	A	86	Challenge to duel	Four years
B	A	87	Threatening violence	Three years
B	A	87	Threatening violence by night	Five years
B	A	88	Assembling for the purpose of smuggling	Two years \$1000
B		89	Official corruption	Five years \$5000
B		90	Extortion by public officer	Five years \$5000
C		91	Public officer receiving property to show favour	One year
C		92	Breach of trust by public officer	Two years
B		93	False claim by public official	Four years
B		94(1)	Abuse of office	Three years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B		94(2)	Abuse of office for gain	Four years
B	A	95	Public officer giving false certificate	Four years
C	A	96	Unauthorised administration of an oath	Two years
B	A	97	False assumption of authority	Four years
A	A	98	Personating public officer	Four years
B		99	Threat of injury to person employed in the public service	Four years
A		100	Perjury	Seven years
A		102	Fabricating evidence	Seven years
B		103	False swearing	Four years
B		104	Deceiving witnesses	Four years
B		105	Destroying evidence	Four years
B		106(1)	Defeating the course of justice	Seven years
B		106(2)	Conspiracy to defeat the course of justice	Five years
B		107	Compounding of offences	Four years
B		108	Compounding penal actions	Four years
B	A	109	Offering reward for stolen property	Four years
B	A	110	Offences relating to judicial proceedings	Four years
B	A	111	Rescue of a person in other cases	Seven years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B	A	112	Escape	Four years
B	A	113	Permitting prisoner to escape	Four years
B	A	114	Aiding prisoner to escape	Seven years
B	A	115	Unlawfully removing attached property	Three years
C	A	116	Obstructing court officers	Four years
B		117	Frauds, etc., by public servants	Four years
B		118	Neglect of official duty	Four years
B	A	118	False information to public official	Three years \$400
B		120	Disobedience of lawful duty	Two years
B	A	121	Insult to religion	Four years
B	A	122	Disturbing religious assemblies	Four years
B	A	123	Trespassing, etc., on burial places	Four years
C		124	Words, etc., with intent to wound religious feelings	One year
B	A	125(1)	Hindering burial, etc.	Four years
A	A	127	Rape	Life Imp.
A	A	128	Attempted rape	Fourteen years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	129	Abduction for the purpose of marriage or carnal knowledge	Ten years
B	A	130	Abduction of girl under sixteen	Four years
B	A	131	Indecent assault on female	Ten years
C	A	132	Insulting the modesty of a women	Three years
A	A	133(1)(a)	Defilement of girl under twelve	Twenty years
A	A	133(1)(b)	Defilement of girl between the ages of twelve and sixteen	Twelve years
A	A	133(2)	Defilement of girl under sixteen	Seven years
B	A	134	Defilement of idiots, etc.	Twelve years
B	A	135	Procuration	Four years
B	A	136	Administering drugs to woman or girl	Four years
B	A	137	Detention in a brothel	Four years
B	A	138(1)	Living on earnings of prostitution	Four years
B	A	139	Brothel keeping	Four years
B	A	140(1)	Attempt to procure abortion	Four years
B	A	141	Attempt to procure own abortion	Four years
B	A	142	Supplying drugs for purpose of procuring abortion	Four years
B	A	143(1)	Unnatural offence	Ten years
B	A	143(2)	Unnatural offence (attempt)	Four years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	144(4)	Indecent assault on a man	Ten years
A	A	144(5)	Indecency between males	Four years
A	A	145(1)	Incest by males	If with a girl under thirteen, life, otherwise twenty years
A	A	145(3)	Incest by males (attempt)	If with a girl under thirteen, ten years, otherwise seven years
A	A	146	Incest by females	Ten years
A	A	148	Fraudulent pretence of marriage	Five years
A	A	149	Bigamy	Five years
A	A	150	Fraudulent marriage ceremony	Five years
B		151	Neglecting children	Four years
A	A	152	Child stealing	Seven years
C		153	Common nuisance	One year
C	A	154	Watching and besetting	Six months
C		155(1)	Chain letters	Six months \$500
C	A	156(1)	Obscene publications	Three months \$200
C	A	157	Idle and disorderly persons	Three months \$500

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
C	A	158(1)	Rogues and vagabonds	One year
C	A	158(1)	Rogues and vagabonds (subsequent offence)	Two years
B		161	Failure to account for subscriptions	Two years
C		1621	Street Trading	\$1,000
C		162(3)	Street Trading (subsequent offence)	Six months \$5,000
C	A	163	Disorderly conduct	\$100
C	A	164	Drunk and disorderly persons	Thirty days \$30
C	A	165	Unauthorised wearing of uniform	Three months \$100
B	A	166	Negligent act likely to spread disease	Four years
B		167	Adulteration of food, drink, etc.	Four years
B	A	168	Pollution	Four years
B	A	169(1)	Obeah	Four years
B		170	Libel	Four years
B		178	Libel to extort money	Three years
A	A	181	Murder	Life imp.
A	A	182	Manslaughter	Life imp.
A	A	193	Attempt to murder	Life imp.
A	A	194	Accessory after the fact to murder	Life imp.

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	195	Written threat to murder	Seven years
A	A	196	Conspiracy to murder	Fourteen years
A	A	197	Infanticide	Life imp.
A	A	198(1)	Killing unborn child	Life imp.
B	A	199	Concealing the birth of a child	Two years
A	A	200	Disabling, etc., to facilitate an offence	Life imp.
A	A	201	Preventing escape from wreck	Life imp.
A	A	202	Wounding or causing grievous bodily harm	Life imp.
B	A	203	Wounding or inflicting grievous bodily harm	Seven years
A	A	204	Attempting to injure by explosive substances	Sixteen years
A	A	205	Bomb hoax	Ten years \$20,000
A	A	206	Maliciously administering poison	Fourteen years
B	A	207	Unlawful use of firearms	Five years
B	A	209	Reckless and negligent acts	Four years
C	A	210	Other negligent acts causing harm	Two years \$2000
C	A	211	Dealing with poisonous substances in a negligent manner	Two years \$2000
A	A	212	Exhibition of false light, mark or buoy	Fourteen years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B	A	213	Conveying person for hire in unsafe conveyance	Four years
C		214	Common assault	One year
B	A	215	Assault causing actual bodily harm	Five years
A	A	216	Assault on person protecting wreck	Seven years
A	A	219	Kidnapping and abduction	Life imp.
A	A	220	Keeping in confinement a kidnapped person	Life imp
B	A	221	Wrongful confinement	Five years
B	A	222	Unlawful compulsory labour	Three years
B	A	235	Theft	Ten years
A	A	236	Robbery	Life imp.
B	A	237(1)	Burglary	Fourteen years
A	A	238(1)	Aggravated burglary	Life imp.
B	A	239	Abstracting electricity	Two years \$2000
C	A	240(1)	Taking conveyance without authority	Two years \$1,000
B	A	241(1)	Obtaining property by deception	Ten years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B	A	242(1)	Obtaining pecuniary advantage by deception	Five years
B	A	243	Evasion of liability by deception	Five years
B	A	244	Obtaining services by deception	Four years
A	A	245	Obtaining a money transfer by deception	Ten years
A	A	247	Dishonestly retaining a wrongful credit	Ten years
B	A	248(1)	Making off	Five years \$2,000
B	A	249(1)	False accounting	Seven years
B	A	250(1)	Connivance in dishonesty by company officer contrary to section 241, 242 or 249	Ten, five or seven years
B	A	251(1)	False statements by company officers	Seven years
B	A	252	Suppression, etc., of documents	Seven years
A	A	253(1)	Blackmail	Fourteen years
B	A	254(2)	Handling stolen goods	Fourteen years
B	A	255(1)	Going equipped for stealing	Three years
A	A	261	Arson	Life imp.
			Destroying or damaging property other than by fire	Ten years
B	A	262	Threats to destroy or damage property	Ten years
A	A	263	Attempt to commit arson or to destroy or damage property	Fourteen years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	264	Setting fire to crops, etc.	Fourteen years
A	A	265	Attempt to set fire to crops, etc.	Seven years
A	A	266	Casting away ships, etc.	Life Imp.
A	A	267	Attempts to cast away ships, etc.	Fourteen years
B	A	268	Killing or injuring animals	Five years
A	A	269	Attempts to destroy property by explosives	Fourteen years
B	A	270	Communicating infectious disease to animals	Seven years
C	A	271(1)	Criminal trespass	One year \$1,000
		271(2)	do.	Two years \$2,000
		271(2)	do.	Three years \$3,000
B	A	272	Aggravated trespass	Four years & fine
C	A	273	Doing damage on unenclosed land	Two years
B	A	279	Forgery (general punishment)	Three years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	280	Forgery (will, etc.)	Ten years
A	A	281	Forgery (judicial document)	Ten years
B	A	282	Forgery (stamp, etc.)	Seven years
B	A	283	Uttering forged document	As for the forgery
B	A	284	Procuring execution of forged document	As for the forgery
B	A	285	Uttering cancelled or exhausted document	As for the forgery
B	A	286	Obliterating crossings on cheques	Seven years
B	A	287	Making documents without authority	Seven years
B	A	288	Demanding property on forged testamentary document	As for the forgery
B	A	289(1)	Importing or purchasing forged notes	Ten years
A	A	289(2)	Uttering a forged bank note or currency note	Ten years
B	A	290	Falsifying warrants, etc.	Ten years
B	A	291	Falsifying register	Ten years
B	A	292	Sending false certificate of marriage to registrar	Seven years
B	A	293	False statement to registrar of births, etc.	Five years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
A	A	295	Counterfeiting coin	Ten years
A	A	296	Preparation for counterfeiting	Seven Years
A	A	297	Making, etc. implements of forgery	Seven years
B	A	298(1)	Impairing coin	Fourteen years
		298(2)		Seven years
B	A	299	Melting down coin	Six months \$200
B	A	301	Possession of clippings	Seven years
B	A	302	Uttering counterfeit coin	Two years
B	A	303	Repeated uttering	Three years
B	A	304	Uttering metal of coin not current as coin	One year
C	A	305	Selling imitation currency	Six months
B	A	306	Exporting counterfeit coin	Two years
B	A	308	Possession of die used for making coin	Seven years
B	A	309	Possession of materials for forging stamps	One year \$200
B	A	311	Trade mark offences	Four years
B	A*	313	Attempts to commit an offence	Life imp.
B		314	Neglect to prevent the commission of certain offences.	Two years

Mode of trial category	Whether arrestable without a Warrant "A" means arrestable	Penal Code (2005 Revision) Section	Nature of Offence	Maximum punishment
B	A*	315	Conspiracy to commit certain offences	Ten years
B		316	Other conspiracies	Four years
B	A*	318	Accessories after the fact in certain cases *If the offence attempted, etc., is arrestable OFFENCES AGAINST OTHER LAWS WHERE POWER OF ARREST IS NOT PRESCRIBED If the offence is punishable more severely than with six years' imprisonment then such offence is arrestable	Ten years
CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS WHERE NO MODE OF TRIAL PRESCRIBED				
When the maximum punishment exceeds ten years' imprisonment				A
When the maximum punishment is one year imprisonment or a lesser punishment				C
All other offences				B

SECOND SCHEDULE

Form Of Search Warrant

(Section 28)

Whereas I/ the court am/ is satisfied by information on oath that there is reasonable suspicion of the commission of the offence of _____ and it has been made to appear to this court/me that the production of the following article(s) is/are essential to the inquiry into the said offence.

This is to authorise and require you to enter upon and search the premises of one _____ situate at _____, and if discovered to take possession of the said article(s) and produce the same forthwith before a court; returning this warrant with an endorsement certifying the manner of execution.

Given under my hand (and the seal of the court) this day of 20 .

Magistrate/Justice of the Peace

THIRD SCHEDULE

Rules For Framing Indictments

(Section 163)

Material, etc., for
indictments

1. (1) An indictment may be on parchment or durable paper, and may be either written or printed, or partly written and partly printed.

(2) Each sheet on which an indictment is set out shall be not more than 17 and not less than 13 inches in length, and not more than 14 and not less than 8 inches in width, and if more than one sheet is required the sheets will be fastened together in book form.

(3) A proper margin not less than 2 inches in width shall be kept on the left hand side of each sheet.

(4) Figures and abbreviations may be used in an indictment for expressing anything which is commonly expressed thereby.

(5) There shall be endorsed on the indictment the name of every witness intended to be examined by the prosecution.

(6) An indictment shall not be open to objection by reason only of any failure to comply with this rule.

Commencement of
indictment

2. The commencement of an indictment shall be in the following form-

CAYMAN ISLANDS

IN THE GRAND COURT

Criminal Side

The Queen versus A.B.

A.B. is charged with the following offence (offences) -

To Wit:

3. (1) A description of the offence charged in an indictment, or where more than one offence is charged, of each offence so charged, shall be set out in a separate paragraph called a count. Mode in which offences are to be charged

(2) A count shall commence with a statement of the offence charged, called the statement of offence.

(3) The statement of an offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the elements of the offence, and if the offence charged is one created by a law, shall contain a reference to the section of the law creating the offence.

(4) After the statement of offence, particulars of such offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary:

Provided that where any rule of law or any law limits the particulars of an offence which are required to be given in an information, nothing in this rule shall require any more particulars to be given than those as required.

(5) Where a charge or indictment contains more than one counts the counts shall be numbered consecutively.

4. (1) Where a law constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative, or the doing or the omission to do any act in any one of any different capacities, or with any one of any different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence. Provisions as to statutory offences

5. (1) The description of property in a count shall be in ordinary language and such as to indicate with reasonable clarity the property referred to, and if the property is so described it shall not be necessary (except when required for the purpose of describing an offence depending on any special ownership of property or special value of property) to name the person to whom the property belongs or the value of the property. Description of property

(2) Where property is vested in more than one person, and the owners of the property are referred to in an indictment, it shall be sufficient to describe the property as owned by one of those persons by name with others, and if the persons owning the property are a body of persons with a collective name, such

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as “Inhabitants”, “Trustees”, “Commissioners”, “Club” or other such name, it shall be sufficient to use the collective name without naming any individual.

- Description of persons 6. The description or designation in an indictment of the accused person, or of any other person to whom reference is made therein, shall be such as is reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, such description or designation shall be given as is reasonably practicable in the circumstances, or such person may be described as “a person unknown”.
- Description of document 7. Where it is necessary to refer to any document or instrument, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof without setting out any copy thereof.
- Description of engraving 8. In a count in respect of an offence for engraving or making the whole or any part of any instrument, matter or anything whatsoever, or for using or having the unlawful possession of any plate or other material upon which the whole or any part of any instrument, matter or thing whatsoever, shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument, matter or thing whatsoever, shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known, without setting out any copy or facsimile of the whole or any part of such instrument, matter or thing.
- Description of money 9. In a count in which it shall be necessary to make any averment as to any money or any currency note, it shall be sufficient to describe such money or currency note simply as money, without specifying any particular coin or banknote; and such allegation as far as regards the description of the property shall be sustained by proof of any amount of coin or of any banknote, although the particular species of coin of which such amount was composed or the particular nature of the banknote shall not be proved; and in cases of obtaining money or pecuniary advantage by deception by proof that the offender obtained any piece of coin, or any banknote, or any portion of the value thereof although such piece of coin or banknote may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to any other person and such part shall have been returned accordingly.
- General rule as to description 10. Subject to these Rules, it shall be sufficient to describe any place, time, thing, matter, act or omission whatsoever to which it is necessary to refer in any charge or indictment in ordinary language in such a manner as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to.

11. It shall not be necessary in stating any intent to defraud, deceive or injure to state an intent to defraud, deceive or injure any particular person where the statute creating the offence does not make any intent to defraud, deceive or injure a particular person an essential ingredient of the offence.

Statement of intent

12. Any charge of a previous conviction of an offence shall be charged at the end of the indictment by means of a statement that the person accused has been previously convicted of that offence at a certain time and place without stating the particulars of the offence:

Charge of previous convictions, etc.

Provided that in reading such indictment to the jury regard shall be had to section 120.

SPECIMEN FORMS OF INDICTMENT

1.

STATEMENT OF OFFENCE

Murder, contrary to section 180 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A B. on the day of , at , murdered J.S.

2.

STATEMENT OF OFFENCE

Accessory after the fact to murder, contrary to section 194 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A. B., well knowing that one H.C., did on the day
of , at , murder C.C.
did on the day of , at , and on
other days thereafter receive, comfort, harbour, assist and maintain the said H.C.

6.

STATEMENT OF OFFENCE

Cruelty to a juvenile, contrary to section 41(1) of the Juveniles Law, 1990

PARTICULARS OF OFFENCE

A.B., between the day of , and the day of , at , being a person having the custody, charge or care of C.D., a juvenile, wilfully assaulted, ill-treated, neglected, abandoned or exposed the said juvenile, or procured him to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the said juvenile unnecessary suffering or injury to his health.

7.

STATEMENT OF OFFENCE

Theft, contrary to section 235 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , stole from M.N., ten yards of cloth.

8.

STATEMENT OF OFFENCE

Robbery, contrary to section 236 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , stole a watch from C.D., and, immediately at the time of doing so, and in order to do so, used force on the said C.D., or put him in fear of being then and there subjected to force.

9.

STATEMENT OF OFFENCE

First Count

Theft, contrary to section 235 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , stole a bag, the property of C.D.

STATEMENT OF OFFENCE

Second Count

Handling stolen goods contrary to section 254(1) of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , knowing or believing it to be stolen, dishonestly received a bag, or dishonestly undertook, assisted in or arranged for the retention, removal, disposal or realisation thereof for the benefit of another person.

A.B., has been previously convicted of handling stolen goods on the day of .

10.

STATEMENT OF OFFENCE

Burglary and theft contrary to sections 237(1)(b) and 235 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , entered the building known as as a trespasser and there stole one watch, the property of C.D.

11.

STATEMENT OF OFFENCE

Blackmail, contrary to section 253 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , with a view to gain for himself or another or with intent to cause loss to C.D., or another made an unwarranted demand with menaces from the said C.D., that is to say he demanded \$2,000 from the said C.D., under threat of accusing the said C.D., of having committed an infamous crime.

12.

STATEMENT OF OFFENCE

Dishonestly obtaining property by deception, contrary to section 241 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , dishonestly by deception obtained from C.D., a motor car with intent permanently to deprive C.D. thereof.

13.

STATEMENT OF OFFENCE

Conspiracy to commit an offence, contrary to section 315 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B. and C.D. on divers days between the day of , and the day of , at , conspired together and with other persons unknown to defraud such persons as should thereafter be induced to part with money to the said A.B., and C.D., by false representation that A.B., and C.D., were then carrying on a genuine business as jewellers at and that they were then willing and prepared to supply articles of jewellery to such persons.

14.

STATEMENT OF OFFENCE

First Count

Arson, contrary to section 261 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the _____ day of _____, at _____, wilfully and unlawfully set fire to a dwelling house known as _____.

STATEMENT OF OFFENCE

Second Count

Damaging property, contrary to section 261 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the _____ day of _____, at _____, without lawful excuse damaged a dwelling house known as _____ the property of C.D. intending to damage such property.

15.

STATEMENT OF OFFENCES

A B., Arson, contrary to section 261 of the Penal Code (2005 Revision)

C.D. Counselling or procuring the said A.B., to commit the same offence.

PARTICULARS OF OFFENCES

A. B., on the _____ day of _____, at _____, wilfully and unlawfully set fire to a dwelling house known as _____ . C.D., on the same day at _____, did counsel and procure the said A.B., to commit the said offence.

16.

STATEMENT OF OFFENCE

**Doing damage on unenclosed land contrary to section 273 of the Penal Code
(2005 Revision)**

PARTICULARS OF OFFENCE

A.B., on the day of , at , without
lawful excuse entered upon private unenclosed land and maliciously damaged a
coconut tree there growing.

17.

STATEMENT OF OFFENCE

First Count

Forgery contrary to section 279 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , made
a false document with intent to defraud.

STATEMENT OF OFFENCE

Second Count

**Uttering a forged document, contrary to section 283 of the Penal Code
(2005 Revision)**

PARTICULARS OF OFFENCE

A.B., on the day of , at , uttered
a certain forged document purporting the same to be genuine and knowing the
same to be forged and with intent to defraud.

18.

STATEMENT OF OFFENCE

**Uttering counterfeit coin, contrary to section 302 of the Penal Code
(2005 Revision)**

PARTICULARS OF OFFENCE

A.B., on the day of , at , uttered
a counterfeit twenty-five cent piece knowing the same to be counterfeit.

19.

STATEMENT OF OFFENCE

Perjury, contrary to section 100 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , being a
witness upon the trial of an action in the Grand Court, in which one was
plaintiff and one was defendant, knowingly falsely
swore that he saw one N.M., in the street called Street, on
the day of .

20.

STATEMENT OF OFFENCE

First Count

**Producing an obscene writing for the purpose of public distribution,
contrary to section 156(1)(a) of the Penal Code (2005 Revision)**

PARTICULARS OF OFFENCE

E.M., on the day of , at , made
and published or caused to be made and published an obscene writing, the
particulars of which are published with this indictment. (Particulars to specify
pages and lines complained of where necessary, as in a book).

STATEMENT OF OFFENCE

Second Count

**Importing an obscene writing for the purpose of public distribution,
contrary to section 156(1)(b) of the Penal Code (2005 Revision)**

PARTICULARS OF OFFENCE

E.M., on the day of , at ,
imported , for the purpose of distribution to the public an
obscene writing, the particulars of which are published with this indictment.

21.

STATEMENT OF OFFENCE

**A.B., undischarged bankrupt obtaining credit, contrary to section 173 of the
Bankruptcy Law (1997 Revision);**

C.D., counselling and procuring the same offence

PARTICULARS OF OFFENCES

A.B., on the day of , at , being an
undischarged bankrupt obtained credit to the extent of one hundred dollars from
H.S., without informing the said H.S. that he was an undischarged bankrupt.

C.D., at the same time and place did aid, abet, counsel and procure A B., to
commit the said offence.

22.

STATEMENT OF OFFENCE

First Count

**False Accounting, contrary to section 249(1)(a) of the Penal Code
(2005 Revision)**

PARTICULARS OF OFFENCE

A.B., on the day of , at , dishonestly, with a view to gain for himself or other, falsified an account in a cash book, the property of C.D., purporting to show that on the said day one hundred dollars had been paid to L.M.

STATEMENT OF OFFENCE

Second Count

**False Accounting, contrary to section 249(1)(a) of the Penal Code
(2005 Revision)**

PARTICULARS OF OFFENCE

AB., on the day of , at , dishonestly, with a view to gain for himself or another, omitted or concurred in omitting from an account in a cash book belonging to C.D., his employer, a material particular, that is to say the receipt on the said day of one hundred dollars from H.S.

23.

STATEMENT OF OFFENCE

First Count

**Dishonestly obtaining property by deception contrary to section 241(1) of the
Penal Code (2005 Revision)**

PARTICULARS OF OFFENCE

A.B., on the day of , at , dishonestly obtained ownership, possession or control of certain property, that is to say one hundred dollars entrusted to him by H.S., in order that he, the said A.B., might retain the same in safe custody.

STATEMENT OF OFFENCE

Second Count

Dishonestly obtaining property by deception, contrary to section 241(1) of the Penal Code(2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , dishonestly obtained ownership, possession or control of certain property, that is to say one hundred dollars entrusted to him by H.S., in order that he, the said A.B., might retain the same in safe custody.

STATEMENT OF OFFENCE

Third Count

Dishonestly obtaining property contrary to section 241(1) of the Penal Code (2005 Revision)

A.B., on the day of , at , dishonestly obtained ownership, possession or control of certain property, that is to say one hundred dollars received by him from H.S., for the account of L.M.

24.

STATEMENT OF OFFENCE

Libel, contrary to section 170 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day of , at , published a defamatory libel concerning W.Y., in the form of a letter addressed to J.B., which said letter contained the following defamatory matters concerning the said W.Y.-

1. Do you know that about the year your friend W.Y. was in the employ of L&J, and that his accounts were found to be all wrong (meaning thereby that W.Y. was guilty of acts of dishonesty and falsification of accounts while he was in the employ of L&J).
2. As soon as his defalcations were discovered and a warrant was applied for he fled to Rio (meaning thereby that the said W.Y. was a fugitive from justice).
3. Some time after this he appears to have returned to Grand Cayman, for he was found to be keeping a brothel at Bodden

Town (meaning thereby that the said W.Y. had committed the criminal offence of keeping a brothel).

(See Form 26 for plea of justification to Form 25).

25.

PLEA OF JUSTIFICATION OF A.B., IN ANSWER TO THE INDICTMENT AGAINST HIM FOR LIBEL

(See Form 25).

A.B. says he is not guilty, and for a further plea he says that all the defamatory matters alleged in the indictment are true.

PARTICULARS

1. On the day of , at , W.Y. received the sum of one hundred dollars from C.F. and the sum of two hundred dollars from W.D., on behalf of his employers L&J., which he fraudulently omitted to enter in their books or to account for in any way.

2. On the day of , at , soon after W.Y.'s defalcations were discovered and a warrant applied for against him for theft of his employers' money and falsification of their books, he left Grand Cayman on a ship called the "Eagle", bound for Rio.

3. On the day of , at , and other days in the year W.Y. kept a brothel at Bodden Town, contrary to section 139 of the Penal Code (2005 Revision).

AND A.B. says it was for the public benefit that the defamatory matters charged in the said indictment should be published by reason of the fact that W.Y. was, at the time of the publications thereof, a candidate for the public office of Membership of the Legislative Assembly of the Cayman Islands.

26.

REPLICATION TO THE PLEA OF JUSTIFICATION OF A. B.

(See Form 26)

H.S., Clerk of the Grand Court, joins issue on behalf of our Lady the Queen.

27.

STATEMENT OF OFFENCE

First Count

**Bankruptcy Offence, contrary to section 172 (1) of the Bankruptcy Law
(1997 Revision)**

PARTICULARS OF OFFENCE

A.B., having been adjudged bankrupt on the _____ day of _____, at _____, did not fully and truly discover to the trustee all his property and how and to whom and for what consideration he had disposed of a piano, part thereof.

STATEMENT OF OFFENCE

Second Count

**Bankruptcy Offence, contrary to section 172 (3) of the Bankruptcy Law
(1997 Revision)**

PARTICULARS OF OFFENCE

A.B., having been adjudged bankrupt, on the _____ day of _____, at _____, did not deliver up to the trustee a book, called a ledger relating to his property affairs.

STATEMENT OF OFFENCE

Third Count
Bankruptcy Offence, contrary to section 172(4) of the Bankruptcy Law
(1997 Revision)

PARTICULARS OF OFFENCE

A.B., on the _____ day of _____, at _____, and within six months next of the presentation of a bankruptcy petition against him upon which he was adjudged bankrupt, fraudulently removed a piano, value four hundred dollars, part of his property.

28.

STATEMENT OF OFFENCE

Attempting to inter the body of a person dying a sudden death without the consent of the Coroner, contrary to section 20 of the Coroners Law
(1995 Revision)

PARTICULARS OF OFFENCE

A.B. and G.C., on the _____ day of _____ at _____, intending to prevent the Coroner of _____ from holding an inquest in the execution of his duty upon the view of the dead body of S.C., who died a violent, or an unnatural or sudden death of which the cause was unknown, did attempt to bury the said dead body in a certain place called _____.

29.

STATEMENT OF OFFENCE

Conspiracy to incite women to kill their unborn children, contrary to sections 315 and 198 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., and C.D., on divers days between the _____ and the _____, at _____, conspired together and with other persons unknown to incite women being with child to administer to themselves noxious things with intent to procure the death of their unborn children.

30.

STATEMENT OF OFFENCE

First Count

Infanticide, contrary to section 197 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the day _____ of _____, at _____, caused the death of her newly-born child by stabbing it with a knife but at the time of the act she had not fully recovered from the effect of giving birth to such child and by reason thereof her mind was then disturbed.

STATEMENT OF OFFENCE

Second Count

Infanticide, contrary to section 197 of the Penal Code (2005 Revision)

PARTICULARS OF OFFENCE

A.B., on the _____ day of _____, at _____, caused the death of her newly-born child by a wilful omission, that is to say wilfully neglecting to _____, at the time of the omission she had not fully recovered from the effect of giving birth to such child and by reason thereof the balance of her mind was then disturbed.

FOURTH SCHEDULE

Voluntary Indictments

Application to judge of the Grand Court

1. An application under section 108 for consent to the preferment of an indictment may be made to a judge of the Grand Court.

Application to be in writing

2. Every such application shall be made in writing and shall be signed by the applicant or his attorney-at-law.

Accompanying documents to application etc.

3. Every application-

- (a) shall be accompanied by the indictment which it is proposed to prefer and, unless the application is made by or on behalf of the Attorney-General, shall also be accompanied by an affidavit by the applicant, or, if the applicant is a corporation, by an affidavit by a director or officer of the corporation, that the statements contained in the application are, to the best of the deponent's knowledge, information and belief, true; and
- (b) shall state whether or not any application has previously been made under this Law and whether there have been any committal proceedings, and the result of any such application or proceedings.

Application where no committal proceedings

4. Where there are no committal proceedings, the application shall state the reason why it is desired to prefer an indictment without such proceedings and-

- (a) there shall accompany the application proofs of evidence of the witnesses whom it is proposed to call in support of the charges; and
- (b) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Application where committal proceedings

5. Where there have been committal proceedings, and the magistrate has refused to commit the accused for trial, the application shall be accompanied by-

- (a) a copy of the committal documents; and
- (b) proofs of any evidence which it is proposed to call in support of the charges so far as that evidence is not contained in the committal documents; and

the application shall embody a statement that the evidence shown by the proofs and (except so far as may be expressly stated to the contrary in the application) the evidence shown by the committal documents, will be available at the trial and that the case disclosed by the committal documents and proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Application where person committed for trial

6. Where the accused has been committed for trial the application shall state why the application is made and shall be accompanied by proofs of evidence which it is proposed to call in support of the charges, so far as that evidence is not contained in the committal documents and, unless the committal documents have already been transmitted to the judge to whom the application is made, shall also be accompanied by a copy of the committal documents; and the application shall also embody a statement that the evidence shown by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Judge's decision in writing

7. Unless the judge otherwise directs in any particular case, his decision on the application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses, and if the judge thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

Applicant may attend by an attorney-at-law

8. Unless the judge gives a direction to the contrary, where an applicant is required to attend as aforesaid, he may attend by an attorney-at-law.

Inspection of committal documents

9. It shall be the duty of any person in charge of any committal documents to give to any person desiring to make an application for leave to prefer an indictment against a person in respect of whom committal proceedings have taken place, a reasonable opportunity to inspect the committal documents and, if so required by him, to supply him with copies of the documents or any part thereof.

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Carmena Watler
Clerk of Cabinet

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