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## Penal Code [Cap 17]

LAWS OF FIJI

### CHAPTER 17

#### PENAL CODE

ARRANGEMENT OF SECTIONS

#### PART I-GENERAL PROVISIONS

##### CHAPTER I-PRELIMINARY

SECTION

1. Short title.
2. Saving of certain laws.

##### CHAPTER II-INTERPRETATION

3. General rule of construction.
4. Definition of certain expressions and terms.

##### CHAPTER III-TERRITORIAL APPLICATION OF THIS CODE

5. Extent of jurisdiction of Fiji Courts.
6. Offences committed partly within and partly beyond the jurisdiction.

##### CHAPTER IV-GENERAL RULES AS TO CRIMINAL RESPONSIBILITY

7. Ignorance of law.
8. *Bona fide* claim of right.
9. Intention and motive.
10. Mistake of fact.
11. Presumption of sanity.
12. Insanity.
13. Intoxication.
14. Immature age.
15. Judicial officers.

16. Compulsion.
17. Defence of person or property.
18. Use of force in effecting arrest.
19. Compulsion by husband.
20. Person not to be punished twice for same offence.

## **CHAPTER V-PARTIES TO OFFENCES**

21. Principal offenders.
22. Offences committed by joint offenders in prosecution of common purpose.
23. Counselling another to commit an offence.

## **CHAPTER VI-PUNISHMENTS**

24. Sentence of death.
25. Persons under 18 not to be sentenced to death.
26. Record and report to be sent to Governor General.
27. Procedure where woman convicted of capital offence alleges she is pregnant.
28. Imprisonment.
29. Suspended sentences of imprisonment.
30. Power of court on conviction of further offence to deal with suspended sentence.
31. Court by which suspended sentence is to be dealt with.
32. Discovery of further offences.
33. Minimum period on sentence of imprisonment for life.
34. Corporal punishment.
35. Fines.
36. Distress.
37. Suspension of execution of sentence of imprisonment in default of fine.
38. Commitment in lieu of distress.
39. Payment after commitment.
40. Payment after issue of warrant but before commitment.
41. Security for keeping the peace.
42. Security for coming up for judgment.
43. Provisions of [Criminal Procedure Code](#) relating to recognisance to apply.
44. Absolute and conditional discharge.
45. Issue of warrants and errors in orders or warrants.
46. Police supervision.
47. General punishment for misdemeanours.
48. Escaped convicts to serve unexpired sentences when recaptured.
49. Forfeiture,

## **PART II-CRIMES**

### *Division I-Offences against Public Order*

## **CHAPTER VII-TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY**

50. Treason by the law of England.
51. Instigating invasion.
52. Misprision of treason.

53. Treasonable felonies.
54. Limitations as to trial for treason, misprision of treason, or treasonable felonies.
55. Inciting to mutiny.
56. Aiding soldiers or policemen in acts of mutiny.
57. Inducing soldiers or policemen to desert.
58. Aiding prisoners of war to escape.
59. Definition of overt acts.
60. Definitions for purposes of sections relating to sedition, etc.
61. Power to prohibit importation of publication.
62. Offences in relation to publications, the importation of which is prohibited.
63. Delivery of prohibited publication to police station.
64. Power to examine packages.
65. Seditious intention.
66. Seditious offences.
67. Suspension of newspaper containing seditious matter.
68. Power of Court to prohibit circulation of seditious publications.

### **CHAPTER VIII-GENOCIDE**

69. Genocide.

### **CHAPTER IX-OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY**

70. Defamation of foreign princes.
71. Foreign enlistment.
72. Piracy.
73. Hijacking.
74. Other offences committed in the course of hijacking.
75. Aircraft operated by joint or international organisation.
76. Aircraft sabotage.
77. Prosecution of offences.
78. Definition of State.

### **CHAPTER X-UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY**

79. Unlawful society.
80. Managing unlawful society.
81. Being member of unlawful society.
82. Prosecutions under sections 80 and 81.
83. Power of entry, arrest, search, etc.
84. Declaration by Minister.
85. Forfeiture of insignia, etc.
86. Definition of unlawful assembly and riot.
87. Punishment of unlawful assembly.
88. Punishment of riot.
89. Making proclamation for rioters to disperse.
90. Dispersion of rioters after proclamation made.
91. Rioting after proclamation.
92. Preventing or obstructing the making of proclamation.

93. Rioters, demolishing buildings, etc.
94. Rioters damaging buildings, machinery, etc.
95. Riotously interfering with railway, vehicle or vessel.
96. Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse.
97. Prohibition on manufacture, sale, etc. of flick knives, gravity knives and knuckle dusters.
98. Going armed in public.
99. Forcible entry.
100. Forcible detainer.
101. Affray.
102. Challenge to fight a duel.
103. Threatening violence.
104. Assembling for the purpose of smuggling.
105. Throwing or projecting objects.

*Division II-Offences Against the Administration of Lawful Authority*

**CHAPTER XI-CORRUPTION AND THE ABUSE OF OFFICE**

106. Official corruption.
107. Extortion by public officers.
108. Public officers receiving property to show favour.
109. Officers charged with administration of property of a special character or with special duties.
110. False claims by officials.
111. Abuse of office.
112. False certificates by public officers.
113. Unauthorised administration of oaths.
114. False assumption of authority.
115. Personating public officers.
116. Threats of injury to persons employed in public service.

**CHAPTER XII-PERJURY AND FALSE STATEMENTS AND DECLARATIONS**

117. Perjury.
118. False statements on oath made otherwise than in a judicial proceeding.
119. False statements, etc. with reference to marriage.
120. False statements, etc. as to births or deaths.
121. False statutory declarations and other false statements without oath.
122. False declarations, etc. to obtain registration, etc. for carrying on a vocation.
123. Aiders abettors, suborners, etc.
124. Corroboration.
125. Fabricating evidence.
126. Inconsistent or contradictory statements.
127. Proof of certain proceedings on which perjury is assigned.
128. Forms and ceremonies of oath immaterial.

**CHAPTER XIII-OTHER OFFENCES RELATING TO THE  
ADMINISTRATION OF JUSTICE**

129. Deceiving witnesses.
130. Destroying evidence.
131. Conspiracy to defeat justice and interference with witnesses.

- 132. Compounding felonies.
- 133. Compounding penal actions.
- 134. Advertisements for stolen property.
- 135. Corruptly taking a reward.
- 136. Offences relating to judicial proceedings.

#### **CHAPTER XIV-RESCUES AND ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW**

- 137. Rescue.
- 138. Escape.
- 139. Aiding prisoners to escape.
- 140. Removal, etc. of property under lawful seizure.
- 141. Obstructing court officers.

#### **CHAPTER XV-MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY**

- 142. Frauds and breaches of trust by persons employed in the public service.
- 143. False information to public servant.
- 144. Disobedience of lawful orders.

#### *Division III-Offences injurious to the public in general*

#### **CHAPTER XVI-OFFENCES RELATING TO RELIGION**

- 145. Insult to religion of any class.
- 146. Disturbing religious assemblies.
- 147. Trespassing on burial places.
- 148. Writing or uttering words with intent to wound religious feelings.

#### **CHAPTER XVII-OFFENCES AGAINST MORALITY**

- 149. Definition of rape.
- 150. Punishment of rape.
- 151. Attempted rape.
- 152. Abduction.
- 153. Abduction of girl under eighteen years of age with intent to have carnal-knowledge.
- 154. Indecent assaults on and indecently insulting or annoying females.
- 155. Defilement of girl under thirteen years of age.
- 156. Defilement of girl between thirteen and sixteen years of age. Defilement of idiots or imbeciles.
- 157. Prostitution.
- 158. Procuring defilement of women by threats, fraud or drugs.
- 159. Householder permitting defilement of girl under thirteen years of age on his premises.
- 160. Householder permitting, defilement of girl under sixteen years of age on his premises.
- 161. Detention of female in brothel or elsewhere.
- 162. Selling minors under the age of sixteen years for immoral purposes.
- 163. Buying minors under the age of sixteen years for immoral purposes.
- 164. Power of search.
- 165. Authority of court as to custody of girls.

166. Male person living on earnings of prostitution or persistently soliciting.
167. Women living on earnings of prostitution or aiding, etc. for gain prostitution of another woman.
168. Loitering or soliciting for the purposes of prostitution.
169. Suspicious premises.
170. Brothels.
171. Conspiracy to defile,
172. Attempts to procure abortion.
173. Abortion by woman with child.
174. Supplying drugs or instruments to procure abortion.
175. Unnatural offences.
176. Attempts to commit unnatural offences and indecent assaults.
177. Indecent practices between males.
178. Incest by males.
179. Incest by females.
180. Test of relationship.
181. Sanction of Director of Public Prosecutions.
182. Knowledge of age of female immaterial.
183. Definition of carnal knowledge.

#### **CHAPTER XVIII-OFFENCES RELATING TO MARRIAGE**

184. Fraudulent pretence of marriage.
185. Bigamy.
186. Marriage ceremony fraudulently gone through without lawful marriage.

#### **CHAPTER XIX-NUISANCES AND OTHER MISCELLANEOUS OFFENCES**

187. Common nuisance.
188. Traffic in obscene publications.
189. Offences in connexion with street and house to house collections.
190. Unlawful use of locomotives, etc.
191. Inciting dogs to attack.
192. Wearing, of uniform without authority prohibited.
193. Negligent spreading of disease.
194. Adulteration of food.
195. Sale of noxious food or drink.
196. Fouling air.
197. Criminal trespass.

#### *Division IV-Offences against the person*

#### **CHAPTER XX-MURDER AND MANSLAUGHTER**

198. Manslaughter.
199. Murder.
200. Punishment of murder.
201. Punishment of manslaughter.
202. Malice aforethought.
203. Killing on provocation.
204. Provocation defined.
205. Infanticide.

- 206. Causing death defined.
- 207. When child deemed to be a person.
- 208. Limitation as to time of death.

#### **CHAPTER XXI-DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH**

- 209. Responsibility of person who has charge of another.
- 210. Duty of head of family.
- 211. Duty of masters.
- 212. Duty of persons doing dangerous acts.
- 213. Duty of persons in charge of dangerous things.

#### **CHAPTER XXII-OFFENCES CONNECTED WITH MURDER AND SUICIDE**

- 214. Attempt to murder.
- 215. Attempt to murder by convict.
- 216. Accessory after the fact to murder.
- 217. Conspiracy to murder.
- 218. Suicide to cease to be offence.
- 219. Liability for complicity in another's suicide.
- 220. Concealing the birth of children.
- 221. Killing unborn child.

#### **CHAPTER XXIII-OFFENCES ENDANGERING LIFE AND HEALTH**

- 222. Disabling in order to commit felony or misdemeanour.
- 223. Stupefying in order to commit felony or misdemeanour.
- 224. Acts intended to cause grievous harm or to prevent arrest.
- 225. Preventing escape from wreck.
- 226. Intentionally endangering safety of persons travelling by railway.
- 227. Grievous harm.
- 228. Placing explosive with intent.
- 229. Maliciously administering poison with intent to harm.
- 230. Unlawful wounding.
- 231. Unlawful poisoning.
- 232. Witchcraft and sorcery.
- 233. Failure to supply necessaries.
- 234. Surgical operation.
- 235. Excess of force.
- 236. Consent.

#### **CHAPTER XXIV-CRIMINAL RECKLESSNESS AND NEGLIGENCE**

- 237. Reckless or negligent acts.
- 238. Causing death by dangerous driving.
- 239. Other negligent acts causing harm.
- 240. Negligent dealing with poisons.
- 241. Endangering safety of persons travelling by railway.
- 242. Exhibition of false light, mark or buoy.

243. Conveyance by unsafe or overloaded vessel.

## **CHAPTER XXV-ASSAULTS**

244. Common assault.

245. Assault causing actual bodily harm.

246. Assaults on magistrates and other persons protecting wreck.

247. Assaults punishable with five years' imprisonment.

## **CHAPTER XXVI-OFFENCES AGAINST LIBERTY**

248. Definition of kidnapping and abduction.

249. Punishment for kidnapping.

250. Kidnapping or abducting in order to murder.

251. Kidnapping or abducting with intent to confine person.

252. Kidnapping or abducting with intent to harm.

253. Wrongfully concealing kidnapped person.

254. Child stealing.

255. Abduction of girls under sixteen.

256. Punishment for wrongful confinement.

257. Unlawful compulsory labour.

### *Division V-Offences relating to property*

## **CHAPTER XXVII-LARCENY, EMBEZZLEMENT AND CONVERSION**

258. Things capable of being stolen.

259. Definition of theft.

260. Stealing and embezzlement by co-partners, etc.

261. Husband and wife.

262. General punishment for theft.

263. Larceny of will.

264. Larceny of documents of title and legal documents.

265. Larceny of electricity.

266. Larceny of ore.

267. Larceny of postal packets.

268. Embezzlement by officer of post office.

269. Definitions relating to larceny and embezzlement of postal packets.

270. Larceny in dwelling-house.

271. Larceny from the person.

272. Larceny from ship, dock, etc.

273. Larceny by tenant or lodger.

274. Larceny and embezzlement by clerks or servants.

275. Larceny of cattle.

276. Larceny of dogs.

277. Larceny of creatures.

278. Larceny of fish.

279. Conversion.

## **CHAPTER XXVIII-STEALING AND DAMAGING TREES, FIXTURES, ETC.**

- 280. Larceny of trees.
- 281. Larceny of fences.
- 282. Larceny of fruit and vegetables.
- 283. Damaging fixtures, trees, etc., with intent to steal.

#### **CHAPTER XXIX-OTHER OFFENCES ALLIED TO STEALING**

- 284. Fraudulent destruction of documents.
- 285. Fraudulent destruction of documents of title.
- 286. Fraudulent destruction of wills.
- 287. Fraudulent destruction of record, writ, etc.
- 288. Miners removing ore.
- 289. Killing animals with intent to steal.
- 290. Larceny of or dredging for oysters.
- 291. Factor, obtaining, advances on the property of their principals.
- 292. Unlawful use of vehicles, animals, etc.

#### **CHAPTER XXX-ROBBERY AND EXTORTION**

- 293. Robbery.
- 294. Demanding money etc. with menaces.
- 295. Demanding with menaces with intent to steal.
- 296. Extortion.

#### **CHAPTER XXXI-BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES**

- 297. Definition of breaking and entering.
- 298. Sacrilege.
- 299. Burglary.
- 300. Housebreaking and committing felony.
- 301. Entering a magazine with intent.
- 302. Housebreaking with intent to commit felony.
- 303. Possession of housebreaking implements.
- 304. Forfeiture of housebreaking instruments.

#### **CHAPTER XXXII-FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST, AND FALSE ACCOUNTING**

- 305. Conversion by trustee.
- 306. Directors destroying books, etc.
- 307. Fraudulent falsification of accounts.

#### **CHAPTER XXXIII-FALSE PRETENCES**

- 308. Definition of false pretence.
- 309. False pretences.
- 310. Obtaining credit, etc., by false pretences.
- 311. Obtaining registration by false pretence.

312. False declaration for passport.

### **CHAPTER XXXIV-RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES**

313. Receiving.

314. Receiving goods stolen outside Fiji.

315. Evidence on charge of receiving stolen property.

316. Compulsory disclosures not to afford evidence.

#### *Division VI-Malicious Injuries to Property*

### **CHAPTER XXXV-OFFENCES CAUSING INJURY TO PROPERTY**

317. Arson.

318. Attempts to commit arson.

319. Setting fire to crops, etc.

320. Attempting to set fire to crops. etc.

321. Casting away vessels.

322. Attempts to cast away vessels.

323. Injuring animals.

324. Other malicious injuries-general and special punishments.

325. Attempts to destroy property by explosives.

326. Spreading infectious disease among animals.

327. Removing boundary marks with intent to defraud.

328. Wilful damage, etc. to survey and boundary marks.

329. Penalties for damage, etc. to railway works.

330. Criminal Intimidation.

#### *Division VII-Forgery, coining, counterfeiting and similar offences*

### **CHAPTER XXXVI-INTERPRETATION**

331. Definitions for purposes of sections relating to forgery, etc.

332. Definition of forgery.

333. False document.

334. Intent to defraud.

### **CHAPTER XXXVII-PUNISHMENT FOR FORGERY**

335. Forgery of certain documents with intent to defraud.

336. Forgery with intent to defraud or deceive.

337. Making false entries in the books of the Chief Accountant.

338. Forging copies of certificates of records.

339. Forging registers of births, etc.

340. Making false entries in copies of register sent to registrar.

341. Forgery of other documents.

342. Forgery of seals and dies.

343. Uttering.

344. Uttering cancelled documents.

- 345. Demanding property on forged document.
- 346. Possession of forged documents, seals and dies.
- 347. Possession of paper or implements for forgery.
- 348. Possession of revenue paper, etc.
- 349. Falsifying warrants for money.
- 350. Procuring execution of document by false pretences.
- 351. Letter written for another to be signed by writer.

#### **CHAPTER XXXVIII-OFFENCES RELATING TO COIN, AND BANK AND CURRENCY NOTES**

- 352. Definitions.
- 353. Counterfeiting.
- 354. Gilding, silvering, filing and altering coin.
- 355. Imparting coin and possession of filing, etc.
- 356. Uttering and possession with intent to utter counterfeit coin.
- 357. Buying or selling counterfeit coin.
- 358. Importing and exporting counterfeit coin.
- 359. Possession of medals resembling coin.
- 360. Making, mending and having possession of coining implements.
- 361. Breaking up coin suspected to be counterfeit.
- 362. Evidence of coin being counterfeit.
- 363. Defacing and uttering defaced coin.
- 364. Melting down of currency.
- 365. Mutilating or defacing currency notes.
- 366. Imitation of currency.
- 367. Evidence of counterfeiting, etc.
- 368. Forfeiture of forged bank notes, currency notes. etc.

#### **CHAPTER XXXIX-PERSONATION**

- 369. General penalty for personation.
- 370. Falsely making acknowledgement.
- 371. Personation of a person named in a certificate.
- 372. Lending, etc. certificate for personation.
- 373. Personation of person named in a testimonial of character.
- 374. Lending, etc. testimonial for personation.

#### **CHAPTER XL-SECRET COMMISSIONS AND CORRUPT PRACTICES**

- 375. Interpretation for purposes of sections dealing with corrupt practices, etc.
- 376. Corrupt practices.
- 377. Secret commission on Government contracts.
- 378. Presumption as to corrupt practices.
- 379. Consent to prosecution.

*Division VIII-Attempts and conspiracies to Commit Crimes, and Accessories After the Fact*

#### **CHAPTER XLI-ATTEMPTS**

- 380. Attempt defined.
- 381. Attempts to commit offences.
- 382. Punishment of attempts to commit certain felonies.
- 383. Soliciting or inciting others to commit offence in Fiji or elsewhere.
- 384. Neglect to prevent felony.

## CHAPTER XLII-CONSPIRACIES

- 385. Conspiracy to commit felony.
- 386. Conspiracy to commit misdemeanour.
- 387. Other conspiracies.

## CHAPTER XLIII-ACCESSORIES AFTER THE FACT

- 388. Definition of accessories after the fact.
- 389. Punishment of accessories after the fact to felonies.
- 390. Punishment of accessories after the fact to misdemeanours.

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## AN ACT TO ESTABLISH A CODE OF CRIMINAL LAW

*Ordinances Nos. 18 of 1944, 29 of 1945, 9 of 1946, 11 of 1948, 21 of 1950,  
23 of 1951, 24 of 1952, 31 of 1954, 9 of 1955, 25 of 1957, 30 of 1958,  
6 of 1959, 16 of 1960, 40 of 1960, 50 of 1961, 16 of 1966, 17 of 1966,  
37 of 1966, 12 of 1969, 25 of 1969, 8 of 1970,  
Orders 7<sup>th</sup> October 1970\*, 4th November 1970†,  
Acts Nos. 11 of 1971, 8 of 1972, 28 of 1972, 15 of 1973, 14 of 1975,  
4 of 1976, 24 of 1976, 34 of 1976, 13 of 1977, 20 of 1977, 4 of 1979*

\* See Legal Notice No. 112 of 1970  
† See Legal Notice No. 118 of 1970.

[1 May 1945]

## PART I-GENERAL PROVISIONS

### CHAPTER I-PRELIMINARY

#### *Short title*

1. This Act (hereinafter referred to as this Code) may be cited as the [Penal Code](#).

#### *Saving of certain laws*

2. Except as hereinafter expressly provided nothing in this Code shall affect-
  - (a) the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Fiji other than this Code; or

(b) the liability of a person to be tried or punished for an offence under the provisions of any law in force in Fiji relating to the jurisdiction of the courts of Fiji in respect of acts done beyond the ordinary jurisdiction of such courts; or  
(Amended by Order\* 7th October 1970.)

(c) the power of any court to punish a person for contempt of such court; or

(d) the liability or trial of a person, or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

(e) any power of Her Majesty, or of the Governor-General as the representative of Her Majesty, to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or  
(Amended by Order\* 7th October 1970.)

(f) any of the Statutes, Acts, Regulations or Articles for the time being in force for the government of Her Majesty's military or naval or air forces, or the military or police forces of Fiji:

Provided that if a person does an act which is punishable under this Code and is also punishable under another Act or Statute of any of the kinds mentioned in this section, he shall not be punished for that act both under that Act or Statute and also under this Code.

\* See Legal notice No. 112 of 1970

† See: Legal Notice No. 118 of 1970

## CHAPTER II - INTERPRETATION

### *General rule of construction*

3. This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and, except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

### *Definition of certain expressions and terms*

4. In this Code unless the context otherwise requires-

"court" means a court of competent jurisdiction;

"dangerous harm" means any harm endangering life;

"document of title to goods" includes any bill of lading, India warrant, dock warrant, warehousekeeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to;

"document of title to lands" includes any deed, map, roll, register, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate or to any interest in or out of any real estate and includes an instrument under the [Land Transfer Act](#); (*Cap. 131*)

"dwelling-house" includes any building or structure\* or vessel or part of a building or structure\* or vessel which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house if there is a communication between such building or structure and the dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other, but not otherwise;

\*Inserted Act No. 15 of 1973.

"felony" means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more;

"grievous harm" means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

"harm" means any bodily hurt, disease or disorder whether permanent or temporary;

"judicial proceeding" includes any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person, in which evidence may be taken on oath;

"knowingly" used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

"local authority" means a local authority established under any\* Act;

†Amended by Order 8th October, 1970.

"mail" includes every conveyance by which postal packets are carried, whether it be a vessel, car, coach, cart, horse or any other conveyance, and also a person employed in conveying or delivering postal packets, and also any vessel employed by or under the post office for the transmission of postal packets by contract, or otherwise in respect of postal packets transmitted by the vessel;

"mail bag" includes a bag, box, parcel or any other envelope or covering in which postal packets in course of transmission by post are conveyed, whether it does or does not contain any such packet;

"maim" means the destruction or permanent disabling of any external or internal organ, member or sense;

"misdemeanour" means any offence which is not treason or a felony;

"money" includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

"night" or "night-time" means the interval between half-past six o'clock in the evening and half-past six o'clock in the morning;

"oath" includes affirmation or declaration and "swear" includes affirm or declare;

"offence" is an act, attempt or omission punishable by law;

"officer of the post office" includes the \*Permanent Secretary for Posts and Telecommunications and any person employed in any business of the post office, whether employed by the \*Permanent Secretary by any person under him or on behalf of the post office;

\*Amended by Order 19<sup>th</sup> November 1971.

"Person" and "owner", and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include Her Majesty;

"person employed in the public service" means any person holding any of the following offices or performing the duty hereof, whether as a deputy or otherwise, namely

(i) any civil office including the office of †Governor-General the power of appointing a person to which or of removing from which is vested in Her Majesty or in the †Governor-General in a †Minister or in any public Commission or Board; or  
† Amended by Order 8th October, 1970 and by Act 14 of 1975.

(ii) any office to which a person is appointed or nominated under the provisions of any Act or by election; or

(iii) any civil office, the power of appointing to which or removing from which is vested in any person or persons holding an office of any kind included in either of paragraphs (i) or (ii); or

(iv) any office of arbitrator or umpire in any proceeding or matter submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act;

and the said term further includes-

(i) a justice of the peace;

(ii) a member of a commission of inquiry appointed under or in pursuance of any Act;

(iii) any person employed to execute any process of a court;

(iv) all persons belonging to the military forces of Fiji;

(v) all persons in the employment of any government department;

(vi) all persons in the employ of the Fijian Affairs Board;

(vii) a person acting as a minister of religion of whatsoever denomination, in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or

certificate of marriage, birth, baptism, death or burial, but not in any other respect;

(viii) a person in the employ of a local authority;

"possession"-

(a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;

(b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

"postal packet" means a letter, postcard, lettercard, newspaper, book, packet, printed paper, pattern or sample packet, small packet or parcel and every other packet or article when in course of transmission by post and shall include a telegram when conveyed by post;

*(Substituted by 37 of 1966, s. 5.)*

"property" includes any description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

"public" refers not only to all persons within Fiji, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

"public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

\*"public place" or "public premises" means-

(a) any highway, public street, public road, public park or garden, sea beach, river, public bridge, wharf, jetty, lane, footway, square, court, alley or passage whether a thoroughfare or not; or

(b) any-

(i) land or open space, whether such land or space is closed or unenclosed; and

(ii) place or building of public resort, other than a dwelling house,

to which for the time being the public have or are permitted to have access whether on payment or otherwise;

\*Replaced by Act No. 11 of 1971.

"publicly" when applied to acts done, means either-

(a) that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or

(b) that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

\*"severe subnormality" means a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or guarding himself against sources of exploitation or will be so incapable when of an age to do so;

\*Inserted by Ordinance No. 12 of 1969.

"trustee" means a trustee on some express trust created by some deed, will, or instrument in writing, and includes the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official receiver, assignee, liquidator or other like officer acting under any present or future †Act relating to companies or bankruptcy;

† Amended by Order 8th October, 1970.

"utter" includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question;

"valuable security" includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any country or territory of the Commonwealth, or any territory which is under Her Majesty's protection or in respect of which a trusteeship agreement has been entered into by Her Majesty, or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without any country or territory of the Commonwealth, or any territory which is under Her Majesty's protection or in respect of which a trusteeship agreement has been entered into by Her Majesty, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order or other security for the payment of money, or any authority or request for the payment of money or for the delivery or transfer of goods or chattels, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal, and any document of title to lands or goods;

*(Amended by 37 of 1966, s. 5.)*

"vessel" includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters, and includes aircraft;

"wound" means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

### **CHAPTER III-TERRITORIAL APPLICATION OF THIS CODE**

*Extent of jurisdiction of Fiji Courts*

**5.** The jurisdiction of the courts of Fiji for the purposes of this Code extends to every place within Fiji or within \*the internal waters, archipelagic waters and territorial seas thereof.

\*Amended by 20 of 1977 s.2.

*Offences committed partly within and partly beyond the jurisdiction*

**6.** When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

**CHAPTER IV-GENERAL RULES AS TO CRIMINAL RESPONSIBILITY**

*Ignorance of law*

**7.** Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

*Bona fide claim of right*

**8.** A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

*Intention and motive*

**9.**(1) Subject to the express provision of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention is immaterial so far as regards criminal responsibility.

*Mistake of fact*

**10.** A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

*Presumption of sanity*

**11.** Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

*Insanity*

**12.** A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or knowing that he ought not to do the act or make the omission.

But a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

*Intoxication*

**13.**-(1) Save as provided in this section, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and-

(a) the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3) Where the defence under subsection (2) is established, then in a case falling under paragraph (a) thereof the accused shall be discharged, and in a case falling under paragraph (b) the provisions of this Code and of the [Criminal Procedure Code](#) relating to insanity shall apply.

(*Cap. 21*)

(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5) For the purpose of this section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

*Immature age*

**14.**-(1) A person under the age of \*ten years is not criminally responsible for any act or omission.  
\*Amended by Ordinance No. 12 of 1969.

(2) A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know

that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

#### *Judicial officers*

**15.** Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

*(Amended by 9 of 1946, s. 2.)*

#### *Compulsion*

**16.** A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

#### *Defence of person or property*

**17.** Subject to any express provisions in this Code or any other law in operation in Fiji, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of English common law.

#### *Use of force in effecting arrest*

**18.** Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the apprehension of such person, have regard to the gravity of the offence which had been or was being committed by such person and the circumstances in which such offence had been or was being committed by such person.

#### *Compulsion by husband*

**19.** A married woman is not free from criminal responsibility of doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but, on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

#### *Person not to be punished twice for same offence*

**20.** A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may

be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

## CHAPTER V-PARTIES TO OFFENCES

### *Principal offenders*

**21.**-(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say-

- (a) every person who actually does the act or makes the omission which constitutes the offences;
- (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
- (c) every person who aids or abets another person in committing the offence;
- (d) any person who counsels or procures any other person to commit the offence.

In the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

(2) A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(3) Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

### *Offences committed by joint offenders in prosecution of common purpose*

**22.** When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

### *Counselling another to commit an offence*

**23.** When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

If the facts constituting the offence actually committed are not a probable consequence of carrying out the counsel, the person who gave the counsel is not deemed to be responsible.

## CHAPTER VI-PUNISHMENTS

### *Sentence of death*

**\*24.**-(1) When any person is sentenced to death, the form of sentence shall be to the effect only that he is to -suffer death in the manner authorised by law".  
(*Substituted by 6 of 1959, s. 2.*)

(2) A certificate under the hand of the Chief Registrar or other officer of the court that sentence of death has been passed, and naming the person condemned, shall be sufficient authority for the detention of such person.

\*Sections 24, 25 and 27 and subsections (2) and (3) of section 26 substituted by Ordinance No. 21 of 1950.

### *Persons under 18 not to be sentenced to death*

**\*25.**-(1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the †Governor-General's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the †Governor-General may direct, and whilst so detained shall be deemed to be in legal custody.  
(*Amended by 24 of 1952, s. 2, 17 of 1966, s. 2, and 28 of 1972 s. 2.*)

(2) When a person has been sentenced to be detained during the †Governor-General's pleasure under subsection (1) the presiding judge shall forward to the †Governor-General a copy of the notes of evidence taken on the trial, with a report in writing signed by him containing any recommendation or observations on the case he may think fit to make.

(3) Any person so detained as aforesaid may at any time be discharged by the †Governor-General on licence. Such licence may be in such form and may contain such conditions as the †Governor-General may direct and may at any time be revoked or varied by the †Governor-General.

Where a licence has been revoked the person to whom the licence relates shall return to such place as the †Governor-General may direct and if he fails to do so may be apprehended without warrant and taken to that place.

\*Sections 24, 25 and 27 and subsections (2) and (3) of section 26 substituted by Ordinance No. 21 of 1950.

†Amended by Order 8th October, 1970.

### *Record and report to be sent to Governor-General*

**26.**-(1) As soon as possible after action has been taken in accordance with the provisions of subsection (6) of section 88 of the Constitution, the Commission on the Prerogative of Mercy shall communicate to the presiding judge or his successor in office the terms of any decision reached by the Governor-General under such provisions and such judge shall cause the tenor and substance thereof to be entered in the records of the Court.

\*(2) The †Governor-General shall issue a death warrant, or an order for the sentence of death to be commuted, or a pardon, under his hand and the public seal of Fiji, to give effect to the said decision. If the sentence of death is to be carried out, the warrant shall state that the person to be executed shall be hanged by the neck until he is dead, and the place where and the time when the execution is to be had, and shall give directions as to the place of burial or cremation of the body of the person executed. If the sentence is commuted for any other punishment the order shall specify that punishment. If the person sentenced is pardoned, the pardon shall state whether it is free, or to what conditions, if any, it is subject:

*(Amended by 6 of 1959, s. 3.)*

Provided that the †Governor-General's warrant may direct that the execution shall take place at such time and at such place and that the body of the person executed shall be buried or cremated at such place, as shall be appointed by some officer specified in the warrant.

\*(3) The warrant or order, or pardon of the †Governor-General shall be sufficient authority in law to all persons to whom the same is directed to execute the sentence of death or other punishment awarded, and to carry out the directions therein given in accordance with the terms thereof.

\*Sections 24, 25 and 27 and subsections (2) and (3) of section 26 substituted by Ordinance No. 21 of 1950.

†Amended by Order 8th October, 1970.

*Procedure where woman convicted of capital offence alleges she is pregnant*

\*27.-(1) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom she is convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by the trial judge.

(2) The question whether the woman is pregnant or not shall be determined by the judge on such evidence as may be laid before him on the part of the woman or on the part of the Crown, and the judge shall find that the woman is not pregnant unless it is proved affirmatively to his satisfaction that she is pregnant.

(3) Where a woman convicted of an offence punishable with death is found in accordance with the preceding provisions of this section to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of sentence of death.

\*Sections 24, 25 and 27 and subsections (2) and (3) of section 26 substituted by Ordinance No. 21 of 1950.

*Imprisonment*

28.-(1) No person shall be sentenced by a court to imprisonment with hard labour; and every enactment conferring power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed immediately before the date of coming into force of this section; and so far as any enactment required or permits prisoners to be kept to hard labour it shall cease to have effect.

*(Substituted by 25 of 1957, s. 3.)*

(2) A person liable to imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or instead of imprisonment.

(4) Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence.

(5) A warrant under the hand of the judge or magistrate by whom any person is sentenced to imprisonment, ordering that the sentence be carried out in any prison within Fiji, shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant, not being a sentence of death. Subject to the provisions of this section every sentence shall be deemed to commence from and to include the whole of the day on which it was pronounced except where otherwise provided in this Code or otherwise ordered by the court.

*\*Suspended sentences of imprisonment*

**29.**-(1) A court which passes a sentence of imprisonment for a term of not more than two years for an offence, may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year nor more than three years from the date of the order, the offender commits in Fiji another offence punishable with imprisonment and thereafter a court having power to do so orders under the provisions of section **30** that the original sentence shall take effect; and in this and in sections **30**, **31** and **32** "operational period" in relation to a suspended sentence means the period so specified in the order.

(2) A court which passes a suspended sentence on any person for an offence shall not make a probation order in his case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(3) A court which passes a sentence of imprisonment for a term of not more than six months in respect of one offence shall not make an order under the provisions of subsection (1) where-

(a) the act or any of the acts constituting that offence consisted of an assault on or threat of violence to another person or of having or possessing a firearm, an imitation firearm, an explosive or an offensive weapon or of indecent conduct with or towards a person under the age of sixteen years;

(b) that offence is one in respect of which a probation order or order for conditional discharge was originally made or the offender was subject to such order at the time of committing the offence; or

(c) on the occasion on which a sentence is passed for that offence, the court passes or proposes to pass a sentence of immediate imprisonment on the offender for another offence which the court is not required to suspend.

(4) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under the provisions of section **30** if during the operational period he commits an offence

punishable with imprisonment.

(5) Subject to any provision contained in any written law-

(a) a suspended sentence which has not taken effect under the provisions of section 30 shall be treated as a sentence of imprisonment for the purposes of any written law which provides for disqualification for or loss of office or forfeiture of office of persons sentenced to imprisonment; and

(b) where a suspended sentence has taken effect under the provisions of section 30, the offender shall be treated for the purpose of such written law as having been convicted on the ordinary date on which the period allowed for making an appeal against an order under that section expires or, if such an appeal is made, the date on which it is finally disposed of, or abandoned or fails for non-prosecution.

\* Inserted by Ordinance No. 12 of 1969

*\*Power of court on conviction of further offence to deal with suspended sentence*

**30.**-(1) Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he was convicted by or before a court having power under the provisions of section 31 to deal with him in respect of the suspended sentence or who subsequently appears or is brought before a court, then, unless the sentence has already taken effect, that court shall consider his case and deal with him by one of the following methods-

(a) the court may order that the suspended sentence shall take effect with the original term unaltered;

(b) it may order that the sentence shall take effect with the substitution of a lesser term for the original term;

(c) it may by order vary the original order made under the provisions of subsection (1) of section 29 by substituting for the period specified therein a period expiring not later than three years from the date of the variation; or

(d) it may make any order with respect to the suspended sentence, and a court shall make an order under paragraph (a) unless the court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent, offence and, where it is of that opinion, the court shall state its reasons.

(2) Where a court orders that a suspended sentence shall take effect with or without any variation of the original term, the court may order that that sentence shall take effect immediately or that the term thereof shall commence on the expiry of another term of imprisonment passed on the offender by that or any other court.

(3) For the purposes of any written law conferring rights of appeal in criminal cases, any order made by a court under the provisions of subsection (1) shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

\* Inserted by Ordinance No. 12 of 1969

*\*Court by which suspended sentence is to be dealt with*

**31.**-(1) An offender shall be dealt with in respect of a suspended sentence by the Supreme Court or, where the sentence was passed by a magistrate's court, by any magistrate's court before which he appears or is brought.

(2) Where an offender is convicted by a magistrate's court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Supreme Court-

(a) the court may, if it thinks fit, commit him in custody or on appeal to the Supreme Court; and

(b) if it does not, shall give written notice of the conviction to the Clerk of the Court by which the suspended sentence is passed.

(3) For the purposes of this and section 32 a suspended sentence passed on an offender on appeal shall be treated as having been passed by the court by which he was originally sentenced.

\* Inserted by Ordinance No. 12 of 1969

*\*Discovery of further offences*

**32.**-(1) If it appears to a judge or a magistrate on whom jurisdiction is conferred by subsection (2) that an offender has been convicted in Fiji of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that it has not been dealt with in respect of this suspended sentence, the judge or magistrate may issue a summons requiring the offender to appear at the place and time specified therein or may issue a warrant for his arrest.

(2) The following persons shall have jurisdiction for the purpose of subsection (1):-

(a) if the suspended sentence was passed by the Supreme Court, a judge of that court;

(b) if the suspended sentence was passed by a magistrate's court, any magistrate.

\* Inserted by Ordinance No. 12 of 1969

*\*Minimum period on sentence of imprisonment for life*

**33.** Whenever a sentence of imprisonment for life is imposed on any convicted person the judge who imposes the sentence may recommend the minimum period which he considers the convicted person should serve.

\*Inserted by Act No. 28 of 1972.

*Corporal punishment*

†**34.**-(1) A sentence of corporal punishment shall be to suffer corporal punishment once only and shall specify the number of strokes which shall not exceed ‡twelve in any case.

‡Inserted by Ordinance No. 12 of 1969.

(2) No sentence of corporal punishment shall be carried out unless it has been confirmed by the Supreme Court, and no such sentence shall be executed publicly or by instalments.

(3) The following provisions shall govern the carrying out of a sentence of corporal punishment-

(a) where the person sentenced to corporal punishment signs a statement that he does not intend to appeal against conviction or sentence, his right to appeal shall be deemed to have been abandoned and shall, notwithstanding the provisions of any other written law, thereon cease, and the sentence shall be carried out forthwith after it has been confirmed by the Supreme Court under the provisions of subsection (2);  
§Inserted by Act No. 15 of 1973

(b) where the person so sentenced does not sign such a statement and does not appeal against his conviction or sentence within the period prescribed by law, such sentence shall be carried out forthwith after it has been confirmed by the Supreme Court under the provisions of subsection (2);

(c) where the person so sentenced appeals against conviction or sentence and such sentence is upheld on appeal, such sentence shall be carried out within fourteen days of the determination of the appeal;  
(Amended by 37 of 1966, s. 5).

(d) the period of fourteen days prescribed in paragraph (c) may be extended by the Supreme Court if it is satisfied that the sentence of corporal punishment could not be carried out within such period owing to the accused's physical state or wilful act or omission;

(e) if there is an appeal in a case in which corporal punishment has been awarded, it shall be determined with as much expedition as practicable;

(f) In no circumstances whatsoever shall a sentence of corporal punishment be carried out after the expiration of whichever of the following periods from the date of passing sentence is applicable-

(i) where the sentence was passed by the Supreme Court, six months;

(ii) where the sentence was passed by a Magistrate's Court, three months.

(Subsection substituted by 16 of 1960, s. 2 and amended by 4 of 1976, s. 3 and 24 of 1976, s. 2.)

(4) No sentence of corporal punishment shall be passed upon any of the following persons:-

(a) females;

(b) males sentenced to death;

(c) males whom the court considers to be more than thirty-five years of age;

(d) persons under the age of seventeen years.

(Amended by 17 of 1966, s. 3, 12 of 1969, s. 5, and 28 of 1972, s. 2)

(5) Where a person is convicted at one trial of two or more distinct offences any two or more of which are punishable by corporal punishment under the provisions of this Code or any other Act, the

combined sentences of corporal punishment awarded by the court shall not exceed, twelve strokes.  
(Amended by Ordinance 12 of 1969, s. 5)

(6) In determining the age of an offender for the purposes of this section the court may in the absence of direct evidence or medical testimony of age adjudge such age according to the appearance of the offender.

(7) A sentence of corporal punishment shall not be carried out except in the presence of a medical officer or a duly qualified medical practitioner, nor before such medical officer or practitioner has after examination certified that in his opinion the prisoner is physically fit to undergo the sentence of corporal punishment about to be inflicted upon him.

(8) The medical officer or practitioner may at any time during the carrying out of the sentence of corporal punishment intervene and prohibit the remainder of the sentence from being carried out if in his opinion the prisoner is unable to bear such sentence without risk of grave or permanent injury.

(9) If any person has been sentenced to corporal punishment, and such sentence is, wholly or partially, prevented from being carried out, such person shall be kept in custody, and shall as soon as possible be taken before the court which passed the sentence of corporal punishment and such court shall either remit such sentence or substitute for such sentence, or the balance thereof, any sentence to which such person might have been liable.

(Amended by 16 of 1960, s. 2.)

(10) An offender sentenced to undergo corporal punishment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect, or for ascertaining whether the same shall be carried into effect.

(11) A sentence of corporal punishment shall be carried out with an instrument of a size and pattern approved by the \*Minister.

†Sections 34 to 39 substituted by Ordinance No, 21 of 1950.

\* Amended by Order 8th October, 1970.

### *Fines*

**\*35.**-(1) Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply:

- (a) Where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive;
- (b) Where the sum to which the fine may amount is expressed, any lesser fine may be imposed;
- (c) In the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court;
- (d) In the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with a fine only in which the offender is sentenced to a fine the court passing sentence may, in its discretion-

- (i) direct by its sentence that in default of payment of the fine the

offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

(ii) issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant.

(2) The term of imprisonment to which a person may be sentenced by a court in default of payment of a fine shall be such term as in the opinion of the court will satisfy the justice of the case but shall not exceed the maximum fixed by the following scale:-

<i>Amount</i>	<i>Maximum period</i>
†Not exceeding \$2	7 days
Exceeding \$2 but not exceeding \$4	14 days
Exceeding \$4 but not exceeding \$20	6 weeks
Exceeding \$20 but not exceeding \$40	2 months
Exceeding \$40 but not exceeding \$80	3 months
Exceeding \$80 but not exceeding \$150	4 months
Exceeding \$150 but not exceeding \$300	6 months
Exceeding \$300	9 months

†(3) Notwithstanding the provisions of subsection (5) of section 28 but subject to the provisions of subsection (4) of that section, the imprisonment which is imposed in default of payment of a fine shall commence on the day on which the person so in default was arrested by virtue of the sentence of the court and shall terminate whenever the fine and all expenses are either paid or levied by process of law.

\*Sections 34 to 39 substituted by Ordinance No. 21 of 1950.

†Inserted by Ordinance No, 12 of 1969.

*Distress*

\*36.-(1) When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on the †real and personal property by distress or sale under warrant. If he shows sufficient †personal property to satisfy the order his †real property shall not be sold.

†Inserted by Ordinance No. 12 of 1969.

(2) Such persons may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

†(3) A warrant under the provisions of this section may be executed anywhere in Fiji.

†Inserted by Ordinance No. 12 of 1969.

(4) Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under this section may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in this section referred to as the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposited upon affidavit which shall be filed with the notice.

(5) Upon receipt of a valid notice given under subsection (4), the court shall by an order in writing addressed to the officer having the execution of the warrant, direct the stay of the execution proceedings.

(6) Upon the issue of an order under subsection (5), the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(7) A notice shall be served upon the person whose property was, by the warrant issued under subsection (1), directed to be attached, and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

(8) Upon the date fixed for the hearing of the objection, the court shall investigate the claim and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with the provisions of subsection (7).

(9) If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit from attachment.

(10) If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with the provisions of subsection (8), the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to cost as it deems fit.

(11) Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (4) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

(12) No distress made under this section shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

\*Sections 34 to 39 substituted by Ordinance No. 21 of 1950.

*Suspension of execution of sentence of imprisonment in default of fine*

**\*37.**-(1) When a convicted person has been sentenced to a fine only and to imprisonment in default of payment of a fine, and whether or not a warrant of distress has been issued under section **36** the court may make an order directing the fine to be paid on or before a specified date, not being more than thirty days from the date of the order, and in the event of the fine not being paid on or before that date may, subject to the other provisions of this section, forthwith issue a warrant of committal. The court may, before making such order, require the convicted person to execute a bond, with or without sureties, conditioned for his appearance before the court on the specified date if the fine be not in the meantime paid. Upon the making of an order under this subsection the sentence of imprisonment shall be deemed to be suspended and the convicted person shall be released from custody.

(2) In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

(3) The court may in its discretion direct that any money to which this section applied may be paid by instalments at such times and in such amounts as the court may deem fit; but so nevertheless that in default of payment of any such instalment as aforesaid the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly.

(4) A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under the provisions of subsection (1), or who has been allowed to pay by instalments under the provisions of subsection (3), shall not be issued unless the court shall first make inquiry as to his means in his presence:

Provided that a court may issue such a warrant of commitment without any further inquiry as to means if it shall have made such inquiry in the presence of the convicted person at the time when the fine was imposed or at any subsequent time and the convicted person shall not before the expiration of the time for payment have notified the court of any change in his means or applied to the court for an extension of time to pay the fine.

*(Proviso inserted by 25 of 1957, s. 7.)*

(5) After making inquiry in accordance with the provisions of subsection (4), the court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the instalments or the times at which the instalments were, by the previous order of the court, directed to be paid, as the case may be.

(6) For the purpose of enabling inquiry to be made under the provisions of subsection (4), the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the first instance a warrant for his arrest.

\* Sections 34 to 39 substituted by Ordinance No. 21 of 1950.

#### *Commitment in lieu of distress*

**\*38.**-(1) If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress,

commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

(2) When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

(3) The period for which a person may be committed to prison in default of or in lieu of distress under this section shall be-

(a) if the person has been sentenced to a term of imprisonment in default of payment of a fine, the period to which he was so sentenced;

(b) in other cases such period as the court considers reasonable subject to the maximum laid down in subsection (2) of section **30** relating to fines.

\* Sections 34 to 39 substituted by Ordinance No. 21 of 1950.

#### *Payment after commitment*

**\*39.**-(1) Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

(2) If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable. The calculation shall be made by the officer in charge of the prison in which such person is confined, who shall forthwith give notice in writing to such person and to the court which passed sentence on him, stating the sum paid and the number of days by which the term of imprisonment originally awarded is reduced. The reduction of sentence shall be as so notified unless the court otherwise orders.

\* Sections 34 to 39 substituted by Ordinance No. 21 of 1950.

*(Amended by 16 of 1960 s. 3.)*

#### *\*Payment after issue of warrant but before commitment*

**40.** Where a warrant has been issued under the provisions of this Code for non-payment of a fine, any payment made after the issue of such warrant but before the person in respect of whom the warrant has been issued has been taken into custody, being a payment insufficient to satisfy the sum mentioned in the warrant together with the amount of the expenses therein mentioned, shall be deemed to be appropriated primarily in satisfaction, or part satisfaction, of such expenses.

\*Inserted by Ordinance No. 12 of 1969.

#### *Security for keeping the peace*

†**41.**-(1) A person convicted of an offence not punishable with death may, instead of or in addition to any punishment to which he is liable, be ordered to enter into his own recognizance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, not exceeding two years, and may be ordered to

be imprisoned until such recognizance, with sureties if so directed, is entered into; but so that the imprisonment for not entering into the recognizance shall not extend for a term longer than six months:

Provided that no order shall be made under this section where the person convicted has been sentenced to a term of imprisonment of more than six months.

(2) In addition to the powers conferred by sub-section (1), any magistrate shall have power in any trial before him, whether or not the complaint be dismissed, to bind both the complainant and defendant with or without sureties, to keep the peace and be of good behaviour for a period not exceeding one year and may order any person so bound, in default of compliance with the order, to be imprisoned for three months or until such earlier time as he so complies:

Provided that:

(a) a defendant who has been sentenced to more than six months' imprisonment shall not be bound over under this subsection;

(b) a complainant shall not be bound over under the powers contained in this subsection unless he shall have been given an opportunity to address the Court personally or by a barrister and solicitor as to why he should not be bound over.

(3) In this section "complainant" includes a person who makes complaint, or on behalf of whom complaint is made, to the police.

†Sections 41 to 43 substituted by Ordinance No. 21 of 1950.

(Section amended by 30 of 1958, s. 2.)

#### *Security for coming up for judgment*

†42.-(1) In any case in which a person is convicted before any court of any offence not punishable with death, if it appears to the court before which he is convicted that having regard to the circumstances, including the nature of the offence and the character of the accused, it is expedient to release the offender on probation, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, \*for such period not exceeding two years as the court may order, to appear and receive sentence when called upon and, in the meantime, to keep the peace, to be of good behaviour and to comply with such conditions as the court may impose.

\*Inserted by Ordinance No. 12 of 1969.

(2) If at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(3) An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may after hearing the case, pass sentence.

(4) Where an order under subsection (1) is made by a court, the order shall for the purpose of re-vesting or restoring stolen property and for the purpose of enabling the court to make any order under the provisions of sections 164 and 165 of the [Criminal Procedure Code](#), have the like effect as a conviction.

(Cap. 21)

†Sections 41 to 43 substituted by Ordinance No. 21 of 1950.

*Provisions of [Criminal Procedure Code](#) relating to recognizance to apply*

\*43. The provisions of sections **113,114** and **116** of the [Criminal Procedure Code](#) shall apply *mutatis mutandis* to recognisances taken under section **41** or section **42**.

(Cap. 21)

\*Sections 41 to 43 substituted by Ordinance No. 21 of 1950.

*†Absolute and conditional discharge*

**44.**-(1) Where a court by or before which a person is found guilty of an offence, not being an offence for which a fixed sentence is prescribed by law, is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order under the Probation of Offenders Act is not appropriate, the court may, with or without proceeding to conviction, make an order discharging him absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the order, and subject to such other conditions, if any, ‡including the payment of costs or compensation, or the restitution of goods or the payment of money in lieu of goods, as may be specified in such order.

(Cap. 22)

‡Inserted by Act No. 15 of 1973.

(2) Before making an order discharging a person subject to the conditions referred to in subsection (1), the court shall explain to the offender in ordinary language that if during the period of conditional discharge he commits another offence or fails to comply with such conditions, if any, which may have been imposed he will be liable to be sentenced for the original offence.

(3) Where an order discharging an offender is made under the provisions of this section the court may order him to pay the whole, or any part, of the costs of and incidental to the prosecution, and of any compensation adjudged.

(4) An order made under the provisions of this section when the court does not proceed to conviction shall, for the purpose of revesting or restoring stolen property and of enabling the court to make an order under the provisions of sections 162 and 165 of the [Criminal Procedure Code](#), have the like effect as a conviction.

(Cap. 21)

†Inserted by Ordinance No. 12 of 1969.

*Issue of warrants and errors in orders or warrants*

\*45.-(1) Every warrant for the execution of any sentence may be issued either by the judge or magistrate who passed the sentence or by his successor in office.

(2) The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no defect in form in any order or warrant given under this Code, shall be held to render void or unlawful any act done or intended to be done.

\*Sections 43 and 45 substituted by Ordinance No. 21 of 1950.

*Police supervision*

**46.-(1)** When any person having been convicted of any offence punishable with imprisonment for a term of three years or upwards, is again convicted of any offence punishable with imprisonment for a term three years or upwards, the Court may, if it thinks fit, at the time of passing sentence on such person, also order that he shall be subject to police supervision as hereinafter provided for such period as the court may specify but not exceeding five years from the date of the order or from the date of his next release from prison after the making of the order whichever shall be the later date:

\*Provided that-

(a) where a person, whilst subject to police supervision, is sentenced to a term of imprisonment for another offence, the period of police supervision shall cease to run and remain suspended during such term of imprisonment and shall be revived upon such person being released from imprisonment;

(b) where a person has been released from prison under a compulsory supervision order made under the provisions of the Prisons Act, any order made under the provisions of this subsection shall not come into effect until the expiry of such compulsory supervision order.

(Cap. 86)

(2) Every person ordered to be subject to police super-vision who is at large in Fiji shall-

(a) within one week of his release from prison personally present himself and notify the place of his residence to the officer in charge of the police station nearest to such place of residence;

\* (b) whenever he changes the place of his residence either within the Division or from Division to Division, personally present himself and notify such change of the place of his residence to the officer in charge of the police station nearest to the place of residence he is leaving and, if a different police station, to the officer in charge of the police station nearest to his new place of residence;

\* Inserted by Ordinance No. 12 of 1969.

(c) personally present himself, when called upon to do so by any police officer, to the officer in charge of the police station nearest †to the place of his residence.

† Amended by Order 8th October, 1970.

(3) Any person subject to police supervision who is at large in Fiji who-

(a) fails to notify \*the place of his residence or change of residence in accordance with the provisions of this section; or

(b) fails to present himself to a police station when called upon to do so under paragraph (c) of subsection (2); or

(c) neglects to comply with any rule made under this section,

shall, unless he proves to the satisfaction of the Court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and shall be liable to a fine not exceeding two hundred dollars or imprisonment for \*a continuing term not exceeding six months or to both such

fine and imprisonment.

\*Inserted by Ordinance No. 12 of 1969.

(4) Where any person while subject to police supervision is sentenced to a term of imprisonment upon being convicted of any offence, the court, in addition to any such sentence of imprisonment, may order that such person shall be subject to police supervision for a period not exceeding five years from the date of his release from prison.

(Amended by 14 of 1975 s.6)

(5) The †Minister may make rules for carrying out the provisions of this section, and in particular prescribing that supervision cards shall be carried by persons under police supervision when reporting under the provisions of this section.

(Section substituted by 16 of 1960, s. 4)

†Amended by Order 8th October, 1970.

\*(6) For the purposes of this section, the expression "the place of his residence" means any one dwelling-house or other abode in which the person concerned actually resides and which he nominates as such to the officer in charge of the police station to whom he is required to report under the provisions of this section.

\*Inserted by Ordinance No. 12 of 1969.

\*(7) For the purposes of this section, a person shall be deemed to have changed the place of his residence if he has been absent from the place of his residence continuously for a period of seven days or more unless, before the expiration of such period, he has notified the officer in charge of the police station nearest to such place of his residence that his absence is only temporary; and he shall in any event be deemed to have changed his place of residence if he has been absent from the place of his residence continuously for a period of twenty-eight days or more.

\* Inserted by Ordinance No. 12 of 1969.

#### *General punishment for misdemeanours*

‡47. When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or with both.

‡Sections 47 to 49 substituted by Ordinance No. 21 of 1950.

#### *Escaped convicts to serve unexpired sentences when recaptured*

‡48.-(1) The time during which an escaped person is at large shall not be counted as part of the term of the sentence which he was serving at the time of his escape.

(2) When sentence is passed under this Code on an escaped convict, such sentence-

(a) if of death, fine or corporal punishment shall, subject to the provisions of this Code, take effect immediately;

(b) if of imprisonment, shall be executed in accordance with the provisions of subsection (4) of section 28.

‡Sections 47 to 49 substituted by Ordinance No. 21 of 1950.

#### *Forfeiture*

‡49. When any person is convicted of an offence under any of the following sections, namely, sections **106, 107, 108, 132, 133** and **373**, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to Her Majesty of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the \*Minister may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

‡Sections 47 to 49 substituted by Ordinance No. 21 of 1950.

\*Amended by Order 8th October, 1970.

## PART II-CRIMES

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### *Division I.-Offences against Public Order*

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#### **CHAPTER VII-TREASON AND OTHER OFFENCES AGAINST THE SOVEREIGN'S AUTHORITY**

##### *Treason by the law of England*

**50.** Any person who compasses, imagines, invents, devises or intends any act, matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, inventing, devising or intending by publishing any printing or writing or by any overt acts or does any act which if done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of the offence termed treason and shall be †sentenced to death.

†Amended by Ordinance No. 12 of 1969.

##### *Instigating invasion*

**51.** Any person who instigates any foreigner to invade Fiji with an armed force is guilty of treason, and †shall be sentenced to death.

†Amended by Ordinance No. 12 of 1969

##### *Misprision of treason*

**52.** Any person who-

(a) becomes an accessory after the fact to treason; or

(b) knowing that any person intends to commit treason, does not give information thereof with all reasonable despatch to the \*Governor-General, the Minister or to a magistrate or police officer or use other reasonable endeavours to prevent the commission of the offence,

\*Amended by Order 8th October, 1970.

is guilty of the felony termed misprision of treason, and is liable to imprisonment for life.

*Treasonable felonies*

**53.** Any person who forms an intention to effect any of the following purposes, that is to say-

\* (a) to depose Her Majesty from any style, honour and royal name to which she is entitled; or

\* Substituted by 14 of 1975 s.6.

(b) to levy war against Her Majesty within any part of Her Majesty's territories, or within any country which has been declared to be under her protection or in respect of which Her Majesty has accepted a trusteeship agreement, in order by force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe, the legislature or legislative authority of any of Her Majesty's territories, or of any country which has been declared to be under her protection or in respect of which Her Majesty has accepted a trusteeship agreement; or (*Amended by 37 of 1966, s. 5*)

(c) to instigate any foreigner to make an armed invasion of any of Her Majesty's dominions or of any country which has been declared to be under her protection or in respect of which Her Majesty has accepted a trusteeship agreement,

and manifests such intention by an overt act, or by publishing any printing or writing, is guilty of a felony, and is liable to imprisonment for life.

*Limitations as to trial for treason, misprision of treason, or treasonable felonies*

**54.** A person cannot be tried for treason, or for any of the felonies defined in sections **51**, **52** or **53**, unless the prosecution is commenced within two years after the offence is committed.

*Two witnesses necessary*

Nor can a person charged with treason, or with any of such felonies, be convicted, except on his own plea of guilty, or on the evidence in open court of two witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason or felony.

This section does not apply to cases in which the overt act of treason alleged is the killing of Her Majesty, or a direct attempt to endanger the life or injure the person of Her Majesty.

*Inciting to mutiny*

**55.** Any person who advisedly attempts to effect any of the following purposes, that is to say-

(a) to seduce any person serving in the military forces of Fiji or any police officer from his duty and allegiance to Her Majesty; or

(b) to incite any such persons to commit an act of mutiny or any traitorous or mutinous act; or

(c) to incite any such persons to make or endeavour to make a mutinous assembly,

is guilty of a felony, and is liable to imprisonment for life.

*Aiding soldiers or policemen in acts of mutiny*

**56.** Any person who-

(a) aids, abets, or is accessory to, any act of mutiny by; or

(b) incites to sedition or to disobedience to any lawful order given by a superior officer,

any non-commissioned officer or private of the military forces of Fiji or any police officer, is guilty of a misdemeanour.

*Inducing soldier or policemen to desert*

**57.** Any person who, by any means whatsoever, directly or indirectly-

(a) procures or persuades or attempts to procure or persuade to desert; or

(b) aids, abets, or is accessory to the desertion of; or

(c) having reason to believe he is a deserter, harbours or aids in concealing,

any non-commissioned officer or private of the Fiji military forces or any police officer is guilty of a misdemeanour and is liable to imprisonment for six months.

*Aiding prisoners of war to escape*

**58.** Any person who-

(a) knowingly and advisedly aids an alien enemy of Her Majesty, being a prisoner of war in Fiji, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from Fiji, is guilty of a felony, and is liable to imprisonment for life;

(b) negligently and unlawfully permits the escape of any such person as is mentioned in paragraph (a), is guilty of a misdemeanour.

*Definition of overt acts*

**59.** In the case of any of the offences defined in this Chapter, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

*Definitions for purposes of sections relating to sedition, etc.*

**60.** For the purposes of sections **61** to **68**-

"import" includes-

(a) to bring into Fiji; and

(b) to bring within the waters of Fiji whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

"newspaper" means a periodical publication containing any public news or comments thereon or any discussion of political matters;

"periodical publication" includes every publication issued periodically, or in parts or numbers at intervals, whether regular or irregular;

"publication" includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication;

"seditious publication" means a publication having a seditious intention;

"seditious words" means words having a seditious intention.

*Power to prohibit importation of publication*

**61.** If the \*Minister is of opinion that the importation of any publication would be contrary to the public interest, he may in his absolute discretion, by order prohibit the importation of such publication, and in the case of periodical publication may, by the same or subsequent order, prohibit the importation of any past or future issue thereof.

\* Amended by Order 8th October, 1970.

*Offences in relation to publications, the importation of which is prohibited*

**62.**-(1) Any person who, †except with the permission of the \*Minister, imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section **61**, or any extract therefrom, is guilty of a misdemeanour, and is liable for a first offence to imprisonment for two years or to a fine of two hundred dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract therefrom shall be forfeited to Her Majesty.

† Inserted by Ordinance No. 12 of 1969.

\* Amended by Order 8th October, 1970.

(2) Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section **61**, or any extract therefrom, is guilty of a misdemeanour, and is liable for a first offence to imprisonment for one year or to a fine of one hundred dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and

such publication or extract therefrom shall be forfeited to Her Majesty.

*Delivery of prohibited publication to police station*

**63-(1)** Any person to whom any publication the importation of which has been prohibited under section **61**, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him, or, in the case of a publication or extract therefrom coming into the possession of such person before an order prohibiting its importation has been made, forthwith upon the coming into effect of an order prohibiting the importation of such publication, deliver such publication or extract therefrom to the officer in charge of the nearest police station, and in default thereof is guilty of a misdemeanour, and is liable to imprisonment for one year or to a fine of one hundred dollars or to both such imprisonment and fine; and such publication or extract therefrom shall be forfeited to Her Majesty.

(2) A person who complies with the provisions of subsection (1) or is convicted of an offence under that subsection is not liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

*Power to examine packages*

**64-(1)** Any of the following officers, that is to say:-

(a) the Comptroller of Customs, the Commissioner of Police, the ‡Permanent Secretary for Posts and Telecommunications, or any officer authorised in that behalf in writing by any one of them; or  
‡ Amended by Order 1 November, 1971.

(b) any other officer authorised in that behalf by the \*Minister, may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section **62** to import, publish, sell, offer for sale, distribute, reproduce or possess, and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

\* Amended by Order 8th October, 1970.

(2) If any such publication or extract therefrom is found in such package or article, the whole package or article may be impounded and retained by the officer, and the person importing, distributing or posting it or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section **62** or section **63** as the case may be.

*Seditious intention*

**65.-(1)** A "seditious intention" is an intention-

(i) to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, Her heirs or successors or the Government of Fiji as by law established; or

(ii) to excite Her Majesty's subjects or inhabitants of Fiji to attempt to procure the alteration, otherwise than by lawful means, of any matter in Fiji as by law established; or

(iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in Fiji; or

(iv) to raise discontent or disaffection amongst Her Majesty's subjects or inhabitants of Fiji; or

(v) to promote feelings of ill-will and hostility between different classes of the population of Fiji.

But an act, speech or publication is not seditious by reason only that it intends-

(a) to show that Her Majesty has been misled or mistaken in any of her measures; or

(b) to point out errors or defects in the government or constitution of Fiji as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(c) to persuade Her Majesty's subjects or inhabitants of Fiji to attempt to procure by lawful means the alteration of any matter in Fiji as by law established; or

(d) to point out, with a view to their removal, any matters which are producing or having a tendency to produce feelings of ill-will and enmity between different classes of the population of Fiji.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

### *Seditious offences*

**66.**-(1) Any person who-

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do any act with a seditious intention;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) imports any seditious publication, unless he has no reason to believe that it is seditious,

is guilty of a misdemeanour, and is liable for a first offence to imprisonment for two years or to a fine of two hundred dollars or to both such imprisonment and fine, and for a subsequent offence to

imprisonment for three years; and any such seditious publication shall be forfeited to Her Majesty.

(2) Any person who without lawful excuse has in his possession any seditious publication is guilty of a misdemeanour, and is liable for a first offence to imprisonment for one year or to a fine of one hundred dollars or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to Her Majesty.

(3) No prosecution for an offence under this section shall be begun except within six months after the offence is committed.

(4) A person shall not be prosecuted for an offence under this section without the written consent of the \*Director of Public Prosecutions.

\* Amended by Order 8th October, 1970.

(5) No person shall be convicted of an offence under this section on the uncorroborated testimony of one witness.

*Suspension of newspaper containing seditious matter*

**67.**-(1) Whenever any person is convicted of publishing in any newspaper matter having a seditious intention, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters, that is to say:-

(a) prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order, the future publication of that newspaper;

(b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor or editor of that newspaper from publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service or otherwise, in the publication, editing or production of any newspaper; and

(c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

(2) Any person who contravenes an order made under this section is guilty of a misdemeanour, and is liable to imprisonment for six months or to a fine of two hundred dollars or to both such imprisonment and fine.

(3) Nothing in this Code shall affect the power of the court to punish any person contravening an order made under this section for contempt of court:

Provided that no person shall be punished twice for the same offence.

*Power of court to prohibit circulation of seditious publications*

**68.**-(1) Whenever on the application of the \*Director of Public Prosecutions it is shown to the satisfaction of the court that the issue or circulation of a seditious publication is or if commenced or

continued would be likely to lead to unlawful violence, or appears to have the object of promoting feelings of hostility between different classes or races of the community, the court shall make an order (in this section called a "prohibition order") prohibiting the issuing and circulation of that publication (in this section called a "prohibited publication") and requiring every person having any copy of the prohibited publication in his possession, power or control forthwith to deliver every such copy into the custody of the police.

\* Amended by Order 8th October, 1970.

(2) An order under this section may be made *ex parte* on the application of the \*Director of Public Prosecutions in chambers.

\* Amended by Order 8th October, 1970.

(3) It shall be sufficient if the order so describes the prohibited publication that it can be identified by a reasonable person who compares the prohibited publication with the description in the prohibition order.

(4) Every person on whom a copy of a prohibition order is served by any police officer shall forthwith deliver to that police officer every prohibited publication in his possession, power or control, and if he fails to do so he is guilty of a misdemeanour, and is liable to imprisonment for one year or to a fine of two hundred dollars or to both such imprisonment and fine.

(5) Every person to whose knowledge it shall come that a prohibited publication is in his possession, power or control shall forthwith deliver every such publication into the custody of the police.

(6) The court may, if it thinks fit, either before or after or without service of the prohibition order on any person, issue a warrant authorising any police officer not below the rank of sergeant and his assistants to break, enter and search, either by day or night, any building or place specified in the order, and any enclosure, room, box, receptacle or thing in such building or place, and to seize and carry away every prohibited publication there found, and to use such force as may be necessary for the purpose.

A copy of the prohibition order and of the search warrant shall be left in a conspicuous position at every building or place so entered.

(7) The owner of any prohibited publication delivered or seized under this section may, at any time within fourteen days after the delivery or seizure, petition the court for the discharge of the prohibition order, and the court, if on the hearing of the petition it decides that the prohibition order ought not to have been made, shall discharge the order and shall order the prohibited publication delivered by or seized from the petitioner to be returned to him.

(8) Every prohibited publication delivered or seized under this section with respect to which a petition is not filed within the time aforesaid or which is not ordered to be returned to the owner shall be deemed to be forfeited to Her Majesty.

## **\*CHAPTER VIII-GENOCIDE**

### *\*Genocide*

**69.**-(1) A person commits the offence of genocide if he commits any of the following acts with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:-

(a) killing members of the group;

- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

†(2) A person guilty of an offence of genocide shall on conviction-

- (a) if the offence consists of the killing of any person, be sentenced to death;
  - (b) in any other case, be liable to imprisonment for a term not exceeding fourteen years.
- † Amended by Ordinance No. 15 of 1973.

(3) Proceedings for an offence of genocide shall not be instituted except by or with the consent of the ‡Director of Public Prosecutions.  
 \* Inserted by Ordinance No. 25 of 1969.  
 ‡ Amended by Order 13th November, 1970.

## **CHAPTER IX-OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILLITY**

### *Defamation of foreign princes*

°70. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Fiji and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of a misdemeanour.  
 ° Amended by 14 of 1975, s.6.

### *Foreign enlistment*

°71. Any person commits a misdemeanour who does any of the following acts without the licence, order, command or authority of the Governor-General, that is to say:-

- (a) who prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state, or is engaged in such preparation or fitting-out, or assists therein, or is employed in any capacity in such expedition; or
- (b) who, being a British subject, accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state, or, whether a British subject or not, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid; or
- (c) who, being a British subject, quits or goes on board any vessel with a view of

quitting Fiji, with intent to accept any commission or engagement in the military naval service of any foreign state at war with a friendly state, or, whether a British subject or not, induces any other person to quit or to go on board any vessel with a view of quitting Fiji with the like intent; or

(d) who, being the master or owner of any vessel, knowingly either takes on board, or engages to take on board, or has on board such vessel, any illegally enlisted person; or

(e) who, with intent or knowledge, or having reasonable cause to believe that the same will be employed in the military or naval service of any foreign state at war with any friendly state, builds, agrees to build, causes to be built, equips, despatches, or causes or allows to be despatched, any vessel, or issues or delivers any commission for any vessel:

Provided that a person building, causing to be built, or equipping a vessel in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, is not liable to any of the penalties specified in this section in respect of such building or equipment if-

(i) upon a proclamation of neutrality being issued by Her Majesty \*in right of Her Government of Fiji he forthwith gives notice to the \*Minister or the Secretary of State that he is so building, causing to be built, or equipping such vessel, and furnishes such particulars of the contract and of any matters relating to, or done, or to be done under the contract as may be required by the \*Minister or the Secretary of State; and  
\* Amended by Order 8th October, 1970.

(ii) he gives such security, and takes and permits to be taken such other measures, if any, as the \*Minister or the Secretary of State may prescribe for ensuring that such vessel shall not be despatched, delivered or removed without the licence of Her Majesty until the termination of such war as aforesaid.

° Amended by 14 of 1975, s.6.

\* Amended by Order 8th October, 1970.

### *Piracy*

**72.** Any person who is guilty of piracy or any crime connected with or relating or akin to piracy †shall be liable to imprisonment for life.

† Amended by Ordinance No. 12 of 1969.

### *‡Hijacking*

**73.**-(1) A person on board an aircraft in flight who-

(a) unlawfully, by the use of force or by threats of any kind or by any other form of intimidation, seizes or exercises control of that aircraft or attempts to seize or exercise control of it; or

(b) assists any person who carries out or attempts to carry out any act mentioned in paragraph (a),

commits the offence of hijacking, whatever his nationality or citizenship, whatever the State in

which the aircraft is registered and whether-the aircraft is in Fiji or elsewhere.

(2) The provisions of subsection (1) shall not apply if-

(a) the aircraft is used in military, customs or police service; or

(b) both the place of take-off and the place of landing are in the territory of the State in which the aircraft is registered,

unless the person seizing or exercising control of the aircraft or assisting in so doing is a citizen of Fiji or resident in Fiji or his act is committed in Fiji or the aircraft whatever its use is registered in Fiji.

(3) A person who commits the offence of hijacking is liable on conviction to imprisonment for life.

(4) The period during which an aircraft is in flight shall be deemed to include any period from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation, and, in the case of a forced landing, any period until the competent authorities take over responsibility of the aircraft and for persons and property on board.

(5) For the purposes of this section, the territorial waters of any State shall be treated as part of its territory.

‡Inserted by Act No. 8 of 1972.

*\*Other offences committed in the course of hijacking*

**74.** Where outside Fiji any person of whatever nationality or citizenship, while on board an aircraft wherever registered, does any act which would constitute an offence under this Code if done in Fiji shall be liable to be convicted of such offence if it is done in connection with the offence of hijacking.

\*Inserted by Act No. 8 of 1972 and amended by Act No. 15 of 1973.

*\*Aircraft operated by joint or international organisation*

**75.**-(1) If the Minister by order declares-

(a) that any two or more States named in the order have established an organisation or agency which operates aircraft; and

(b) that one of these States has been designated as exercising, for aircraft so operated, the powers of the State of registration,

the State declared under paragraph (b) of this subsection shall be deemed for the purposes of this Code to be the State in which any aircraft so operated is registered; but in relation to such an aircraft paragraph (b) of subsection (2) of section **73** and paragraph (b) of subsection (2) of section **76** shall have effect as if these paragraphs referred to the territory of any one of the States named in the order.

\*Inserted by Act No. 8 of 1972 and amended by Act No. 15 of 1973.

*\*Aircraft Sabotage*

**76.**-(1) A person who-

- (a) destroys an aircraft in service or causes damage which renders it incapable of flight or which is likely to endanger its safety in flight; or
- (b) places or causes to be placed on an aircraft in service by any means whatsoever, a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
- (c) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
- (d) communicates information which he knows to be false thereby endangering the safety of an aircraft in flight; or
- (e) performs an act of violence on board an aircraft in flight likely to endanger the safety of that aircraft; or
- (f) assists any person who carries out or attempts to carry out any act mentioned in the preceding paragraphs of this section;
- \* (g) communicates any information which he knows to be false or performs any other act for the purpose of causing, or which is likely to cause, inconvenience to persons travelling upon or about to travel upon an aircraft in service or which is likely adversely to affect the journey or passage of an aircraft in service,  
\* Inserted by Act No. 15 of 1973

commits the offence of aircraft sabotage whatever his nationality or citizenship, whatever the State in which the aircraft is registered and whether the aircraft is in Fiji or elsewhere.

(2) The provisions of subsection (1) shall not apply if-

(a) the aircraft is used in military, customs or police service; or

(b) both the place of take off and the place of landing are in the territory of the State in which the aircraft is registered, unless-

(i) the offence is committed in Fiji; or

(ii) The aircraft whatever its use is registered in Fiji; or

(iii) the aircraft lands in Fiji with the offender on board; or

(iv) the offence is committed against or on board an aircraft leased to a lessee who has either his principal place of business or a residence in Fiji.

(3) A person who commits an offence under this section is liable on conviction to imprisonment for life.

(4) For the purposes of this section "aircraft in service" means the period beginning with the pre-flight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing after such flight.

\*Inserted by Act No. 8 of 1972 and amended by Act No. 15 of 1973.

†*Prosecution of offences*

**77.** Proceedings for an offence under sections **73** and **76** shall not be instituted except by or with the consent of the Director of Public Prosecutions.

† Inserted by Act No. 8 of 1972

†*Definition of State*

**78.** "State" means, for the purposes of sections **73** to **76**, any State which is a party to any international convention to which Fiji is also a party.

† Inserted by Act No. 8 of 1972

**CHAPTER X-UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILLITY**

*Unlawful society*

**79.**-(1) A society includes any combination of ten or more persons whether the society be known by any name or not.

(2) A society is an unlawful society-

(a) if formed for any of the following purposes:-

- (i) levying war or encouraging or assisting any persons to levy war on the Government or the inhabitants of any part of Fiji; or
- (ii) killing or injuring or inciting to the killing or injuring of any person; or
- (iii) destroying or injuring or inciting to the destruction or injuring of any property; or
- (iv) subverting or promoting the subversion of the Government or of its officials; or
- (v) committing or inciting to acts of violence or intimidation; or
- (vi) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or
- (vii) disturbing or inciting to the disturbance of peace and order in any part of Fiji; or

(b) if declared by an order of the \*Minister to be a society dangerous to the good government of Fiji.

\*Amended by Order 8th October, 1970

*Managing unlawful society*

**80.** Any person who manages or assists in the management of an unlawful society is guilty of a felony, and is liable to imprisonment for seven years.

*Being member of unlawful society*

**81.** Any person who-

(a) is a member of an unlawful society; or

(b) knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control,

is guilty of a felony, and is liable to imprisonment for three years.

*Prosecutions under sections 80 and 81*

**82.**-(1) A prosecution for an offence under sections **80** and **81** shall not be instituted except with the consent of the \*Director of Public Prosecutions:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the \*Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

\*Amended by Order 8th October, 1970.

(2) In any prosecution for an offence under sections **80** and **81** it shall not be necessary to prove that the society consisted of ten or more members; but it shall be sufficient to prove the existence of a combination of persons, and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to ten.

(3) Any person who attends a meeting of an unlawful society shall be presumed, until and unless the contrary is proved, to be a member of the society.

(4) Any person who has in his possession or custody or under his control any of the insignia, banners, arms, books, papers, documents or other property belonging to an unlawful society, or wears any of the insignia, or is marked with any mark of the society, shall be presumed, unless and until the contrary is proved, to be a member of the society.

*Power of entry, arrest, search, etc.*

**83.** Any peace officer, and any police officer authorised in writing by a peace officer, may enter with or without assistance any house or building or into any place in which he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and to arrest or cause to be arrested all persons found therein and to search such house, building or place, and seize or cause to be seized all insignia, banners, arms, books, papers, documents and other

property which he may have reasonable cause to believe to belong to any unlawful society or to be in any way connected with the purpose of the meeting.

For the purposes of this section, the expression "peace officer" means any magistrate or any police officer not below the rank of Assistant Superintendent.

*Declaration by \*Minister*

**84.**-(1) When a society is declared to be an unlawful society by an order of the \*Minister, the following consequences shall ensue:-

(a) the property of the society within Fiji shall forthwith vest in an officer appointed by the \*Minister;

(b) the officer appointed by the \*Minister shall proceed to wind up the affairs of the society, and after satisfying and providing for all debts and liabilities of the society and the cost of the winding up, if there shall then be any surplus assets shall prepare and submit to the \*Minister a scheme for the application of such surplus assets;

(c) such scheme, when submitted for approval, may be amended by the \*Minister in such way as he shall think proper in the circumstances of the case;

(d) the approval of the \*Minister to such a scheme shall be denoted by the endorsement thereon of a memorandum of such approval signed by the \*Minister, and, upon this being done, the surplus assets, the subject of the scheme, shall be held by such officer upon the terms and to the purposes thereby prescribed;

(e) for the purpose of the winding up, the officer appointed by the \*Minister shall have all the powers vested in the Official Receiver for the purpose of the discovering of the property of a debtor and the realization thereof.

\*Amended by Order 8<sup>th</sup> October, 1970

(2) The \*Minister may, for the purpose of enabling a society to wind up its own affairs, suspend the operation of this section for such period as to him shall seem expedient.

\*Amended by Order 8<sup>th</sup> October, 1970

(3) The provisions of subsection (1) shall not apply to any property seized at any time under section **83**.

\*Amended by Order 8th October, 1970

*Forfeiture of insignia, etc.*

**85.** Subject to the provisions of section **84**, the insignia, banners, arms, books, papers, documents and other property belonging to an unlawful society shall be forfeited to Her Majesty, and shall be dealt with in such manner as the \*Minister may direct.

\*Amended by Order 8th October, 1970.

*Definitions of unlawful assembly and riot*

**86.** When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.

It is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as aforesaid.

#### *Riot*

When an unlawful assembly has begun to execute the purpose for which it assembled by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

#### *Punishment of unlawful assembly*

**87.** Any person who takes part in an unlawful assembly is guilty of a misdemeanour, and is liable to imprisonment for one year.

#### *Punishment of riot*

**88.** Any person who takes part in a riot is guilty of a misdemeanour.

#### *Making proclamation for rioters to disperse*

**89.** Any magistrate or, in his absence, any officer of police or special constable not below the rank of Assistant Superintendent, in whose view twelve or more persons are riotously assembled, or who apprehends that a riot is about to be committed by twelve or more persons assembled within his view, may make or cause to be made a proclamation in the Queen's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.  
(Amended by 16 of 1960, s. 5.)

#### *Dispersion of rioters after proclamation made*

**90.** If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer or constable, or any other person acting in aid of such person, police officer or special constable may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as is reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by use of such force, caused harm or death to any person.  
(Amended by 16 of 1960, s. 6.)

#### *Rioting after proclamation*

**91.** If a proclamation is made, commanding the persons engaged in a riot, or assembled with the

purpose of committing a riot, to disperse, every person who, at or after the expiration of a reasonable time for the making of such proclamation, takes or continues to take part in the riot or assembly, is guilty of a felony, and is liable to imprisonment for five years.

*Preventing or obstructing the making of proclamation*

**92.** Any person who forcibly prevents or obstructs the making of such proclamation as is in section **89** mentioned, is guilty of a felony, and is liable to imprisonment for ten years; and if the making of the proclamation is so prevented, every person who, knowing that it has been so prevented, takes or continues to take part in the riot or assembly, is liable to imprisonment for five years.

*Rioters demolishing buildings, etc.*

**93.** Any persons who, being riotously assembled together, unlawfully pull down or destroy, or begin to pull down or destroy any building, railway, machinery or structures are guilty of a felony, and each of them is liable to imprisonment for life.

*Rioters damaging buildings, machinery, etc.*

**94.** Any persons who, being riotously assembled together, unlawfully damage any of the things in section **93** mentioned, are guilty of a felony, and each of them is liable to imprisonment for seven years.

*Riotously interfering with railway, vehicle or vessel*

**95.** All persons are guilty of a misdemeanour who, being riotously assembled, unlawfully and with force prevent, hinder or obstruct the loading or unloading of any railway, vehicle or vessel, or the starting or transit of any railway or vehicle, or the sailing or navigation of any vessel, or unlawfully and with force board any railway, vehicle or vessel with intent to do so.

*Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse*

**96.** (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon is guilty of a misdemeanour.

(2) Where any person is convicted of an offence under subsection (1) the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) In this section "offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him.

*(Section inserted by 16 of 1960, s. 7)*

*Prohibition on manufacture, sale, etc., of flick knives, gravity knives and knuckle dusters*

**97.**-(1) Any person who manufactures, sells or hires, or exposes for sale or hire, or offers for sale or hire, or lends or gives to any person a flick knife, gravity knife\*, swordstick or knuckle duster shall be guilty of an offence and shall be liable on conviction to imprisonment for six months or to a fine of one hundred dollars or to both such fine and imprisonment.

\*Inserted by Ordinance No. 12 of 1969.

(2) Where any person is convicted of an offence contrary to subsection (1) the court shall make an order for the forfeiture or disposal of all flick knives, gravity knives, swordsticks and knuckle dusters found in the possession of such person.

(3) In this section-

"flick knife" means any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife;

"gravity knife" means any knife which has a blade which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force and which, when released, is locked in place by means of a button, spring, lever or other device;

"knuckle duster" means any solid contraption designed or adapted to be gripped in the fist or fitted to or over one or more fingers and equipped with any projection or flat striking surface peculiarly adapted for causing injury to the person:

Provided that nothing in this section shall apply to any ring which is a *bona fide* signet ring or to any ring the projection of which consists of a precious or semi-precious stone or stones or other purely ornamental object.

(Section inserted by 50 of 1961, s. 2.)

#### *Going armed in public*

**98.** Any person who goes armed in public without lawful occasion in such a manner as to cause terror to any person is guilty of a misdemeanour, and his arms may be forfeited.

#### *Forcible entry*

**99.** Any person who, in order to take possession thereof, enters on any lands or tenements in a violent manner, whether such violence consists in actual force applied to any other person or in threats or in breaking open any house or in collecting an unusual number of people, is guilty of the misdemeanour termed forcible entry.

It is immaterial whether he is entitled to enter on the land or not, provided that a person who enters upon lands or tenements of his own, but which are in the custody of his servant or bailiff, does not commit the offence of forcible entry.

#### *Forcible detainer*

**100.** Any person who, being in actual possession of land without colour of right, holds possession of it, in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against a person entitled by law to the possession of the land is guilty of the misdemeanour termed forcible detainer.

#### *Affray*

**101.** Any person who takes part in a fight in a public place is guilty of a misdemeanour, and is liable to imprisonment for one year.

*Challenge to fight a duel*

**102.** Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, is guilty of a misdemeanour.

*Threatening violence*

**103.** Any person who with intent to alarm any person in a dwelling-house, discharges loaded firearms or commits any other breach of the peace, is guilty of a misdemeanour, and is liable to imprisonment for \*three years, with or without corporal punishment.

\* Amended by Act No. 15 of 1973

*Assembling for the purpose of smuggling*

**104.** Any persons who assemble together, to the number of two or more, for the purpose of unshipping, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to the customs, are guilty of a misdemeanour, and each of them is liable to a fine not exceeding two hundred dollars or to imprisonment for six months.

*\*Throwing or projecting objects, etc.*

**105.** Any person who wilfully throws or in any other way projects any object, fluid or substance at any dwelling-house, vehicle or person is guilty of an offence and is liable to imprisonment for three years, with or without corporal punishment.

\* Amended by Act No. 15 of 1973

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*Division II-Offences against Administration of  
Lawful Authority*

**CHAPTER XI-CORRUPTION AND THE ABUSE OF OFFICE**

*Official corruption*

**106.** Any person who-

(a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

(b) corruptly gives, confers or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony and is liable to imprisonment for seven years.

*Extortion by public officers*

**107.** Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a misdemeanour, and is liable to imprisonment for three years.

*Public officers receiving property to show favour*

**108.** Any person who, being employed in the public service, receives any property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or any one in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or any one in whom he is interested, and any person employed in the public service, is guilty of a misdemeanour, and is liable to imprisonment for six months.

*Officers charged with administration of property of a special character or with special duties*

**109.** Any person who, being employed in the public service, and being charged by virtue of his employment with any judicial or administrative duties respecting property of a special character, or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly, a private interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, is guilty of a misdemeanour, and is liable to imprisonment for one year.

*False claims by officials*

**110.** Any person who, being employed in the public service, in such a capacity as to require him or enable him to furnish returns or statements touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

*Abuse of office*

**111.** Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour.

If the act is done or directed to be done for purpose of gain, he is guilty of a felony, and is liable to

imprisonment for three years.

A prosecution for any offence under this or either of sections **109** or **110** shall not be instituted except by or with the sanction of the \*Director of Public Prosecutions.

\* Amended by Order 8th October, 1970.

*False certificates by public officers*

**112.** Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, is guilty of a misdemeanour.

*Unauthorised administration of oaths*

**113.** Any person who administers an oath, or takes a solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so is guilty of a misdemeanour:

Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate or a justice of the peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation or affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

*False assumption of authority*

**114.** Any person who-

- (a) not being a judicial officer, assumes to act as a judicial officer; or
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or
- (c) represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being so authorised. when he is not, and knows that he is not. in fact, so authorised,

is guilty of a misdemeanour.

*Personating public officers*

**115.** Any person who-

- (a) personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

is guilty of a misdemeanour, and is liable to imprisonment for three years.

*Threat of injury to persons employed in public service*

**116.** Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service, is guilty of a misdemeanour.

A prosecution for an offence under this section shall not be instituted except by or with the sanction of the \*Director of Public Prosecutions.

\* Amended by Order 13th November, 1970.

**CHAPTER XII-PERJURY AND FALSE STATEMENTS AND DECLARATIONS**

*Perjury*

**117.**-(1) Any person lawfully sworn as a witness in a judicial proceeding who wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true is guilty of the misdemeanour termed perjury, and is liable to imprisonment for seven years.

\*(2) Any person lawfully sworn as an interpreter, who wilfully in the course, or proposed course, of his duties as such, makes any misstatement, or actively or by omission misinterprets any statement whether or not that statement is material in any judicial proceeding is guilty of perjury and is liable to imprisonment for seven years.

\*Inserted by Ordinance No. 12 of 1969.

(3) Where a statement made for the purpose of a judicial proceeding is not made before the tribunal itself but is made on oath before a person authorised by law to administer an oath to the person who makes the statement and to record or authenticate the statement it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

(4) The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

*False statements on oath made otherwise than in a judicial proceeding*

**118.** Any person who-

(a) being required or authorised by law to make any statement on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or

(b) wilfully uses any false affidavit for the [Bills of Sale Act](#),

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

(Cap. 225)

*False statements, etc. with reference to marriage*

**119.** Any person who-

(a) for the purpose of procuring a marriage or a certificate or licence for marriage knowingly and wilfully makes a false oath or makes or signs a false declaration, notice or certificate required under any Act for the time being in force relating to marriage; or

(b) knowingly and wilfully makes or knowingly and wilfully causes to be made for the purpose of being inserted in any register of marriage a false statement as to any particular required by law to be known and registered relating to any marriage; or

(c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false,

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

*False statements, etc. as to births or deaths*

**120.**-(1) Any person who-

(a) wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or

(b) wilfully makes any false certificate or declaration under or for the purposes of any Act relating to the registration of births or deaths or, knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person; or

(c) wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born or as to the body of a deceased person or a still-born child in any coffin or falsely pretends that any child born alive was still-born; or

(d) makes any false statement with intent to have the same inserted in any register of births or deaths,

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

(2) A prosecution under this section shall not be commenced more than three years after the commission of the offence.

*False statutory declarations and other false statements without oath*

**121.** Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular and the statement is made-

- (a) in a statutory declaration; or
- (b) in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by any Act for the time being in force; or
- (c) in any oral declaration or oral answer which he is required to make by, under or in pursuance of any Act for the time being in force,

is guilty of a misdemeanour.

*False declarations, etc. to obtain registration, etc. for carrying on a vocation*

**122.** Any person who-

- (a) procures or attempts to procure himself to be registered on any register or roll kept under or in pursuance of any Act for the time being in force of persons qualified by law to practise any vocation or calling; or
- (b) procures or attempts to procure a certificate of the registration of any person on any such register or roll as aforesaid,

by wilfully making or producing or causing to be produced, either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, is guilty of a misdemeanour, and is liable to imprisonment for twelve months.

*Aiders, abettors, suborners, etc.*

**123.**-(1) Every person who aids, abets, counsels, procures or suborns another person to commit an offence against any of sections **117** to **122** inclusive is liable to be proceeded against, tried and punished as if he were a principal offender.

(2) Every person who incites or attempts to procure or suborn another person to commit an offence against any of the six preceding sections of this Code is guilty of a misdemeanour.

*Corroboration*

**124.** A person shall not be liable to be convicted on any offence against any of sections **117** to **123** inclusive or of any offence declared by any other Act to be perjury or subornation or perjury or to be punishable as perjury or subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

*Fabricating evidence*

**125.** Any person who, with intent to mislead any tribunal in any judicial proceeding-

- (a) fabricates evidence by any means other than perjury or subornation of perjury; or
- (b) knowingly makes use of such fabricated evidence,

is guilty of a misdemeanour, and is liable to imprisonment for seven years.

*Inconsistent or contradictory statements*

**126.**-(1) Where two or more inconsistent or contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by one and the same witness in any judicial proceeding or proceedings, whether before the same court or tribunal or person or not, such witness shall be guilty of a misdemeanour, and is liable to imprisonment for six months.

(2) Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements, but, upon proof that both the statements were made by him, the court, if satisfied that the statements, or either of them, were or was made with intent to deceive the court, tribunal or person before whom the statements or either of them were or was made, shall convict the accused.

*Proof of certain proceedings on which perjury is assigned*

**127.** On a prosecution-

- (a) for perjury alleged to have been committed on the trial of an information for felony or misdemeanour; or
- (b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information and trial purporting to be signed by the Chief Registrar or other person having the custody of the records of the court where the information was tried or by the deputy of that Chief Registrar or other person without proof of the signature or official character of the clerk or persons appearing to have signed the certificate.

*Forms and ceremonies of oath immaterial*

**128.** For the purposes of this Chapter the forms and ceremonies used in administering an oath are immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted without objection or has declared to be binding on him.

**CHAPTER XIII-OTHER OFFENCES RELATING TO  
THE ADMINISTRATION OF JUSTICE**

*Deceiving witnesses*

**129.** Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, is guilty of a misdemeanour.

*Destroying evidence*

**130.** Any person who, knowing that any book, document or thing of any kind whatsoever is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it illegible or indecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of a misdemeanour.

*Conspiracy to defeat justice and interference with witnesses*

**131.** Any person commits a misdemeanour who-

(a) conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or

(b) in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavours to do so; or

(c) obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal; or

\*(d) in any way obstructs, prevents, perverts or defeats, or attempts to obstruct, prevent, pervert or defeat, the course of justice.

\*Inserted by Ordinance No. 12 of 1969.

*Compounding felonies*

**132.** Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay a prosecution for a felony, or will withhold any evidence thereof is guilty of a misdemeanour.

*Compounding penal actions*

**133.** Any person who, having brought, or under pretence of bringing, an action against another person under the provisions of a penal Act in order to obtain from him a penalty for any offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, is guilty of a misdemeanour. (Amended by Ordinance 37 of 1966, s. 5.)

*Advertisements for stolen property*

**134.** Any person who-

(a) publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(b) publicly offers to return to any person who may have bought or advanced money by way of loan upon any stolen or lost property the money so paid or advanced, or any other sum of money or reward for the return of such property; or

(c) prints or publishes any such offer,

is guilty of a misdemeanour.

*Corruptly taking a reward*

**135.** Any person who corruptly takes any money or reward, directly or indirectly, under pretence or upon account of helping any person to recover any property which has, under circumstances which amount to felony or misdemeanour, been stolen or obtained in any way whatsoever, or received, is (unless he has used all due diligence to cause the offender to be brought to trial for the same) guilty of felony, and is liable to imprisonment for seven years.

*Offences relating to judicial proceedings*

**136.**-(1) Any person who-

(a) within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken; or

(b) having been summoned to give evidence in a judicial proceeding, fails to attend; or

(c) being present at a judicial proceeding and being called upon to give evidence, refuses to be sworn or to make an affirmation; or

(d) having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document; or

(e) having attended a judicial proceeding to give evidence, remains in the room in which such proceeding is being had or taken after the witnesses have been ordered to leave such room; or

\*(f) having been ordered by the court to remain within the premises in which any judicial proceeding is being heard or taken or within the precincts thereof departs from such premises or precincts without the leave of the court; or

\*Inserted by Ordinance No. 12 of 1969.

(g) causes an obstruction or disturbance in the course of a judicial proceeding; or

(h) while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any

person before whom such proceeding is being had or taken; or

(i) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or

(j) attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connexion with such evidence; or

(k) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(l) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

(m) commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken,

is guilty of an offence, and is liable to imprisonment for three months.

(2) When an offence against paragraphs (a), (b), (c), (d), (e), (g), (h) or (m) of subsection (1) is committed in view of the court, other than a magistrate's court \*presided over by a third class magistrate, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognizance of the offence and sentence the offender to a fine not exceeding forty dollars or in default of payment to imprisonment for a term not exceeding one month.

\*Amended by Ordinance No. 12 of 1969.

(3) The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the Supreme Court to punish for contempt of court.

## **CHAPTER XIV-RESCUES AND ESCAPES AND OBSTRUCTING OFFICERS OF COURT OF LAW**

### *Rescue*

**137.** Any person, who by force rescues or attempts to rescue from lawful custody any other person-

(a) is, if such last-named person is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life, guilty of a felony, and is liable to imprisonment for life; and

(b) is, if such other person is imprisoned on a charge or under sentence for any offence other than those specified above, guilty of a felony, and is liable to imprisonment for seven years; and

(c) is, in any other case, guilty of a misdemeanour.

If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

### *Escape*

**138.** Any person who, being in lawful custody, escapes from such custody, is guilty of a misdemeanour.

*Aiding prisoners to escape*

**139.** Any person who-

- (a) aids a prisoner in escaping or attempting to escape from lawful custody; or
  - (b) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner; or
  - (c) being an officer of the Prisons Service or other person lawfully placed in charge of any prisoner, knowingly or wilfully permits, or connives at, †or by his negligence causes or contributes to the escape of a prisoner from lawful custody,
- † Inserted by Act No. 11 of 1971

is guilty of a felony, and is liable to imprisonment for seven years.

*Removal, etc. of property under lawful seizure*

**140.** Any person who, when any property has been attached or taken under the process of authority of any court, knowingly, and with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals or disposes of such property, is guilty of a felony, and is liable to imprisonment for three years.

*Obstructing court officers*

**141.** Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of a misdemeanour, and is liable to imprisonment for one year.

**CHAPTER XV-MISCELLANEOUS OFFENCES AGAINST  
PUBLIC AUTHORITY**

*Frauds and breaches of trust by persons employed in the public service*

**142.** Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of a misdemeanour.

*False information to public servant*

**143.** Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such person employed in the public service-

(a) to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

(b) to use the lawful power of such person employed in the public service to the injury or annoyance of any person,

is guilty of a misdemeanour, and is liable to imprisonment for \*twelve months.

\*Amended by Ordinance No. 12 of 1969.

*Disobedience of lawful orders*

**144.** Everyone who disobeys any order, warrant or command duly made, issued or given by any court, officer or person acting in any public capacity and duly authorised in that behalf, is guilty of a misdemeanour, and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for two years.

*Division III.-Offences Injurious to the Public in General*

**CHAPTER XVI-OFFENCES RELATING TO RELIGION**

*Insult to religion of any class*

**145.** Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

*Disturbing religious assemblies*

**146.** Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.

*Trespassing on burial places*

**147.** Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of sepulture, or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

*Writing or uttering words with intent to wound religious feelings*

**148.** Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any

other person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

## CHAPTER XVII-OFFENCES AGAINST MORALITY

### *Definition of rape*

**149.** Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of the felony termed rape.

### *Punishment of rape*

**150.** Any person who commits the offence of rape is liable to imprisonment for life, with or without corporal punishment.

### *Attempted rape*

**151.** Any person who attempts to commit rape is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

### *Abduction*

**152.** Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

### *Abduction of girl under eighteen years of age with intent to have carnal knowledge*

**153.** Any person who, with intent that any unmarried girl under the age of eighteen years shall be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, guardian or any other person having the lawful care or charge of her, is guilty of a misdemeanour:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of eighteen years.

### *Indecent assaults on females*

**154.**-(1) Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony, and is liable to imprisonment for five years, with or without corporal punishment.

(2) It is no defence to a charge for an indecent assault on a girl under the age of sixteen years to prove that she consented to the act of indecency.

(3) It shall be a sufficient defence to a charge for an indecent assault on a girl under the age of sixteen years to prove that she consented to the act of indecency and that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

*(Inserted by 16 of 1960, s. 9.)*

*Indecently insulting or annoying females*

(4) Whoever, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or girl, or whoever intrudes upon the privacy of a woman or girl by doing an act of a nature likely to offend her modesty, is guilty of a misdemeanour, and is liable to imprisonment for one year.

*(Amended by 11 of 1948, s. 2, and by 21 of 1950, s. 3.)*

*Defilement of girl under thirteen years of age*

**155.**-(1) Any person who unlawfully and carnally knows any girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.

(2) Any person who attempts to have unlawful carnal knowledge of any girl under the age of thirteen years is guilty of a misdemeanour, and is liable to imprisonment for \*five years, with or without corporal punishment.

\*Amended by Ordinance No. 12 of 1969.

(3) It is no defence to a charge for unlawful carnal knowledge of a girl under the age of thirteen years to prove that she consented to the act.

*Defilement of girl between thirteen and sixteen years of age*

**156.**-(1) Any person who-

(a) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any girl being of or above the age of thirteen years and under the age of sixteen years;  
or

*Defilement of idiots or imbeciles*

(b) unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female \*person suffering from severe subnormality under circumstances which do not amount to rape but which prove that the offender knew at the time of the commission of the offence that the woman or girl was \*a person suffering from severe subnormality,

\*Amended by Ordinance No. 12 of 1969

is guilty of a misdemeanour, and is liable to imprisonment for \*five years, with or without corporal punishment:

\*Amended by Ordinance No. 12 of 1969

Provided that it shall be a sufficient defence to any charge under paragraph (a) if it shall be made to

appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

(2) No prosecution shall be commenced for an offence under paragraph (a) of subsection (1) more than twelve months after the commission of the offence.

(3) It is no defence to any charge under paragraph (a) of subsection (1) to prove that the girl consented to the act.

### *Procuration*

**157.**-(1) Any person who-

(a) procures or attempts to procure any girl or woman under the age of twenty-one years, not being a common prostitute or of known immoral character, to have unlawful connection, either in Fiji or elsewhere, with any other person or persons; or

(b) procures or attempts to procure any woman or girl to become, either in Fiji or elsewhere, a common prostitute; or

(c) procures or attempts to procure any woman or girl to leave Fiji, with intent that she may become an inmate of or frequent a brothel elsewhere; or

(d) procures or attempts to procure any woman or girl to leave her usual place of abode in Fiji (such place not being a brothel), with intent that she may for the purposes of prostitution become an inmate of or frequent a brothel either in Fiji or elsewhere,

is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment:

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

### *Consent no defence*

(2) It is no defence to any charge under this section to show that the girl or woman procured was procured with her consent.

### *Procuring defilement of woman by threats or fraud or administering drugs*

**158.** Any person who-

(a) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection either in Fiji or elsewhere; or

(b) by false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either in Fiji or elsewhere; or

(c) applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have unlawful carnal connection with such woman or girl,

is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment:

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

*Householder permitting defilement of girl under thirteen years of age on his premises*

**159.** Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of thirteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a felony, and is liable to imprisonment for five years, with or without corporal punishment:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

*Householder permitting defilement of girl under sixteen years of age on his premises*

**160.** Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of or above the age of thirteen years and under the age of sixteen years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of sixteen years.

*Detention with intent or in brothel*

**161.** (1) Any person who detains any woman or girl against her will-

(a) in or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(b) in a brothel,

is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment.

*Constructive detention by withholding clothes*

(2) When a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

*Selling minors under the age of sixteen years for immoral purposes*

**162.**-(1) Any parent or any other person having the custody, charge or care of a minor under the age of sixteen years who sells, lets for hire or otherwise disposes of such minor with intent that such minor shall at any age be employed or used for the purpose of prostitution or illicit sexual intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such minor at any age will be employed or used for any such purpose, is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment.

(2) When a minor under the age of sixteen years is sold, let for hire or otherwise disposed of to a common prostitute or other person of known immoral character, the parent or person so disposing of such minor shall, until the contrary is proved, be deemed to have disposed of such minor with the intent mentioned in this section.

*Buying minors under the age of sixteen years for immoral purposes*

**163.**-(1) Any person who buys, hires or otherwise obtains possession of any minor under the age of sixteen years with intent that such minor shall at any age be employed or used for the purpose of prostitution or illicit sexual intercourse with any person or for any unlawful and immoral purpose or knowing it to be likely that such minor at any age will be employed or used for any such purpose, is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without corporal punishment.

(2) Any common prostitute or other person of known immoral character who buys, hires or otherwise obtains possession of a minor under the age of sixteen years shall, until the contrary is proved, be deemed to have obtained possession of such minor with the intent mentioned in this section.

*Power of search*

**164.**-(1) If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of any woman or girl or other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising the person named therein to search for, and, when found, to take to and detain in a place of safety such woman

or girl until she can be brought before a magistrate; and the magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

(2) A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a magistrate and proceedings to be taken for punishing such person according to law.

(3) A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally; and-

(a) either is under the age of sixteen years; or

(b) if she is of or over the age of sixteen years and under the age of twenty-one years, is so detained against her will or against the will of her father or mother or of any person having the lawful care or charge of her; or

(c) if she is of or over the age of twenty-one years and is so detained against her will.

(4) Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove such woman therefrom.

(5) Every warrant issued under this section shall be addressed to and executed by some officer of police who shall be accompanied by the parent, relative or guardian or other person making the information if such person so desires, unless the magistrate shall otherwise direct.

*Authority of court as to custody of girls*

**165.** Where on the trial of any offence under sections **149** to **164** inclusive it is proved to the satisfaction of the court that the seduction, prostitution or unlawful detention of any female under the age of twenty-one years has been caused, encouraged or favoured by her father, mother, guardian, master or mistress, the court may divest such father, mother, guardian, master or mistress of all authority over her and appoint any person or persons willing to take charge of such female to be her guardian until she has attained the age of twenty-one years or any age below this as the court may direct and the court may from time to time rescind or vary such order by the appointment of any other person or persons as such guardian or in any other respect.

*Male person living on earnings of prostitution or persistently soliciting*

**166.**-(1) Every male person who-

(a) knowingly lives wholly or in part on the earnings of prostitution; or

(b) in any public place persistently solicits or importunes for immoral purposes,

is guilty of a misdemeanour. In the case of a second or subsequent conviction under this section the court may, in addition to any term of imprisonment awarded, sentence the offender to corporal punishment.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

*Woman living on earnings of prostitution or aiding, etc. for gain prostitution of another woman*

**167.** Every woman who knowingly lives wholly or in part on the earnings of prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any person, or generally, is guilty of a misdemeanour.

*\*Loitering or soliciting for the purposes of prostitution*

**168.**-(1) Any common prostitute who loiters or solicits in any public place shall be guilty of an offence.

(2) Any person who, in any public place, solicits for immoral purposes shall be guilty of an offence.

(3) Any person guilty of an offence under the provisions of either of the subsections (1) or (2) shall be liable on conviction, in respect of a first offence, to a fine not exceeding fifty dollars and in respect of a subsequent offence, to a fine not exceeding fifty dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(4) Any police officer may arrest without warrant any person he finds in any public place whom he reasonably suspects to be committing an offence under the provisions of this section.

(5) For the purposes of this section, "public place" includes the doorways and entrances of premises abutting on any public way and any around adjoining and open to any public place.

\*Inserted by Act No. 11 of 1971.

*Suspicious premises*

**169.** If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

*Brothels*

**170.** Any person who-

(a) keeps or manages or acts or assists in the management of a brothel; or

(b) being the tenant, lessee or occupier of any premises knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual

prostitution; or

(c) being the lessor or landlord of any premises or the agent of such lessor or landlord lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

is guilty of a misdemeanour.

*(Amended by 12 of 1969, s. 24.)*

#### *Conspiracy to defile*

**171.** Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony, and is liable to imprisonment for three years, with or without corporal punishment.

#### *Attempts to procure abortion*

**172.** Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, is guilty of a felony, and is liable to imprisonment for fourteen years.

#### *Abortion by woman with child*

**173.** Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatsoever, or permits any such thing or means to be administered or used to her, is guilty of a felony, and is liable to imprisonment for seven years.

#### *Supplying drugs or instruments to procure abortion*

**174.** Any person who unlawfully supplies to or procures for any person any thing whatsoever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and is liable to imprisonment for three years.

#### *Unnatural offences*

**175.** Any person who-

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature,

is guilty of a felony, and is liable to imprisonment for fourteen years, with or without corporal punishment.

*Attempts to commit unnatural offences and indecent assaults*

**176.** Any person who attempts to commit any of the offences specified in section **175**, or who is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, is guilty of a felony, and is liable to imprisonment for seven years, with or without corporal punishment.

*Indecent practices between males*

**177.** Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for five years, with or without corporal punishment.

*Incest by males*

**178.**-(1) Any male person who has carnal knowledge of a female person, who is to his knowledge his granddaughter, daughter, sister or mother, is guilty of a felony, and is liable to imprisonment for seven years:

Provided that if it is alleged in the information or charge and proved that the female person is under the age of thirteen years, the offender shall be liable to imprisonment for life.

*Consent immaterial*

(2) It is immaterial that the carnal knowledge was had with the consent of the female person.

*Attempt*

(3) If any male person attempts to commit any such offence as aforesaid he is guilty of a misdemeanour.

*Order for guardianship*

(4) On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of twenty-one years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons to be the guardian or guardians of such female during her minority or any less period, and the court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

*Incest by females*

**179.** Any female person of or above the age of sixteen years who with consent permits her grandfather, father, brother or son to have carnal knowledge of her (knowing him to be her grandfather, father, brother or son, as the case may be) is guilty of a felony, and is liable to imprisonment for seven years.

*Test of relationship*

**180.** In sections **178** and **179** the expressions "brother" and "sister" respectively include half-brother and half-sister, and the provisions of the said sections shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

*Sanction of \*Director of Public Prosecutions*

**181.** No prosecution for an offence under sections **178** or **179** shall be commenced without the sanction of the \*Director of Public Prosecutions.

\*Amended by Order 8th October, 1970.

*Knowledge of age of female immaterial*

**182.** Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

*Definition of carnal knowledge*

**183.** Whenever, upon the trial for any offence punishable under this Code, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

## **CHAPTER XVIII-OFFENCES RELATING TO MARRIAGE**

*Fraudulent pretence of marriage*

**184.** Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, is guilty of a felony, and is liable to imprisonment for ten years.

*Bigamy*

**185.** Any person who, having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for five years:

Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a

marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time.

*Marriage ceremony fraudulently gone through without lawful marriage*

**186.** Any person who dishonestly or with fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, is guilty of a felony, and is liable to imprisonment for five years

**CHAPTER XIX-NUISANCES AND OTHER MISCELLANEOUS OFFENCES**

*Common nuisance*

**187.** Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance. or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance, and is liable to imprisonment for one year.

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public,

*Traffic in obscene publications*

**188.**-(1) Any person who-

(a) for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writing, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects, or any other object tending to corrupt morals; or

(b) for any of the purposes above-mentioned imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

(c) carries on or takes in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them or exhibits any of them publicly, or makes a business of lending any of them; or

(d) advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be procured either directly or indirectly; or

(e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,

is guilty of a misdemeanour, and is liable to imprisonment for two years or to a fine of two hundred dollars.

(2) If, in respect of any of the offences specified in paragraphs (a), (b), (c), or (d) of subsection (1), any constituent element thereof is committed in Fiji, such commission shall be sufficient to render the person accused of such offence triable therefor in Fiji.

(3) A court, on convicting any person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4) A court may, on the application of the \*Director of Public Prosecutions or a Crown Counsel or a Superintendent of Police, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.

*Offences in connexion with street and house to house collections*

**189.**-(1) In this section-

"collection" means an appeal to the public or any class of the public, made by means of visits from house to house or by soliciting in public ways or other public places, or by both such means, to give money or other property, not being money or property due or about to fall due from the donors under or by virtue of any written law, contract or other legal obligation;

"collector" means, in relation to a collection, a person who makes such an appeal by either of the said means;

"house" includes a place of business;

"promoter" means, in relation to a collection, a person who causes others to act as collectors for the purposes of a collection.

(2) No person shall assist or take part in a collection without the written authority of the promoter (if any) of such collection. Every person so authorised shall produce such written authori