

**CHAPTER 08:01  
PENAL CODE**

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**An Act to establish a code of criminal law.**

[Date of Commencement: 10th June, 1964]

**PART I**  
**General Provisions (ss 1-33)**

**Preliminary (s 1)**

## 1. Short title

This Act may be cited as the Penal Code (hereinafter referred to as "this Code").

### *Interpretation (ss 2-3)*

## 2. Interpretation

(1) Subject to subsection (2), in this Code, unless the context otherwise requires-

**"Act"** includes any orders or rules or regulations made under the authority of any Act;

**"assault"** means-

- (a) the intentional application of force to the person of another, directly or indirectly; or
- (b) the making of any gesture towards another in such a manner as to give him reasonable grounds to believe that the person making the gesture is about to apply such force to his person;

**"court"** means a court of competent jurisdiction;

**"dangerous harm"** means harm endangering life;

**"dwelling-house"** includes any building or structure or part of a building or structure 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;

**"explosive"** has the meaning assigned to it in the Explosives Act;

**"goods"** means corporeal movable property of any description;

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

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

**"judicial officer"** means a judge, magistrate or member of a customary court;

**"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, or in or before a customary court, whether such court takes evidence on oath or not;

**"knowingly"**, used in connection with any term denoting uttering or using, implies

knowledge of the character of the thing uttered or used;

**"local authority"** includes a tribal administration;

**"magistrate"** includes an administrative officer appointed as a magistrate under the Magistrates' Courts Act;

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

**"member of the Forces"** means any member of the Botswana Police Force or any tribal police force;

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

**"navigation"** means navigation by air or water; and "navigator" shall be construed accordingly;

**"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;

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

**"offensive weapon"** means any article made or adapted for use for causing injury to the person or intended by any person having it with him for such use by him and includes a spear, axe, hatchet and club and knife with a blade exceeding four inches in length;

**"peace officer"** has the meaning assigned thereto in the Criminal Procedure and Evidence Act;

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

**"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 the State and any local authority;

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

- (a) any public office;
- (b) any office to which a person is appointed or nominated by or under any written law;
- (c) 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 paragraph (a) or (b) of this definition; or
- (d) any office of arbitrator or umpire in any proceedings or matter submitted to arbitration

by order or with the sanction of any court, or in pursuance of any written law;

and the said term further includes-

- (i) any member of a commission of inquiry appointed under or in pursuance of any written law;
- (ii) any person employed to execute any process of a court;
- (iii) any member of the forces;
- (iv) any person in the employment of the Government;
- (v) any 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 solemnization 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;
- (vi) any person in the employment of a local authority;
- (vii) any person in the employment of the government of a country other than Botswana, or of the United Nations or any agency thereof, who exercises functions of his office in Botswana;

**"petroleum"** includes the liquids commonly known as rock oil, Rangoon oil, Burma oil, kerosene, paraffin oil, petrol, gasolene, benzoline, benzine, naphtha or any like inflammable liquid, whether a natural product or one that is made from petroleum, coal, schist, shale, or any other bituminous substances, or from any products thereof;

**"police force"** includes the Force defined in section 2 of the Police Act and any tribal police force in Botswana, and "police officer" shall be construed accordingly;

**"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;

**"premises"** includes any land, any building or any other place, and any vehicle, conveyance or vessel;

**"print"** means to produce or reproduce words or pictures in visible form by printing, writing, typewriting, duplicating, cyclostyling, lithography, photography or any other means of representing the same in visible form;

**"prohibited publication"** means any publication in respect of which an order has been made under section 47, and any part, copy or reproduction of any such publication;

**"property"** includes any description of movable or immovable 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 Botswana, 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 officer"** means any person in the service of, or holding office under the State whether such service be permanent or temporary, or paid or unpaid;

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

**"publication"** includes all written and printed matter, and any gramophone or other record, perforated roll, recording tape or wire, cinematograph film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed, and everything, whether of a nature similar to the foregoing or not, containing any visible representation or by its form, shape or other characteristics, or in any manner capable of producing, representing or conveying words or ideas, and every copy or reproduction or any publication;

**"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;

**"seditious intention"** has the meaning assigned to it in section 50;

**"seditious publication"** means a publication containing any word, sign or visible presentation expressive of a seditious intention;

**"statute"** has the same meaning as a "written law";

**"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 document which is the property or in the lawful possession of any person and which is evidence of the ownership of any property or of the right to recover



or receive any property;

**"vessel"** means-

- (a) a ship, boat or similar craft; or
- (b) an aircraft;

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

(2) Except where the context otherwise requires, expressions used in this Code shall be presumed to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

### **3. Exclusion of common law**

Subject to the proviso to section 10(8) of the Constitution, no person shall be liable to punishment by the common law for any act.

#### ***Territorial Application of this Code (ss 4-5)***

### **4. Extent of jurisdiction of courts**

The jurisdiction of the courts of Botswana for the purposes of this Code extends to every place within Botswana.

### **5. Offence committed partly within and partly beyond the jurisdiction**

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.

#### ***General Rules as to Criminal Responsibility (ss 6-20)***

### **6. Ignorance of law**

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.

### **7. Bona fide claim of right**

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.

### **8. Intention and motive**

(1) Subject to the express provisions 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 in 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.

## **9. Mistake of fact**

(1) 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.

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

## **10. Presumption of sanity**

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.

## **11. Insanity**

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 of 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 mentioned above in reference to that act or omission.

## **12. Intoxication**

(1) Except 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 person shall be discharged, and in a case falling under paragraph (b) the provisions of section 11 of this Code and of Part XII of the Criminal Procedure and Evidence Act shall apply.

(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 purposes of this section, "intoxication" shall be deemed to include a state produced by narcotics or drugs.

### **13. Immature age**

(1) A person under the age of eight years is not criminally responsible for any act or omission.

(2) A person under the age of 14 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 12 years is presumed to be incapable of having carnal knowledge.

### **14. Judicial officers**

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 good faith 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.

### **15. Compulsion**

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 the causing of, or the attempt to cause, death.

### **16. Defence of person or property**

Subject to the express provisions of this Code or any other law for the time being in force, a person shall not be criminally responsible for the use of force in repelling an unlawful attack upon his person or property or the person or property of anyone whom it is his moral or legal duty to protect if the means he uses and the degree of force he employs in so doing are no more than is reasonably necessary in the circumstances.

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

Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him or 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.

#### **18. Compulsion by husband**

A married woman is not free from criminal responsibility for 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.

#### **19. Person not to be punished twice for same act or omission**

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.

#### **20. Consent of Director of Public Prosecutions to prosecute**

Notwithstanding that in respect of any offence it is provided that no prosecution shall be instituted without the consent of the Director of Public Prosecutions a person may be arrested and charged for such offence and any such person may be remanded in custody or bail notwithstanding that the consent of the Director of Public Prosecutions to the institution of prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

### ***Parties to Offences (ss 21-24)***

#### **21. Principal offenders**

(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 offence;
- (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, and 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 himself doing the act or making the omission.

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

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.

## **23. Counselling another to commit an offence**

(1) 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.

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

## **24. Offences by corporations, societies, etc.**

Where an offence is committed by any company or other body corporate, or by any society, association or body of persons, every person charged with, or concerned or acting in the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act of omission on his part, he was not aware that the offence was being or was intended or was about to be committed, or that he took all reasonable steps to prevent its commission.

### ***Punishments (ss 25-33)***

## **25. Different kinds of punishments**

The following punishments may be inflicted by a court-

- (a) death;
- (b) imprisonment;
- (c) corporal punishment;
- (d) fine;
- (e) forfeiture;
- (f) finding security to keep the peace and be of good behaviour or to come up for judgment;
- (g) any other punishment provided by this Code or by any other law.

## **26. Sentence of death**

(1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

(2) Sentence of death shall not be pronounced on or recorded against any 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 18 years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

(3) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section 298 of the Criminal Procedure and Evidence Act to be pregnant, she shall be liable to imprisonment for life and not to sentence of death.

## **27. Imprisonment**

(1) Sentence of imprisonment shall not be passed on any person under the age of 14 years.

(2) A person convicted of an offence punishable with imprisonment for life or any other period may be sentenced for any shorter term.

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

(4) Notwithstanding any provision in any enactment which provides for the imposition of a statutory minimum period of imprisonment upon a person convicted of an offence, a court may, where there are exceptional extenuating circumstances which would render the imposition of the statutory minimum period of imprisonment totally inappropriate, impose a lesser and appropriate penalty.

## **28. Corporal punishment**

(1) Subject to the provisions of subsection (4), no person shall be sentenced to undergo

corporal punishment for any offence unless such punishment is specifically authorized by this Code or any other law.

(2) A sentence of corporal punishment shall be inflicted once only. The sentence shall specify the number of strokes, which shall not exceed 12, nor, in the case of a person under the age of 18 years, six.

(3) 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 40 years of age.

(4) Where any male person under the age of 40 is convicted of any offence punishable with imprisonment, other than an offence listed in the Second Schedule to the Criminal Procedure and Evidence Act, a court may, in its discretion but subject to the provisions of section 27(1), order him to undergo corporal punishment in addition to or in substitution for such imprisonment.

(5) Where it is provided that any person shall be liable to undergo corporal punishment such punishment shall, if awarded, be inflicted in accordance with the provisions of section 305 of the Criminal Procedure and Evidence Act.

## **29. Fines**

(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) in the case of an offence punishable with a fine or a term of imprisonment, the imposition of a fine or imprisonment shall be a matter for the discretion of the court;
- (c) 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 in accordance with the provisions of section 303 of the Criminal Procedure and Evidence Act.

(2) In the absence of express provisions in any law relating thereto, the term of imprisonment

or corporal punishment ordered by a court in respect of the non-payment of any sum-

- (a) imposed as a fine;
- (b) ordered to be forfeit to the State;
- (c) ordered to be paid under the provisions of any other law,

shall be such as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale-

<i>Amount of fine</i>	<i>Maximum</i>
Not exceeding P200	14 days or 6 strokes
P200-P1000	One month or 9 strokes
P1001-P10,000	Six months or 12 strokes
Exceeding P10,000	Two years imprisonment.

### **30. Forfeiture**

The provisions of this Code with respect to the forfeiture of property to the State shall be in addition to and not in derogation from the provisions of sections 58 and 319 of the Criminal Procedure and Evidence Act.

### **31. Security for keeping the peace or to come up for judgment**

(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, on condition that he shall keep the peace and be of good behaviour for a time to be fixed by the court, 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 longer than one year, and shall not, together with the fixed term of imprisonment, if any, extend for a term longer than the longest term for which he might be sentenced to be imprisoned without fine.

(2) When a person is convicted of any offence not punishable with death the court may, instead of passing sentence, discharge the offender upon his entering into his own recognizance, with or without sureties, in such sum as the court may think fit, on condition that he shall appear to receive judgment at some future sitting of the court or when called upon.

### **32. Discharge of offender without punishment**

(1) Where, in any trial before a magistrate's court, the court thinks that the charge is proved but is of the opinion that, having regard to the character, antecedents, age, health or mental



condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge.

(2) An order made under this section shall, for the purpose of re-vesting or restoring stolen property, and enabling the court to make any order under the provisions of sections 318 and 319 of the Criminal Procedure and Evidence Act have the like effect as a conviction.

### **33. General punishment for offences**

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

## **PART II Crimes (ss 34-399)**

### **DIVISION I OFFENCES AGAINST PUBLIC ORDER (ss 34-98)**

#### ***Treason and other Offences against the State's Authority (ss 34-59)***

### **34. Treason**

- (1) A person is guilty of treason and shall, subject to section 40, be sentenced to death who-
- (a) prepares or endeavours to overthrow by unlawful means the Government as established by law;
  - (b) prepares or endeavours to procure by force any alteration of the law or the policies of the Government;
  - (c) prepares or endeavours to carry out by force any enterprise which usurps the executive power of the State in any matter of both a public and a general nature;
  - (d) in time of war and with intent to give assistance to the enemy, does any act which is likely to give such assistance; or
  - (e) gives assistance to any person who threatens the security or sovereignty of Botswana.
- (2) In paragraphs (b) and (c) of subsection (1) "by force" means either-
- (a) by force used in such a manner as, whether by reason of the number of persons involved or the means used or both, to imperil or be likely to imperil the safety of the State or to cause or be likely to cause death or grievous harm or serious damage to property; or
  - (b) by a show of force to arouse reasonable apprehension that force will be used in such a manner as is described in paragraph (a).
- (3) A person who is not a citizen of Botswana shall not be punishable under this section for

anything done outside Botswana, but a citizen of Botswana may be tried and punished for an offence under this section as if it had been committed within the jurisdiction of the court.

### **35. Instigating invasion**

Any person who instigates any foreigner to invade Botswana with an armed force is guilty of treason and shall, subject to section 40, be sentenced to death.

### **36. Concealment of treason**

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 President or a police officer, or use other reasonable endeavours to prevent the commission of the offence,

is guilty of the offence termed misprision of treason and is liable to imprisonment for not less than 15 years nor more than 25 years.

### **37. Treasonable offences**

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

- (a) prepares or endeavours to procure by unlawful means any alteration of the law or the policies of the Government;
- (b) prepares or endeavours to carry out by unlawful means any enterprise which usurps the executive powers of the State in any matter of both a public and general nature;
- (c) threatens the security of Botswana; or
- (d) prepares or endeavours to give assistance to any person who threatens the security of Botswana,

and manifests such intention by an overt act, or by publishing any printing or writing, is guilty of an offence and is liable to imprisonment for not less than 15 years nor more than 25 years.

### **38. Promoting war or warlike undertaking**

Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by, or against any person or group of persons within Botswana, is guilty of an offence and is liable to imprisonment for not less than 15 years nor more than 25 years.

### **39. Certain persons deemed to threaten security or sovereignty of Botswana**

(1) For the purposes of sections 34 and 37 a person shall be deemed to threaten the security or sovereignty of Botswana if-

- (a) without lawful authority he is found in possession of or wearing the uniform of the armed forces of any foreign country;
- (b) without lawful authority, he is found in possession of any arms or ammunition prohibited under section 23 of the Arms and Ammunition Act, or of any explosive or bomb;
- (c) without lawful authority, he is found in company with any person specified in paragraph (a) or (b).

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

#### **40. Extenuating circumstances in treason and similar offences**

Where a court in convicting a person of an offence contrary to section 34 or 35 is of the opinion that there are extenuating circumstances, the court may, instead of imposing the death sentence, impose a sentence of imprisonment of not less than 15 years nor more than 25 years.

#### **41. Limitations as to trial for treason, etc.**

(1) A person shall not be tried for treason, or for any of the offences defined in sections 36, 37 and 38, unless the prosecution is commenced within two years after the offence is committed.

(2) No person charged with treason, or with any of such offences, may 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 offence 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 offence.

#### **42. Inciting to mutiny**

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

- (a) to seduce any member of the Forces from his duty and allegiance to the President;
- (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 an offence and is liable to imprisonment for life.

#### **43. Aiding members of the Forces in acts of mutiny**

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 member of the Forces is guilty of an offence.

#### **44. Inducing desertion**

Any person who, by any means whatever, directly or indirectly-

- (a) procures or persuades or attempts to procure or persuade to desert;
- (b) aids or abets, or is accessory to, the desertion of; or
- (c) having reason to believe he is a deserter, harbours or aids in concealing,

any member of the Forces, is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

#### **45. Aiding prisoners of war to escape**

Any person who-

- (a) knowingly and advisedly aids an alien enemy of Botswana, being a prisoner of war in Botswana 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 Botswana, is guilty of an offence 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 an offence.

#### **46. Definition of overt act**

In the case of any of the offences defined in this Division, 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.

#### **47. Prohibited publications**

(1) If the President is of the opinion that there is in any publication or series of publications published within or without Botswana by any person or association of persons matter which is contrary to the public interest, he may, in his absolute discretion, by order published in the *Gazette* and in such local newspapers as he may consider necessary, declare that that particular publication or series of publications, or all publications of any class of publication specified in the order published by that person or association of persons, shall be a prohibited publication or prohibited publications, as the case may be.

(2) If an order made under the provisions of subsection (1) specifies by name a publication which is a periodical publication, such order shall, unless a contrary intention be expressed

therein, have effect-

- (a) with respect to all subsequent issues of such publication; and
- (b) not only with respect to any publication under that name, but also with respect to any publication published under any other name if the publishing thereof is in any respect a continuation of, or in substitution for, the publishing of the publication named in the order.

(3) If an order made under the provisions of subsection (1) declares that all publications of any class of publication published by a specified person shall be prohibited publications, such order shall, unless a contrary intention be expressed therein, have effect not only with respect to all publications of that class published by that person or association of persons before the date of the order but also with respect to all publications of that class so published on or after such date.

(4) An order made under the provisions of subsection (1) shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

(5) Where an order has been made under subsection (1) declaring all publications of any class of publication published by a specified person to be prohibited publications or specifying by name a publication which is a periodical publication, any person who wishes to import into Botswana any particular publication affected by such order may apply to the Minister for a permit in that behalf and, unless the Minister is satisfied that the publication contains matter which is contrary to the public interest, he shall grant such a permit and the order shall thereupon cease to have effect with respect to that publication.

(6) Any person whose application to the Minister under subsection (5) has been refused may appeal in writing against such refusal to the President whose decision thereon shall be final.

(7) For the purposes of this section and of any prosecution in respect of a prohibited publication, any publication which purports to be printed or published outside Botswana by any person shall, unless the contrary is proved, be deemed to be published outside Botswana by such person.

(8) In this section, "public interest" means the interests of defence, public safety, public order, public morality or public health.

#### **48. Penalty for prohibited publications**

(1) Any person who, otherwise than in his capacity and in the course of his duties as a public officer, prints, makes, imports, publishes, sells, supplies, offers for sale or supply, distributes, reproduces or has in his possession or under his control any prohibited publication is guilty of an offence and is liable to imprisonment for a term not exceeding three years:

Provided that no person who-

- (i) forthwith on the importation of a publication being prohibited under section 47, delivers

to the nearest administrative officer or to the police officer in charge of the nearest police station all copies of such publication in his possession or under his control, or

- (ii) by reason of its being sent or delivered to him without his knowledge or privity or in response to a request made by him before the importation thereof was prohibited, comes into possession or control of a prohibited publication, and who, forthwith on the nature of its contents becoming known to him, delivers to the nearest administrative officer or the police officer in charge of the nearest police station all copies of such publication so coming into his possession or control,

shall be convicted of an offence under this section in respect of the copies so delivered by him as aforesaid.

(2) Where in any prosecution under this section it is proved that a person printed, made, imported, published, sold, supplied, offered for sale or supply, distributed, reproduced or had in his possession or under his control a prohibited publication, it shall be presumed that he knew the nature and contents of the publication, unless he proves to the satisfaction of the court-

- (a) that he was not aware of the nature or contents of the publication in respect of which he is charged; and
- (b) that he printed, made, imported, published, sold, supplied, offered for sale or supply, distributed, reproduced or had in his possession or under his control such publication in such circumstances that at no time did he have reasonable cause to suspect that it was a prohibited publication.

#### **49. Seizure and disposal of prohibited publications**

(1) Any police officer or administrative officer may seize and detain any prohibited publication which he finds in circumstances which raise a reasonable presumption that an offence under this Code has been, is being or is intended to be committed in relation thereto, or which he finds abandoned or without an apparent owner or possessor or in the possession or custody of any unauthorized person.

(2) Any of the following officers, that is to say-

- (a) any police officer not below the rank of Sub-Inspector;
- (b) any other person employed in the public service authorized in that behalf by the Minister,

may detain, open and examine any package or article which he suspects to contain any prohibited publication, 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.

(3) If any prohibited publication 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 be arrested by the officer and delivered to

police custody to be dealt with according to law.

(4) Any prohibited publication which is seized or detained as aforesaid, or which in any other manner comes into the possession or custody of any court or any public officer, shall be forfeited to the State and may be destroyed or otherwise disposed of, as may be directed by such court or by the Commissioner of Police, as the case may be.

## **50. Seditious intention**

(1) A seditious intention is an intention-

- (a) to bring into hatred or contempt or to excite disaffection against the person of the President or the Government of Botswana as established by law;
- (b) to excite the inhabitants of Botswana to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Botswana as established by law;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Botswana;
- (d) to raise discontent or disaffection amongst the inhabitants of Botswana; or
- (e) to promote feelings of ill-will and hostility between different classes of the population of Botswana,

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

- (i) to show the President has been misled or mistaken in any of his measures;
- (ii) to point out errors or defects in the Government or the Constitution of Botswana as established by law or in legislation or in the administration of justice with a view to the remedying of such errors or defects;
- (iii) to persuade the inhabitants of Botswana to attempt to procure by lawful means the alteration of any matter in Botswana as established by law; or
- (iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Botswana.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, 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 which he so conducted himself.

## **51. Seditious offences**

(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 words with a seditious intention;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- (d) imports any seditious publication, unless he has no reason to believe that it is seditious,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years; and any seditious publication shall be forfeited to the State.

(2) Any person who without lawful excuse has in his possession any seditious publication is guilty of an offence and is liable to imprisonment for a term not exceeding three years; and such publication shall be forfeited to the State.

(3) It shall be a defence to a charge under subsection (2) that the person charged did not know that the publication was seditious when it came into his possession and that he did, as soon as the nature of the publication became known to him, deliver the publication to the nearest administrative officer or to the officer in charge of the nearest police station.

(4) Any printing machine which has been, or is reasonably suspected of being, used for or in connection with the printing or reproduction of a seditious publication may be seized or otherwise secured by a police officer pending the trial and conviction or discharge or acquittal of any person accused of printing or reproducing any seditious publication; and, when any person is convicted of printing or reproducing a seditious publication, the court may, in addition to any other penalty which it may impose, order that the printing machine on which the publication was printed or reproduced shall be either confiscated for a period not exceeding one year, or be forfeited to the State, and may make such order whether or not the person convicted is, or was at the time when the publication was printed or reproduced, the owner of the printing machine. A printing machine forfeited under this subsection shall be sold, and the proceeds, less expenses, shall be paid into the general revenue.

(5) When a proprietor, publisher, printer or editor of a newspaper is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other punishment it may impose, and whether or not it has made an order under subsection (4), make an order prohibiting any further publication of the newspaper for a period not exceeding one year.

(6) The court may, at any time, on the application of the Director of Public Prosecutions and on taking such security, if any, for good behaviour as the court may see fit to order, revoke any order made by it forfeiting or confiscating a printing machine or prohibiting further publication of a newspaper.

(7) A court, before ordering the forfeiture or confiscation of a printing machine under this section, shall be satisfied that the printing machine was the printing machine upon or by which



the seditious publication was printed or reproduced.

(8) In any case in which a printing machine has been secured or confiscated under this section, the Commissioner of Police may, in his discretion, cause-

- (a) the printing machine or any part of it to be removed; or
- (b) any part of the machine to be sealed so as to prevent its use:

Provided that the owner of the printing machine or his agents shall be entitled to reasonable access to it to keep it in working order.

(9) The Commissioner of Police or any police officer acting in pursuance of the powers conferred by this section shall not be liable for any damage caused to a printing machine, whether by neglect or otherwise, not being damage wilfully caused to the machine.

(10) Any person who uses or attempts to use a printing machine confiscated under subsection (4) is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(11) Any person who prints or publishes a newspaper in contravention of an order made under subsection (5) is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(12) In this section the expression "printing machine" includes a printing press, copying press, type-setting machine, photographic, duplicating or engraving apparatus, or other machine or apparatus used for or in connection with printing or reproducing publications, and the type, appurtenances and equipment thereof.

## **52. Prosecutions under section 51**

(1) No prosecution for an offence under section 51 shall be begun except within six months after the offence is committed:

Provided that where a person leaves Botswana within six months of committing such offence, the prosecution for such offence may be begun within six months from the date when such person returns to Botswana after leaving it.

(2) A person shall not be prosecuted for an offence under section 51 without the written consent of the Director of Public Prosecutions.

## **53. Unlawful oaths to commit capital offences**

Any person who-

- (a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the person who takes it to commit any offence punishable with death; or

(b) takes any such oath or engagement, not being compelled to do so,  
is guilty of an offence and is liable to imprisonment for life.

#### **54. Other unlawful oaths to commit offences**

Any person who-

- (a) administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the following ways, that is to say-
- (i) to engage in any mutinous or seditious enterprise;
  - (ii) to commit any offence not punishable with death;
  - (iii) to disturb the public peace;
  - (iv) to be of any association, society or confederacy, formed for the purpose of doing any such act as aforesaid;
  - (v) to obey the orders or commands of any committee or body of men not lawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;
  - (vi) not to inform or give evidence against any associate, confederate or other person;
  - (vii) not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or any other person, or the import of any such oath or engagement; or

(b) takes any such oath or engagement, not being compelled to do so,  
is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

#### **55. Compelling another person to take an oath**

(1) Any person who, by the use of physical force, or by threat or intimidation of any kind, compels another person to take an oath or engagement in the nature of an oath purporting to bind the person who takes it to act or not to act in any way is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

(2) Any person who is present at and consents to the administering, by physical force or under threat or intimidation of any kind, or any oath or engagement in the nature of an oath, to any person purporting to bind the person who takes it to act or not to act in any way is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **56. Compulsion, how far a defence**

It shall not be a defence for a person who takes any oath or engagement in the nature of an

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oath mentioned in section 53 or section 54 to prove that he was compelled to do so unless as soon as reasonably possible after the taking of such oath or engagement in the nature of an oath he reported the event to the police, or, if he is in actual service as a member of the Forces, to his commanding officer.

#### **57. Person present deemed to consent to administering of oath unless he reports to authorities**

Any person who is present at the administering of an oath or engagement in the nature of an oath mentioned in section 53, 54 or 55 shall be deemed to have consented to the administering of such oath or engagement unless as soon as reasonably possible thereafter he reports the event to the police, or if he is in actual service as a member of the Forces, to his commanding officer.

#### **58. Unlawful drilling**

(1) Any person who-

- (a) without the permission of the President trains or drills any other person to the use of arms or the practice of military exercises, movements, or evolutions; or
- (b) is present at any meeting or assembly of persons, held without the permission of the President, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements, or evolutions,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

(2) Any person who, at any meeting or assembly held without the permission of the President, is trained or drilled to the use of arms or the practice of military exercises, movements, or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, is guilty of an offence.

#### **59. Alarming publications**

(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of an offence.

(2) It shall be a defence to a charge under section (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.

### ***Offences Affecting Relations with Foreign States and External Tranquillity (ss 60-65)***

#### **60. Defamation of foreign princes**

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 the peace and friendship between Botswana and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of an offence.

#### **61. Conspiracies, etc. in Botswana relating to the commission of acts of violence abroad**

- (1) Any person who while in Botswana-
- (a) conspires with any other person to commit within a state or territory other than Botswana or to aid or procure the commission within such a state or territory of any act of violence-
    - (i) the commission of which is an offence under the law of that state or territory; and
    - (ii) the commission of which in Botswana would be an offence under the law of Botswana; or
  - (b) incites, instigates, commands or procures any other person to commit within such a state or territory any such act,

shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding three years, or to both.

(2) Reference in this section to the commission of acts of violence includes reference to omissions done with the intention of causing violence.

(3) No prosecution for an offence under this section shall be brought without the consent in writing of the Director of Public Prosecutions.

#### **62. Piracy**

- (1) A person commits an act of piracy if being-
- (a) the owner or master of a ship, he sails the seas in her without authorization from the government of any country with the object of committing depredations upon property or acts of violence against persons or if, from or by means of the ship, he commits any such act of depredation or violence;
  - (b) a member of the crew or a passenger of a ship, he conspires with any other person to rise against her master and officers or to seize the ship or if, in common with any other person, he engages in any act of hostility against her master and officers.

(2) A master or seaman commits an act of piracy if he betrays his trust, runs away with his ship or goods belonging to her or yields them up voluntarily to any person contrary to his duty or conspires or combines with or attempts to corrupt any master, officer or seaman to yield up or run away with any ship or goods or makes or endeavours to make a revolt in the ship.

(3) A person belonging to a ship commits an act of piracy if, upon meeting a ship at sea or in any port, harbour or haven, he forcibly boards or enters her and, though he does not seize or

carry off the ship, throws overboard or destroys any part of the goods belonging to her.

### **63. Punishment of piracy**

(1) A person who commits an act of piracy shall be guilty of an offence and shall be liable to imprisonment for life or any lesser term.

(2) A person who, with intent to commit or at the time of or immediately before or immediately after committing an act of piracy in respect of any ship, assaults, with intent to murder, any person being on board, or belonging to, the ship or injures any such person or unlawfully does any act by which the life of any such person may be endangered shall be guilty of an offence and shall be liable to suffer death.

### **64. Jurisdiction over piracy**

(1) The High Court has jurisdiction to try-

- (a) an act of piracy wherever committed, if committed on board a Botswana ship;
- (b) an act of piracy committed within the territorial waters of the Republic;
- (c) an act of piracy committed by a citizen of Botswana on the high seas or in a foreign port or harbour or in foreign territorial tidal waters.

(2) For the purpose of establishing jurisdiction an act of piracy may be regarded as having been committed where any part of the act was committed.

### **65. Hijacking and related offences**

(1) Any person commits an offence who, whether in or out of Botswana, unlawfully or intentionally-

- (a) performs or threatens to perform an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft;
- (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight;
- (c) 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;
- (d) 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
- (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.

(2) Any person also commits an offence if he-

- (a) attempts to commit any of the offences mentioned in subsection (1); or
- (b) is an accomplice of a person who commits or attempts to commit any such offence.

(3) Any person who commits any offence specified in subsections (1) and (2) shall be liable to imprisonment for life.

***Unlawful Societies, Unlawful Assemblies, Riots and Other  
Offences against Public Tranquillity (ss 66-98)***

**66. Unlawful society**

(1) A society includes any combination of 10 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 person to levy war on the Government or the inhabitants of any part of Botswana;
- (ii) killing or injuring or inciting to the killing or injuring of any person;
- (iii) destroying or injuring or inciting to the destruction or injuring of any property,
- (iv) subverting or promoting the subversion of the Government or of its officials,
- (v) committing or inciting to acts of violence or intimidation,
- (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 Botswana; or

(b) if declared by an order of the President to be a society dangerous to peace and order in Botswana.

**67. Managing unlawful society**

Any person who manages or assists in the management of an unlawful society is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

**68. Being member of unlawful society**

Any person who-

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

- (c) contributes or solicits anything as a subscription or otherwise in the name of or to be used directly or indirectly for the benefit of an unlawful society; or
- (d) in any way takes part in any activity of an unlawful society or carries on any activity in the direct or indirect interests of an unlawful society in which activity it was or could have engaged prior to the date upon which it became an unlawful society,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **69. Prosecutions under sections 67 and 68**

(1) A prosecution for an offence under section 67 or 68 shall not be instituted except with the written consent of the Director of Public Prosecutions:

Provided that-

- (i) 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;
- (ii) the consent of the Director of Public Prosecutions shall not be required to any prosecution for an offence under either of the said sections in respect of a society declared; in accordance with the provisions of section 66(2)(b) to be a society dangerous to peace and good order in Botswana.

(2) In any prosecution for an offence under section 67 or section 68, it shall not be necessary to prove that the society consisted of 10 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 10.

(3) When any books, accounts, writing, papers, documents, banners or insignia of, or relating to, an unlawful society are found in the possession or under the control of any person, or when any person wears any of the insignia of, or is marked with any mark of, an unlawful society, it shall be presumed, until the contrary is proved, that such person is a member of the unlawful society.

(4) When any books, accounts, lists of members, minutes or correspondence of, or relating to, an unlawful society are found in the possession or under the control of any person, it shall further be presumed, until the contrary is proved, that such person assists in the management of the unlawful society.

#### **70. Powers of entry, arrest and search**

Any police officer of or above the rank of, or authorized in writing by a police officer of or above the rank of, Assistant Superintendent may enter, with or without assistance, any house

or building or into any place in which he has reason to believe-

- (a) that a meeting of an unlawful society or of persons who are members of an unlawful society is being held;
- (b) that a member of an unlawful society resides or is; or
- (c) that documents, funds, moneys or other information relating to an unlawful society may be found,

and arrest or cause to be arrested all persons found therein, and search such house, building or place and seize or cause to be seized all insignia, banners, arms, books, papers, documents and all 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 or with the unlawful society.

## **71. Declaration by the President**

(1) When a society is declared to be an unlawful society by an order of the President, the following consequences shall ensue-

- (a) the property of the society within Botswana 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 are then any surplus assets he 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 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 liquidator of an unregistered association for the purpose of its winding up under the Companies Act.

(2) The President 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.

(3) The provisions of subsection (1) shall not apply to any property seized at any time under section 70.

## **72. Forfeiture of insignia, etc.**

Subject to the provisions of section 71, the insignia, banners, arms, books, papers,



documents and other property belonging to an unlawful society shall be forfeited to the State, and shall be dealt with in such manner as the Minister may direct.

### **73. Subversive activities**

(1) Any person who does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a subversive intention, or utters any words with a subversive intention, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

(3) For the purposes of this section, "subversive" means-

- (a) supporting, propagating (otherwise than with intent to produce by lawful means the alteration, correction, defeat, avoidance or punishment thereof) or advocating any act or thing prejudicial to public order, the security of Botswana or the administration of justice;
- (b) inciting to violence or other disorder or crime, or counselling defiance of or disobedience to the law or lawful authority;
- (c) intended or calculated to support or assist or benefit, in or in relation to such acts or intended acts as are hereinafter described, persons who act, intend to act or have acted in a manner prejudicial to public order, the security of Botswana or the administration of justice, or who incite, intend to incite or have incited to violence or other disorder or crime, or who counsel, intend to counsel or have counselled defiance of or disobedience to the law or lawful authority;
- (d) indicating, expressly or by implication, any connection, association, or affiliation with, or support for, any unlawful society;
- (e) intended or calculated to promote feelings of hatred or enmity between different races or communities in Botswana:

Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities;

- (f) intended or calculated to bring into hatred or contempt or to excite disaffection against any public officer, or any member of the Forces, or any class of public officers or members of the Forces, in the execution of his or their duties:

Provided that the provisions of this paragraph do not extend to comments or criticisms made in good faith and with a view to the remedying or correction of errors, defects or misconduct on the part of any such public officer or member of the Forces or class thereof as aforesaid and without attempting to bring into hatred or contempt,

or to excite disaffection against, any such person or class; or

- (g) intended or calculated to seduce from his allegiance or duty any public officer or any member of the Forces.

#### **74. Definition of unlawful assembly and riot**

(1) 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 a manner likely 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.

(2) 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.

(3) When an unlawful assembly has begun to execute its purpose by a breach of the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.

#### **75. Punishment of unlawful assembly**

Any person who takes part in an unlawful assembly is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

#### **76. Punishment of riot**

Any person who takes part in a riot is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

#### **77. Making proclamation rioters to disperse**

Any magistrate or, in his absence, any police officer of or above the rank of Sub-Inspector, in whose view 12 or more persons are riotously assembled, or who apprehends that a riot is about to be committed by 12 or more persons assembled within his view, may make or cause to be made a proclamation in the President's name, in such form as he thinks fit, commanding the rioters or persons so assembled to disperse peaceably.

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

If upon the expiration of a reasonable time after such proclamation is made, or after the making of such proclamation has been prevented by force, 12 or more persons continue riotously assembled together, any person authorized to make proclamation, or any police officer or any other person acting in aid of such person or police officer, 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 proceedings for having, by the use of such force, caused harm or death to any person.

#### **79. Rioting after proclamation**

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 from the making of such proclamation, takes or continues to take part in the riot or assembly is guilty of an offence and is liable to imprisonment for life.

#### **80. Preventing or obstructing the making of proclamation**

Any person who forcibly prevents or obstructs the making of such a proclamation as is mentioned in section 77 is guilty of an offence, and is liable to imprisonment for life; 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 life.

#### **81. Rioters demolishing buildings, etc.**

Any persons who, being riotously assembled together, unlawfully pull down or destroy or begin to pull down or destroy any building, railway, machinery or structure are guilty of an offence and each of them is liable to imprisonment for life.

#### **82. Rioters injuring buildings, machinery, etc.**

Any persons who, being riotously assembled together, unlawfully damage any of the things mentioned in section 81 are guilty of an offence, and each of them is liable to imprisonment for a term not exceeding seven years.

#### **83. Riotously interfering with railway, etc.**

All persons are guilty of an offence who, being riotously assembled, unlawfully and with force prevent, hinder, or obstruct the loading or unloading of any railway train, vehicle or vessel, or the operation of any railway, vehicle or vessel, or unlawfully and with force board any railway train, vehicle or vessel with intent to do so.

#### **84. Going armed in public**

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

#### **85. Possession of firearms, etc.**

(1) Any person who, without reasonable excuse, carries or has in his possession or under his control any firearm or other offensive weapon, or any ammunition, incendiary material or explosive in circumstances which raise a reasonable assumption that such firearm, ammunition, offensive weapon, incendiary material or explosive is intended to be used or has recently been used in a manner or for a purpose prejudicial to public order is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

(2) Any person who consorts with, or is found in the company of, another person who, in

contravention of subsection (1), is carrying or has in his possession or under his control any firearm or other offensive weapon, or any ammunition, incendiary material or explosive, in circumstances which raise a reasonable presumption that he intends to act or has recently acted with such other person in a manner or for a purpose prejudicial to public order, is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

(3) In any prosecution for an offence under this section, it shall be presumed, until the contrary is proved, that a weapon having the appearance of a firearm is a firearm.

(4) In this section-

"ammunition" has the meaning assigned to it in the Arms and Ammunition Act;

"firearm" has the meaning assigned to "arm" in the Arms and Ammunition Act;

"incendiary material" means any material capable of being used for causing damage to property by fire and intended by the person having it in his possession or under his control for such use.

## **86. Forcible entry**

Any person who, in order to take possession thereof, enters on any lands or premises 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 offence termed forcible entry:

Provided that a person who enters upon lands or premises of his own, but which are in the custody of his servants or bailiff, does not commit the offence of forcible entry.

## **87. Forcible detainer**

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 offence termed forcible detainer.

## **88. Affray**

Any person who takes part in a fight in a public place or at any meeting or gathering is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

## **89. Challenge to a duel**

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 an offence.

## **90. Offensive conduct conducive to breaches of the peace**

(1) Any person who in a public place or at a public gathering uses threatening, abusive or

insulting words or behaviour is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

(2) In this section, "public gathering" means any meeting, gathering or concourse, whether in a public place or otherwise, which the public or any section of the public or more than 15 persons are permitted to attend or do attend, whether on payment or otherwise, and includes a procession to or from a public place.

#### **91. Insults relating to Botswana**

Any person who does any act or utters any words or publishes any writing with intent to insult or to bring into contempt or ridicule-

- (a) the Arms or Ensigns Armorial of Botswana;
- (b) the National Flag of Botswana;
- (c) the Standard of the President of Botswana;
- (d) the National Anthem of Botswana,

is guilty of an offence and liable to a fine not exceeding P500.

#### **92. Expressions of hatred, etc. of persons because of race, etc.**

(1) Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine not exceeding P500.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

#### **93. Abusive, obscene or insulting language re President and others**

(1) Any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offence and liable to a fine not exceeding P400.

(2) In this section, "public gathering" has the same meaning as in section 90.

#### **94. Discrimination**

(1) Any person who discriminates against any other person shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(2) For the purposes of this section a person discriminates against another if on the grounds of colour, race, nationality or creed he treats such person less favourably or in a manner different to that in which he treats or would treat any other person.

(3) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

#### **95. Threatening breach of the peace or violence**

(1) Any person who-

- (a) uses obscene, abusive or insulting language, to his employer or to any person placed in authority over him by his employer, in such a manner as is likely to cause a breach of the peace; or
- (b) brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace,

is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

(2) Any person who-

- (a) with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or
- (b) with intent to alarm any person in a dwelling-house, discharges a loaded firearm or commits any other breach of the peace,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years, or, if the offence is committed in the night, to imprisonment for a term not exceeding four years.

#### **96. Incitement to violence and disobedience of the law**

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints or publishes any words, or does any act or thing, indicating or implying that it is or might be desirable to do or omit to do, any act the doing or omission of which is calculated-

- (a) to bring death or physical injury to any person or to any class, community or body of persons;
- (b) to lead to the damage or destruction of any property; or
- (c) to prevent or defeat by violence or by other unlawful means the execution or enforcement of any written law or to lead to defiance or disobedience of any such law, or of any lawful authority,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

#### **97. Assembling for smuggling**

Any persons who assemble together, to the number of two or more, for the purpose of unloading, carrying or concealing any goods subject to customs duty and liable to forfeiture under any law relating to Customs, are guilty of an offence and each of them is liable to a fine not exceeding P600 or to imprisonment for a term not exceeding six months.

## 98. Wrongfully inducing a boycott

(1) Whenever the President is satisfied that any boycott is being conducted or is threatened or likely to be conducted in Botswana with the intention or effect of-

- (a) bringing into hatred or contempt, exciting disaffection against or undermining the lawful authority of the Government of Botswana or any local authority, or of persuading any such body to alter any law or bye-law, to appoint any commission or committee or to take any action which it is not by law required to take;
- (b) endangering public order in Botswana;
- (c) bringing the economic life of Botswana into jeopardy; or
- (d) raising discontent or disaffection amongst the inhabitants of Botswana, or engendering feelings of ill-will or hostility between different classes or different races of the population of Botswana,

he may, by order published in the *Gazette*, designate that boycott for the purposes of this section and may, by the same or any subsequent order so published, specify in relation to a designated boycott any action which he is satisfied is likely to further that boycott, including (but without prejudice to the generality of that power) any action falling within any of the following classes of action, that is to say-

- (i) abstaining from buying goods from or selling goods to any person or class of persons;
- (ii) abstaining from buying or selling any goods or class of goods;
- (iii) abstaining from entering or approaching or dealing at any premises at which any person or class of persons carries on trade or business;
- (iv) abstaining from dealing with any person or class of persons in the course of his trade or business;
- (v) abstaining from using or providing any service or class of service;
- (vi) abstaining from working for or employing any person or class of persons;
- (vii) abstaining from letting, hiring or allowing the use of any land or buildings to any person or class of persons; or
- (viii) abstaining from doing any other act which may lawfully be done.

(2) Any person who, with intent to further any designated boycott-

- (a) by word of mouth publicly; or
- (b) by making a publication,

advises, induces or persuades or attempts to advise, induce or persuade any person or class of persons to take any action which has been specified in relation to that boycott is guilty of an

offence and is liable to imprisonment for a term not exceeding six months.

(3) For the purposes of this section, in determining whether any words were spoken or any publication was made with intent to further a designated boycott, every person shall, unless the contrary be proved, be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

(4) Nothing in this section shall be construed so as to make unlawful any action lawfully taken by a party to a trade dispute (as defined in the Trade Disputes Act) in contemplation or in furtherance of that dispute.

(5) Where any person is charged before any court with an offence under this section, no further proceedings in respect thereof shall be taken against him without the written consent of the Director of Public Prosecutions, except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the due appearance of the person charged, so, however, that if that person is remanded in custody, he shall, after the expiration of a period of 14 days from the date on which he was so remanded, be entitled to be discharged from custody on entering into a recognizance without sureties unless within that period the Director of Public Prosecutions has consented to such further proceedings as aforesaid.

(6) Any order published under this section may at any time be amended, varied, suspended or revoked by a further order so published.

(7) For the purposes of this section a person shall be deemed to make a publication if he prints it, makes it, publishes it, sells it, distributes it, offers it for sale or distribution or reproduces it.

## **DIVISION II**

### **OFFENCES AGAINST THE ADMINISTRATION OF LAWFUL AUTHORITY (ss 99-135)**

#### ***Corruption and the Abuse of Office (ss 99-110)***

#### **99. Official corruption**

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 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 produce or attempt to produce, 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 an offence and is liable to imprisonment for a term not exceeding three years.

#### **100. Extortion by public officers**

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 an offence and is liable to imprisonment for a term not exceeding three years.

#### **101. Public officers receiving property to show favour**

Any person who, being employed in the public service, receives any property or benefit of any kind for himself, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or anyone 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 anyone in whom he is interested, and any person employed in the public service, is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

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

(1) 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 an offence and is liable to imprisonment for a term not exceeding one year.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

#### **103. False claims by officials**

(1) 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 an offence.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

#### **104. Abuse of office**

(1) 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 an offence.

(2) If the act is done or directed to be done for purposes of gain he is liable to imprisonment for a term not exceeding three years.

(3) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

#### **105. False certificates by public officers, etc.**

Any person who, being authorized 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 an offence.

#### **106. Unauthorized administration of oaths**

Any person who administers an oath, or takes 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 an offence and is liable to imprisonment for a term not exceeding one year:

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.

#### **107. False assumption of authority**

Any person who-

- (a) not being a judicial officer, assumes to act as a judicial officer;
- (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 authorized by law to do so; or
- (c) represents himself to be a person authorized by law to sign a document testifying to the contents of any register or record kept by a lawful authority, or testifying to any fact or event, and signs such document as being so authorized, when he is not, and knows that he is not, in fact, so authorized,

is guilty of an offence.

#### **108. Personating persons employed in the public service**

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 an offence and is liable to imprisonment for a term not exceeding three years.

### **109. Threat of injury to persons employed in public service**

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 an offence.

### **110. Tampering with public officers, etc.**

Any person who-

- (a) induces or attempts to induce any public officer, or any member of the Forces, or any servant of a local authority, to fail in his duty, or to terminate his services in the discharge of his duty, or to commit a breach of discipline; or
- (b) with intent to influence any public officer, or any member of the Forces, or any servant of a local authority, in or in relation to the discharge of his duty, or to cause him to fail in his duty, or to terminate his services in the discharge of his duty or to commit a breach of discipline, refuses or threatens to refuse to deal or do trade or business with, or to supply or surrender, in the ordinary course of his trade or business, any goods, or service to, any person,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### ***Offences relating to the Administration of Justice (ss 111-123)***

### **111. Perjury and subornation of perjury**

(1) Any person who, in any judicial proceedings, or for the purpose of instituting any judicial proceedings, knowingly gives false testimony touching any matter which is material to any question then pending in those proceedings or intended to be raised in those proceedings, is guilty of the offence termed perjury.

(2) For the purposes of subsection (1) it is immaterial-

- (a) whether the testimony is given on oath or under any other sanction authorized by law;
- (b) as regards the forms and ceremonies used in administering the oath or in otherwise binding the person giving the testimony to speak the truth, if such person assents to the forms and ceremonies used;

- (c) whether the false testimony is given orally or in writing;
- (d) whether the court or tribunal is properly constituted, or is held in the proper place or not, if it actually acts as a court or tribunal in the proceeding in which the testimony is given;
- (e) whether the person who gives the testimony is a competent witness or not, or whether the testimony is admissible in the proceeding or not.

(3) Any person who aids, abets, counsels, procures, or suborns another person to commit perjury is guilty of the offence termed subornation of perjury.

### **112. False statements by interpreters**

If any person, lawfully sworn as an interpreter in a judicial proceeding, wilfully makes a statement material in the proceeding which he knows to be false, or does not believe to be true, he shall be guilty of perjury.

### **113. Punishment of perjury and subornation**

Any person who commits perjury or suborns perjury is liable to imprisonment for a term not exceeding seven years.

### **114. Evidence on charge of perjury**

A person cannot be convicted of committing perjury or of subornation of perjury solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

### **115. Contradictory statements**

(1) Where a witness in any judicial proceedings (other than a person accused of an offence in criminal proceedings) has made a statement on oath or affirmation of some fact relevant in the proceedings, contradicting in a material detail a previous statement made on oath or affirmation by the same witness before the same court or any other court or tribunal or before any person empowered to administer an oath or affirmation, such witness, if a court is satisfied that either of such statements was made with intent to deceive, is guilty of an offence and is liable to imprisonment for a term not exceeding two years.

(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 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, shall convict the accused.

(3) At the trial of any person for an offence under this section, the record of a court or tribunal containing any statement made on oath or affirmation by the person charged shall be *prima facie* evidence of such statement.

(4) For the avoidance of doubt, it is hereby declared that a person shall be liable to be convicted of an offence under this section notwithstanding that any statement made by him

before a court or tribunal was made in reply to a question which he was bound by law to answer, and any such statement shall be admissible in any proceeding under this section.

#### **116. Fabricating evidence**

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 an offence and is liable to imprisonment for a term not exceeding seven years.

#### **117. False swearing**

Any person who swears falsely or makes a false affirmation or declaration before any person authorized to administer an oath or take a declaration upon a matter of public concern under such circumstances that the false swearing or declaration if committed in a judicial proceeding would have amounted to perjury, is guilty of an offence.

#### **118. Deceiving witnesses**

Any person who practices 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 an offence.

#### **119. Destroying evidence**

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 undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of an offence.

#### **120. Conspiracy to defeat justice and interference with witnesses**

Any person 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;
- (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,

is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

## **121. Compounding certain serious offences**

(1) 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 an offence punishable under this Code with death or with imprisonment for three years or more, or withhold any evidence thereof, is guilty of an offence.

(2) When any person is convicted of an offence under this section, the court may, in addition to or in lieu of any other punishment which may be imposed, order the forfeiture to the State 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.

(3) Payment of any sum ordered to be forfeited to the State in terms of subsection (2) may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

## **122. Advertisements for stolen property**

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;
- (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 an offence.

## **123. Offences relating to judicial proceedings**

(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;
- (b) having been called upon to give evidence in a judicial proceeding, fails to attend, or having attended, refuses to be sworn or to make an affirmation or, having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such room;
- (c) causes an obstruction or disturbance in the course of a judicial proceeding;

- (d) 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;
- (e) publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private;
- (f) endeavours wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence;
- (g) dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding;
- (h) wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or
- (i) commits any 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 a term not exceeding three years.

(2) When any offence against paragraph (a), (b), (c), (d) or (i) of subsection (1) is committed in view of the court, 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 P150 or, in default of payment, to imprisonment for a term not exceeding one month.

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

### ***Rescues, Escapes and Obstructing Officers of Court of Law (ss 124-128)***

#### **124. Rescue**

(1) Any person who by force rescues or attempts to rescue from lawful custody any other person is guilty of an offence.

(2) A person who rescues or attempts to rescue any other person under the circumstances specified under subsection (1) shall-

- (a) if the person being rescued is under sentence of death or imprisonment for life, or charged with an offence punishable with death or imprisonment for life, be liable to imprisonment for life; and
- (b) if the said person being rescued is imprisoned on a charge or under sentence for any offence other than those specified in paragraph (a) but which is punishable under this Code, without proof of previous conviction, with imprisonment for three years, or more, be liable to imprisonment for a term not exceeding seven years.

(3) 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.

### **125. Escape**

Any person who, being in lawful custody, escapes from such custody, is guilty of an offence.

### **126. Aiding prisoners to escape**

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,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **127. Removal, etc. of property under lawful seizure**

Any person who, when any property has been attached or taken under the process or 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 an offence and is liable to imprisonment for a term not exceeding three years.

### **128. Obstructing court officers**

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 an offence and is liable to imprisonment for a term not exceeding one year.

### ***Miscellaneous Offences against Public Authority (ss 129-135)***

### **129. Frauds and breaches of trust by public officers**

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 an offence.

### **130. Neglect of official duty**

(1) Every person employed in the public service who wilfully neglects to perform any duty which he is bound to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter, is guilty of an offence.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Director of Public Prosecutions.

### **131. False information to person employed in the public service**



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 an offence and is liable to imprisonment for a term not exceeding three years.

### **132. Disobedience of statutory duty**

Everyone who wilfully disobeys any written law by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public is guilty of an offence, and is liable, unless it appears from the written law that it was the intention of the Legislature to provide some other penalty for such disobedience, to imprisonment for a term not exceeding two years.

### **133. Disobedience of lawful orders**

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 authorized in that behalf, is guilty of an offence and is liable, unless any other penalty or mode of proceeding is expressly prescribed in respect of such disobedience, to imprisonment for a term not exceeding two years.

### **134. Undermining authority of public officers**

Any person who, without lawful excuse, the burden of proof whereof shall lie upon him, utters, prints, or publishes any words, or does any act or thing calculated to bring into contempt, or to excite defiance of or disobedience to, the lawful authority of a public officer or any class of public officers is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### **135. Destruction, etc. of statutory documents**

(1) Any person who, knowingly and without lawful authority or excuse, destroys, mutilates, defaces, alters, abandons or fails to preserve any statutory document is guilty of an offence and is liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(2) Any person who, in any manner or by whatever means, instigates, expressly or by implication, any person or class of persons to destroy, mutilate, deface, alter, abandon or fail to preserve any statutory document or any class of statutory document, or who does any act with intent or knowing it to be likely that any person or class of persons will be instigated thereby to destroy, mutilate, deface, alter, abandon or fail to preserve any statutory document, is guilty of

an offence and is liable to imprisonment for a term not exceeding three years.

(3) In this section, "statutory document" means any licence, permit, identity card, record or return or certificate of or relating to employment, and any other record of or document establishing status, identity, qualifications, service, authorization, eligibility or entitlement, made, granted, given or issued under and for the purposes of, and in a form prescribed by, any written law, and being of current validity, and includes any part thereof, and any copy thereof made, granted, given or issued as aforesaid.

### **DIVISION III OFFENCES INJURIOUS TO THE PUBLIC IN GENERAL (ss 136-199)**

#### ***Offences relating to Religion (ss 136-140)***

#### **136. Insult to religion of any class**

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 an offence.

#### **137. Disturbing religious assemblies**

Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of an offence.

#### **138. Trespassing on burial places**

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 an offence.

#### **139. Hindering burial of dead body, etc.**

(1) Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects, or harms the dead body of any person or, being under a duty to cause the dead body of any person to be buried, fails to perform such duty, is guilty of an offence.

(2) In this section the word "burial" means burial in earth, interment or any other form of sepulture, or the cremation or any other mode of disposal of a dead body and "buried" has a corresponding meaning.

#### **140. Writing or uttering words with intent to wound religious feelings**

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 an offence and is liable to imprisonment for a term not exceeding one year.

### ***Offences against Morality (ss 141-171)***

#### **141. Definition of rape**

Any person who has unlawful carnal knowledge of another person, or who causes the penetration of a sexual organ or instrument, of whatever nature, into the person of another for the purposes of sexual gratification, or who causes the penetration of another person's sexual organ into his or her person, without the consent of such other person, or with such person's consent if the consent is obtained by force or means of threats or intimidation of any kind, by fear of bodily harm, or by means of false pretences as to the nature of the act, or, in the case of a married person, by personating that person's spouse, is guilty of the offence termed rape.

#### **142. Punishment for rape**

(1) Any person who is charged with the offence of rape shall-

- (i) not be entitled to be granted bail; and
- (ii) subject to subsections (2) and (4), upon conviction be sentenced to a minimum term of 10 years' imprisonment or to a maximum term of life imprisonment.

(2) Where an act of rape is attended by violence resulting in injury to the victim, the person convicted of the act of rape shall be sentenced to a minimum term of 15 years' imprisonment or to a maximum term of life imprisonment with or without corporal punishment.

(3) Any person convicted of the offence of rape shall be required to undergo a Human Immune-system Virus test before he or she is sentenced by the court.

(4) Any person who is convicted under subsection (1) or subsection (2) and whose test for the Human Immune-system Virus under subsection (3) is positive shall be sentenced-

- (a) to a minimum term of 15 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that such person was unaware of being Human Immune-system Virus positive; or
- (b) to a minimum term of 20 years' imprisonment or to a maximum term of life imprisonment with corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immune-system Virus positive.

(5) Any person convicted and sentenced for the offence of rape shall not have the sentence imposed run con-currently with any other sentence whether the other sentence be for the offence of rape or any other offence.

#### **143. Attempted rape**

(1) Any person who attempts to commit rape is guilty of an offence and on conviction shall be sentenced to a minimum term of five years, imprisonment or to a maximum term of life imprisonment with or without corporal punishment.

(2) Any person who is convicted and sentenced for the offence of attempted rape shall not have the sentence imposed run concurrently with any other sentence, whether the other sentence be for the offence of rape or any other offence.

#### **144. Abduction of a person for immoral purposes**

Any person who, with intent to marry or carnally know another person or to cause such person to be married or carnally known by any other person, takes that person away, or detains that person against that person's will, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **145. Abduction of person under 16 years**

Any person who unlawfully takes an unmarried person under the age of 16 years out of the custody or protection of that person's father or mother or other person having the lawful care or charge of that person, and against the will of such father or mother or other person, is guilty of an offence.

#### **146. Indecent assaults**

(1) Any person who unlawfully and indecently assaults any person is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, with or without corporal punishment.

(2) It shall be no defence to a charge for an indecent assault on a person under the age of 16 years to prove that the person so assaulted consented to the act of indecency unless it appears 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 person assaulted was of or above the age of 16 years or was such charged person's spouse.

(3) Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or intrudes upon the privacy of such woman, is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

#### **147. Defilement of person under 16 years**

(1) Any person who unlawfully and carnally knows any person under the age of 16 years is guilty of an offence and on conviction shall be sentenced to a minimum term of 10 years, imprisonment or to a maximum term of life imprisonment.

(2) Any person convicted under subsection (1) shall be required to undergo a Human

Immune-system Virus test before he or she is sentenced by the court.

(3) Any person who is convicted under subsection (1) and whose test for the Human Immune-system Virus under subsection (2) is positive shall on conviction be sentenced to a-

- (a) minimum term of 15 years' imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved that such person was unaware of being Human Immune-system Virus positive; or
- (b) minimum term of 20 years' imprisonment and a maximum term of life imprisonment with or without corporal punishment, where it is proved that on a balance of probabilities such person was aware of being Human Immune-system Virus positive.

(4) Any person who attempts to have unlawful carnal knowledge of any person under the age of 16 years is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years, with or without corporal punishment.

(5) It shall be a sufficient defence to any charge under this section if it appears 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 person was of or above the age of 16 years or was such charged person's spouse.

#### **148. Defilement of idiots or imbeciles**

Any person who, knowing another person to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of that person under circumstances not amounting to rape, but which prove that the offender knew at the time of the commission of the offence that the person against whom the offence was committed was an idiot or imbecile, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years, with or without corporal punishment.

#### **149. Procurement**

Any person who-

- (a) procures or attempts to procure any person to have unlawful carnal connection, either in Botswana or elsewhere, with any other person or persons;
- (b) procures or attempts to procure any person to become, either in Botswana or elsewhere, a common prostitute;
- (c) procures or attempts to procure any person to leave Botswana, with intent that the procured person may become an inmate of or frequent a brothel elsewhere; or
- (d) procures or attempts to procure any person to leave that person's usual place of abode in Botswana with intent that the person may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Botswana or elsewhere;

is guilty of an offence and, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to 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.

#### **150. Procuring defilement of person by threats or fraud or administering drugs**

Any person who-

- (a) by threats or intimidation procures or attempts to procure any other person to have any unlawful carnal connection, either in Botswana or elsewhere;
- (b) by false pretences or false representations procures any other person to have any unlawful carnal connection, either in Botswana or elsewhere; or
- (c) applies, administers to, or causes to be taken by any other person any drug, matter, or thing, with intent to stupefy or overpower so as to have unlawful carnal connection with such woman or girl,

is guilty of an offence and is liable to be punished in the same manner as a person convicted under section 149:

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.

#### **151. Householder, etc., permitting defilement of person under 16 years of age on his or her premises**

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 person under the age of 16 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally, is guilty of an offence:

Provided that it shall be a sufficient defence to any charge under this section if it appears 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 person against whom the offence was committed was of or above the age of 16 years.

#### **152. Householder, etc., permitting defilement of person under 12 years of age on his or her premises**

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 person under the age of 12 years to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any person, whether such carnal knowledge is intended to be with any particular person or generally, is guilty of an offence and is liable to imprisonment for a term not exceeding five years:

Provided that it shall be a sufficient defence to any charge under this section if it appears 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 person against whom the offence was committed was of or above the age of 12 years.

### **153. Detention of persons for immoral purposes**

- (1) Any person who detains any other person against that other person's will-
  - (a) in or upon any premises with intent that the person detained may be unlawfully and carnally known by a particular person or generally by other persons; or
  - (b) in a brothel;

is guilty of an offence.

(2) When a person is in or upon any premises for the purpose of having any unlawful carnal connection, or is in any brothel, that person shall be deemed to be detained in or upon such premises or in such brothel, if, with intent to compel or induce the person to remain in or upon the premises or in such brothel, the person alleged to be detaining that other person-

- (a) withholds from the detained person any wearing apparel or other property belonging to the detained person; or
- (b) threatens the detained person with legal proceedings if the person detained takes away with her any wearing apparel that has been lent or otherwise supplied to that detained person.

(3) No legal proceedings, whether civil or criminal, shall be taken against any person detained under subsection (2) for taking away or being found in possession of any such wearing apparel as was necessary to enable such person to leave such premises or brothel.

### **154. Power of search for detained person**

(1) If it appears to any magistrate, on information made before him on oath by any parent, relative or guardian of a person suspected of being detained or by any other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of the person suspected of being detained, that there is reasonable cause to suspect that such person is unlawfully detained for immoral purposes by any other person in any place within the jurisdiction of such magistrate, such magistrate may issue a warrant authorising a person named therein to search for, and, when found, to take and detain in a place of safety the person who was detained until such person can be brought before a magistrate; and the magistrate before whom the person who was detained is brought may cause such person to be delivered up to his or 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 the person who was detained to be apprehended and brought before a magistrate and proceedings to be taken for punishing such accused person

according to law.

(3) A person shall be deemed to be unlawfully detained for immoral purposes if such person is so detained for the purpose of being unlawfully and carnally known by any other person, whether any particular person or generally, and-

- (a) either is under the age of 16 years;
- (b) if the person is over the age of 16 years or under the age of 21 years, is so detained against such person's will or against the will of such person's father or mother or of any person having the lawful care or charge of such person; or
- (c) if such person is over the age of 21 years and is so detained against such person's will.

(4) Any person authorised by warrant under this section to search for any person 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 detained person therefrom.

#### **155. Person living on earnings of prostitution or persistently soliciting**

(1) Every 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 an offence; and, 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 person is proved to live with or to be habitually in the company of a male or female prostitute or is proved to have exercised control, direction or influence over the movements of a male or female prostitute, in such a manner as to show that such person is aiding or abetting or compelling such prostitution with any other person or generally, such person shall, unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

#### **156. Person aiding, etc. for gain, prostitution**

Every person 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 male or female prostitute in such manner as to show that such person is aiding, abetting or compelling such prostitution with any other person, or generally, is guilty of an offence.

#### **157. Premises used for prostitution**

If it appears 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 person 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, the magistrate may issue a warrant authorizing any police officer to enter and search the house and to arrest that person.

### **158. Brothels**

Any person who-

- (a) keeps or manages or assists in the management of a brothel;
- (b) being the tenant, lessee or occupier, or person in charge, of any premises, knowingly permits such premises or part thereof to be used as a brothel; 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 as a brothel,

is guilty of an offence.

### **159. Conspiracy to defile**

Any person who conspires with another to induce any other person, by means of any false pretence or other fraudulent means, to permit the unlawful carnal knowledge of such person by another person is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **160. Attempts to procure abortion**

(1) Any person who, with intent to procure a 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 whatever, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

(2) Notwithstanding the provisions of subsection (1), it shall not be an offence under this section if a pregnancy is terminated or an abortion is caused within the first 16 weeks of pregnancy, in the following circumstances and under the following conditions-

- (a) where the medical practitioner carrying out the operation is satisfied, by acceptable evidence, that the pregnancy is the result of rape, defilement or incest, and the termination or abortion is requested by the victim, or, where the victim lacks the capacity to make such request, by her next of kin or guardian or the person *in loco parentis*; or
- (b) where the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, and such woman consents to the termination or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next of kin or guardian or the person *in loco parentis*; or

- (c) where established evidence shows that there is a substantial risk that, if the child were born, it would suffer from or later develop such serious physical or mental abnormality or disease as to be seriously handicapped, and the pregnant woman consents to the termination or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next of kin or guardian or the person *in loco parentis*:

Provided that -

- (i) the termination or abortion is carried out by a registered medical practitioner in a Government hospital or a registered private hospital, or a clinic approved for the purpose by the Director of Health Services; and
- (ii) two medical practitioners have given their opinions formed in good faith, in writing, in the case of paragraph (b) above, that continuation of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, or, in the case of paragraph (c) above, that there is substantial risk that, if the child was allowed to be born, it would suffer such serious physical or mental abnormality or disease as to be seriously handicapped.

#### **161. Woman with child procuring abortion**

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 whatever, or permits any such thing, or means to be administered or used to her, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

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

Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used to procure the miscarriage of a woman, whether she is or is not with child, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

#### **163. Knowledge of age of person immaterial**

Except as otherwise expressly stated, it is immaterial in the case of any of the offences committed with respect to a person under a specified age, that the accused person did not know that the person was under that age, or believed that such person was not under that age.

#### **164. Unnatural offences**

Any person who-

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal; or
- (c) permits any other person to have carnal knowledge of him or her against the order of nature,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **165. Attempt to commit unnatural offences**

Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

#### **166. Indecent assault of boys under 14**

Any person who unlawfully and indecently assaults a boy under the age of 14 years is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **167. Indecent practices between persons**

Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.

#### **168. Incest**

(1) Any person who knowingly has carnal knowledge of another person knowing that person to be his or her grandchild, child, brother, sister or parent, is guilty of an offence and is liable to imprisonment for a term not exceeding five years:

Provided that if it is alleged in the indictment or summons and proved that the person of whom carnal knowledge was had is under the age of 16 years, the offender shall be liable to imprisonment for life.

(2) It is immaterial that the carnal knowledge was had with the consent of the person of whom carnal knowledge was had.

(3) If any person attempts to commit any such offence as aforesaid that person is guilty of an offence.

(4) On the conviction before any court of any person of an offence under this section, or of an attempt to commit the same, against any person under the age of 21 years, it shall be in the power of the court to divest the offender of all authority over such person, and, if the offender is the guardian of such person, 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 person during that person's minority or any less period:

Provided that the High 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.

#### **169. Incest by females**

Any female person of or above the age of 16 years who with her 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 an offence and is liable to

imprisonment for a term not exceeding five years.

#### **170. Test of relationship**

In sections 168 and 169 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.

#### **171. Sanction of Director of Public Prosecutions**

No prosecution for an offence under section 168 or 169 shall be commenced without the written consent of the Director of Public Prosecutions.

#### ***Offences relating to Marriage and the Possession of Children (ss 172-175)***

#### **172. Fraudulent pretence of marriage**

(1) Any person who wilfully and by fraud causes any other person who is not lawfully married to such person to believe that they are lawfully married to such person and to cohabit or have sexual intercourse with such person in that belief, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

#### **173. Bigamy**

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 an offence and is liable to imprisonment for a term not exceeding 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 person reasonably believes that he is not married.

#### **174. Marriage with dishonest or fraudulent intent**

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 an offence and is liable to imprisonment for a term not exceeding five years.

#### **175. Child stealing**

(1) Any person who, with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a child under the age of 14 years, of the possession of such child-

- (a) forcibly or fraudulently takes or entices away, or detains the child; or
- (b) receives or harbours the child, knowing it to have been so taken or enticed away or detained,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

(2) It is a defence to a charge of any of the offences defined in this section to prove that the accused person claimed in good faith a right to the possession of the child, or, in the case of an illegitimate child, is its mother or claimed to be its father.

### ***Nuisances and Offences against Health and Convenience (ss 176-191)***

#### **176. Common nuisance**

(1) Any person who does an act not authorized 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 offence termed a common nuisance and is liable to imprisonment for a term not exceeding one year.

(2) 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.

#### **177. Chain letters**

(1) Any person who sends or causes to be sent any chain letter or who sends or receives any money or money's worth in connection with any chain letter is guilty of an offence and is liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

(2) For the purposes of this section "chain letter" means a document addressed by one person to another person suggesting to the person to whom it is addressed-

- (a) that he should send a document having the same purport to a number of other persons; and
- (b) that he should remit to a person or to an address specified in the first mentioned document money or money's worth.

#### **178. Traffic in obscene publications**

(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 writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, gramophone records or other contrivances for the reproduction of sound, or any other obscene objects or any other object tending to corrupt morals;
- (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;

- (c) carries on or takes part 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 publicly, or makes a business of lending any of them;
- (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 an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding P200.

(2) If, in respect of any of the offences specified in paragraph (a), (b), (c) or (d) of subsection (1), any constituent element thereof is committed in Botswana such commission shall be sufficient to render the person accused of such offence triable therefor in Botswana.

(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, the Deputy Director of Public Prosecutions, a State 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.

### **179. Idle and disorderly persons**

Any person who-

- (a) being a common prostitute, behaves in a disorderly or indecent manner in any public place;
- (b) wanders or places himself in any public place for the purpose of begging or gathering alms, or causes or procures or engages any child to do so;
- (c) plays at any game of chance for money or money's worth in any public place;
- (d) publicly conducts himself in a manner likely to cause a breach of the peace;
- (e) without lawful excuse does any indecent act;
- (f) in any public place solicits for immoral purposes; and
- (g) wanders about and endeavours by the exposure of wounds or deformation to obtain or gather alms,

is guilty of an offence and is liable to a fine not exceeding P10 or to imprisonment for a term not exceeding one month, or to both and on a second conviction to imprisonment for a term not exceeding three months and on any subsequent conviction thereof to a term of imprisonment not exceeding one year.

#### **180. Use of insulting language**

Every person who uses insulting language or otherwise conducts himself in a manner likely to give such provocation to any person as to cause such person to break the peace or to commit any offence against the person is guilty of an offence and is liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

#### **181. Nuisances by drunken persons, etc.**

(1) Every person found drunk and incapable in any public place, or on any premises licensed under the Trade and Liquor Act is guilty of an offence and is liable on a first conviction thereof to a fine not exceeding P10 and on a second or subsequent conviction thereof is liable to a fine not exceeding P20.

(2) Every person who, in any public place or on any premises licensed under the Trade and Liquor Act while drunk behaves in a riotous or disorderly manner or who is drunk when in possession of any loaded fire-arm, is guilty of an offence and is liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

#### **182. Rogues and vagabonds**

A person who-

- (a) goes about as a gatherer or collector of alms, or endeavours to procure charitable contributions of any nature or kind, under any false or fraudulent practice;
- (b) is a suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself; and
- (c) is found in or about any premises or in any road or highway or any place adjacent thereto or in any public place, for any unlawful purpose,

shall be guilty of an offence and shall be liable on a first conviction thereof to imprisonment for a term not exceeding three months and on a second or subsequent conviction thereof to imprisonment for a term not exceeding one year.

#### **183. Wearing uniforms declared to be for exclusive use**

(1) The Minister may, by order published in the *Gazette*, upon the application of any persons who perform, or who are members of any organization which performs, any service which in his opinion is in the public interest, declare that any uniform, badge, button or other distinctive mark used by such persons and described in the order shall be for the exclusive use of such persons.

(2) Any person who, without the authority of the persons upon whose application an order

under this section has been published in the *Gazette*, uses or wears any uniform, badge, button or other distinctive mark described in the order, or any uniform, badge, button or other distinctive mark so closely resembling the same as to lead to the belief that it is a uniform, badge, button or other distinctive mark so described, is guilty of an offence and is liable to imprisonment for a term not exceeding one month or to a fine not exceeding P60:

Provided that nothing in this section shall prevent any person from using or wearing any such uniform, badge, button or other distinctive mark in the course of a *bona fide* theatrical performance, or in the course of the making or production of a cinematograph film, if the uniform, badge, button or other distinctive mark is not used or worn in such a manner or in such circumstances as to bring it into contempt.

(3) Any person who, without the authority of the persons upon whose application an order under this section has been published in the *Gazette*, imports or sells or has in his possession for sale any uniform, badge, button or other distinctive mark described in the order is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding P200.

(4) Where any person has been convicted of any offence under this section, the uniform, badge, button or other distinctive mark in respect of which the offence has been committed shall be forfeited to the State unless the Minister otherwise orders.

#### **184. Spreading infection**

Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of an offence.

#### **185. Adulteration of food or drink for sale**

Any person who adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, is guilty of an offence.

#### **186. Sale of noxious food or drink**

Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food and drink, knowing or having reason to believe that the same is noxious as food or drink, is guilty of an offence.

#### **187. Adulteration of drugs**

Any person who adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, is guilty of an offence.

#### **188. Sale of adulterated drugs**



Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes, as if it had not undergone such adulteration, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of an offence.

#### **189. Fouling water**

Any person who voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, is guilty of an offence.

#### **190. Fouling air**

Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of an offence.

#### **191. Offensive trades**

Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits an offence and is liable to be punished as for a common nuisance.

### ***Defamation (ss 192-199)***

#### **192. Definition of criminal defamation**

Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the offence termed criminal defamation.

#### **193. Definition of defamatory matter**

Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

#### **194. Definition of publication**

(1) A person publishes defamatory matter if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for criminal defamation that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person

alleged to be defamed can be collected either from the alleged defamation itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

#### **195. Definition of unlawful publication**

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Division, unless-

- (a) the matter is true and it was for the public benefit that it should be published; or
- (b) it is privileged on one of the grounds hereafter mentioned in this Division.

#### **196. Cases in which publication of defamatory matter is absolutely privileged**

(1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Code in respect thereof, in any of the following cases, namely-

- (a) if the matter is published under the authority of the President in any official document or proceeding;
- (b) if the matter is published in the National Assembly or the *Ntlo ya Dikgosi* by any member thereof;
- (c) if the matter is published by order of the National Assembly;
- (d) if the matter is published concerning a person subject to naval, military or air force discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct, and to some person having authority over him in respect of such conduct;
- (e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge or magistrate or legal practitioner or assessor or witness or party thereto;
- (f) if the matter published is in fact a fair report of anything said, done, or published in the National Assembly or the *Ntlo ya Dikgosi*; or
- (g) if the person publishing the matter is legally bound to publish it.

(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Division whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt a person from any liability to punishment under any other Division of this Code or under any other written law in force within Botswana.

#### **197. Cases in which publication of defamatory matter is conditionally privileged**

A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has legitimate personal interest in so publishing it and the person to whom it is published has a similar duty or interest to receive it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely-

- (a) if the matter published is in fact a fair and substantially accurate report of anything said, done, or shown in a civil or criminal inquiry or proceeding before any court:

Provided that if, acting under the provisions of any written law, the court prohibits the publication of anything said, done or shown before it, the publication thereof shall not be privileged;

- (b) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under section 196;
- (c) if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official, or other public capacity or as to his personal character so far as it appears in such content;
- (d) if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct;
- (e) if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness, or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as mentioned in this paragraph;
- (f) if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance, or act published, or publicly done or made, or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein;
- (g) if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person, so far as it appears in such conduct;
- (h) if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or

matter; or

- (i) if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

### **198. Explanation as to good faith**

A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of section 197 if it is made to appear either-

- (a) that in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged; or
- (b) unless the duty under which he claims to have acted required him to publish the matter to the person to whom it was published whether it was true or false, that the matter was untrue and he did not believe it to be true.

### **199. Presumption as to good faith**

If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the defamation itself, or from the evidence given on the part of the prosecution.

## **DIVISION IV OFFENCES AGAINST THE PERSON (ss 200-262)**

### ***Murder and Manslaughter (ss 200-211)***

#### **200. Manslaughter**

(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the offence termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health whether such omission is or is not accompanied by an intention to cause death or bodily harm.

#### **201. Punishment of manslaughter**

Any person who commits the offence of manslaughter is liable to imprisonment for life.

#### **202. Murder**

Any person who of malice aforethought causes the death of another person by an unlawful

act or omission is guilty of murder.

### **203. Punishment of murder**

(1) Subject to the provisions of subsection (2), any person convicted of murder shall be sentenced to death.

(2) Where a court in convicting a person of murder is of the opinion that there are extenuating circumstances, the court may impose any sentence other than death.

(3) In deciding whether or not there are any extenuating circumstances the court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the convicted person belongs.

### **204. Malice aforethought**

Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances-

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;
- (b) knowing that the act or omission causing death is likely to cause the death of some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death is caused or not, or by a wish that it may not be caused;
- (c) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit such an offence.

### **205. Killing on provocation**

(1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before there is time for his passion to cool, he is guilty of manslaughter only.

(2) The provisions of this section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation.

### **206. Provocation defined**

(1) The term "provocation" means, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in conjugal, parental, filial or fraternal relation, or in the relation of master and servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

(2) When such an act or insult is done or offered by one person to another, or in the

presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give to the latter provocation for an assault.

(3) A lawful act is not provocation to any person for an assault.

(4) An act which a person does in consequence of incitement given by another person in order to induce him to do the act and thereby to furnish an excuse for committing an assault is not provocation to that other person for an assault.

(5) An arrest which is unlawful is not necessarily provocation for an assault, but it may be evidence of provocation to a person who knows of the illegality.

(6) For the purposes of this section the expression "an ordinary person" means an ordinary person of the class of the community to which the accused belongs.

### **207. Suicide pacts**

(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section, "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

### **208. Infanticide**

Where a woman by any wilful act or omission causes the death of her child being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of an offence, to wit, of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

### **209. Causing death defined**

A person is deemed to have caused the death of another person although his act is not the immediate or not the sole cause of death in any of the following cases-

(a) if he inflicts bodily injury on another person in consequence of which that other person

undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

- (b) if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as to his mode of living;
- (c) if by actual or threatened violence he causes such other person to perform an act which causes the the death of such person, such act being a means of avoiding such violence which in the circumstances would appear natural to the person whose death is so caused;
- (d) if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;
- (e) if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

#### **210. When child deemed to be a person capable of being killed**

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not.

#### **211. Limitation as to time of death**

(1) A person is not deemed to have killed another if the death of that person does not take place within a year and a day of the cause of death.

(2) Such period is reckoned inclusive of the day on which the last unlawful act contributing to the cause of death was done.

(3) When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

(4) When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.

#### ***Duties relating to the Preservation of Life and Health (ss 212-216)***

#### **212. Responsibility of person who has charge of another**

It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether the charge is

undertaken under a contract, or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life, and he is held to have caused any consequences which result to the life or health of the other person by reason of any omission to perform that duty.

### **213. Duty of person having custody of child**

It is the duty of every person who has the custody, charge or care of a child under the age of 16 years to provide the necessaries of life for such child; and such a person is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

### **214. Duty of employer of child**

It is the duty of every person employing a child under the age of 16 years, who has contracted or is required under any written law to provide any of the necessaries of life for such child, to provide the same; and such a person is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

### **215. Duty of persons doing dangerous acts**

It is the duty of every person who, except in a case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

### **216. Duty of persons in charge of dangerous things**

It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that, in the absence of care or precaution in its use or management, the life, safety, or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he is held to have caused any consequences which result to the life or health of any person by reason of any omission to perform that duty.

## ***Offences connected with Murder and Suicide (ss 217-224)***

### **217. Attempt to murder**

Any person who-

- (a) attempts unlawfully to cause the death of another; or
- (b) with intent unlawfully to cause the death of another does any act, or omits to do any act, which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life;



is guilty of an offence and is liable to imprisonment for life.

#### **218. Attempt to murder by convict**

Any person who, being under sentence of imprisonment for three years or more, attempts to commit murder, is liable to imprisonment for life, with or without corporal punishment.

#### **219. Accessory after the fact to murder**

Any person who becomes an accessory after the fact to murder is guilty of an offence and is liable to imprisonment for life.

#### **220. Threat to kill**

(1) Any person who without lawful excuse utters or directly or indirectly causes any person to receive a threat, whether in writing or not, to kill any person is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

(2) A prosecution for an offence under this section, where the threat alleged is otherwise than in writing, shall not be instituted except with the written 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.

#### **221. Conspiracy to murder**

Any person who conspires with any other person to kill any person whether such person is in Botswana or elsewhere, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

#### **222. Aiding suicide**

Any person who-

- (a) procures another to kill himself;
- (b) counsels another to kill himself and thereby induces him to do so; or
- (c) aids another in killing himself,

is guilty of an offence and is liable to imprisonment for life.

#### **223. Concealing birth**

Any person who, when a woman is delivered of a child, endeavours, by any secret disposition of the dead body of the child, to conceal the birth, whether the child died before, at,

or after its birth is guilty of an offence.

#### **224. Killing unborn child**

Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and had then died, he would be deemed to have unlawfully killed the child, is guilty of an offence and is liable to imprisonment for life.

### ***Offences Endangering Life and Health (ss 225-238)***

#### **225. Disabling in order to commit offence**

Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or to facilitate the commission of an offence, or to facilitate the flight of an offender after the commission or attempted commission of an offence, renders or attempts to render any person incapable of resistance, is guilty of an offence and is liable to imprisonment for life, with or without corporal punishment.

#### **226. Stupefying in order to commit offence**

Any person who, with intent to commit or to facilitate the commission of an offence, or to facilitate the flight of an offender after the commission or attempted commission of an offence, administers or attempts to administer any stupefying or overpowering drug or thing to any person, is guilty of an offence and is liable to imprisonment for life.

#### **227. Acts intended to cause grievous harm or prevent arrest**

Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

- (a) unlawfully wounds or does any grievous harm to any person by any means whatever;
- (b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon;
- (c) unlawfully causes any explosive to explode;
- (d) sends or delivers any explosive or other dangerous or noxious thing to any person;
- (e) causes any such explosive or thing to be taken or received by any person;
- (f) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of an offence and is liable to imprisonment for life.

#### **228. Preventing escape from wreck**

Any person who unlawfully-

- (a) prevents or obstructs any person who is on board of, or is escaping from a vessel which is in distress or wrecked, in his endeavours to save his life;
- (b) obstructs any person in his endeavours to save the life of any person so situated,

is guilty of an offence and is liable to imprisonment for life.

### **229. Intentionally endangering safety of persons travelling by railway**

Any person who, with intent to injure or to endanger the safety of any person travelling by any railway, whether a particular person or not-

- (a) places anything on the railway;
- (b) deals with the railway, or with anything whatever upon or near the railway, in such a manner as to affect or endanger the free and safe use of the railway or the safety of any such person;
- (c) shoots or throws anything at, into, or upon or causes anything to come into contact with any person or thing on the railway;
- (d) shows any light or signal, or in any way deals with any existing light or signal, upon or near the railway; or
- (e) by any omission to do any act which it is his duty to do causes the safety of any such person to be endangered,

is guilty of an offence and is liable to imprisonment for life, with or without corporal punishment.

### **230. Grievous harm**

(1) Subject to the provisions of this section, any person who unlawfully causes grievous harm to another by the use of any offensive weapon or any other means whatever is guilty of an offence and shall, where there are no extenuating circumstances, on conviction, be sentenced to a term of imprisonment of not less than 7 years or more than 14 years.

(2) Where a court convicting a person under subsection (1) finds that there were extenuating circumstances, it may impose a lesser sentence than that prescribed in subsection (1).

### **231. Attempting to injure by explosives**

Any person who unlawfully, and with intent to do any harm to another, puts any explosive in any place whatever, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **232. Maliciously administering poison with intent to harm**

Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or

does him some grievous harm, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **233. Unlawful wounding and poisoning**

Any person who-

- (a) unlawfully wounds another; or
- (b) unlawfully, and with intent to injure or annoy any person, causes any poison or other noxious thing to be administered to, or taken by, any person,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **234. Intimidation and molestation**

(1) Any person who intimidates or molests any other person is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(2) A person intimidates another person who, with intent to cause alarm to that person or to cause him to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do, causes or threatens to cause unlawful injury to the person, reputation or property of that person or anyone in whom that person is interested.

(3) A person molests another person who, with intent as aforesaid, dissuades or attempts to dissuade, by whatever means, anyone from entering or approaching or dealing at any premises at which that person carries on trade or business or works or otherwise from dealing with that person, or with any person by whom that person is employed, in the course of his trade or business, or watches and besets any premises where that person resides or works or carries on trade or business or happens to be, or the approaches to such premises, or persistently follows that person or anyone in whom that person is interested from place to place, or interferes with any property owned or used by, or deprives of or hinders in the use of such property, that person or anyone in whom that person is interested.

(4) Nothing in subsection (3) shall apply to any action lawfully taken by a party to a trade dispute as defined in the Trade Disputes Act in contemplation or in furtherance of that dispute.

### **235. Failure to supply necessities**

Any person who, being charged with the duty of providing for another any of the necessities of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### **236. Surgical operation**

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for his benefit, or upon an unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having

regard to the patient's state at the time, and to all the circumstances of the case.

### **237. Excess of force**

Any person authorized by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

### **238. Consent**

Notwithstanding anything contained in section 237, consent by a person to the causing of his own death or his own maim does not affect the criminal responsibility of any person by whom such death or maim is caused.

## ***Criminal Recklessness and Negligence (ss 239-245)***

### **239. Reckless and negligent acts**

Any person who in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any person-

- (a) drives any vehicle or rides on any public way;
- (b) navigates, or takes part in the navigation or working of, any vessel;
- (c) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession;
- (d) omits to take precautions against any probable danger from any animal in his possession;
- (e) gives medical or surgical treatment to any person whom he has undertaken to treat;
- (f) dispenses, supplies, sells, administers, or gives away any medicine or poisonous or dangerous matter;
- (g) does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge;
- (h) does any act with respect to, or omits to take proper precautions against any probable danger from, any explosive in his possession; or
- (i) does any act with respect to, or omits to take proper precautions against any probable danger from, any loaded firearm in his possession,

is guilty of an offence.

### **240. Other negligent acts causing harm**

Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in section 239, by which act or omission harm is caused to

any person, is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

#### **241. Dealing in poisonous substances in negligent manner**

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding P200.

#### **242. Endangering safety of persons travelling by railway**

Any person who, by any unlawful act or omission not specified in section 229, causes the safety of any person travelling by any railway to be endangered, is guilty of an offence.

#### **243. Exhibition of false light, mark or buoy**

Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **244. Conveying person by water for hire in unsafe or overloaded vessel**

Any person who knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to be unsafe, is guilty of an offence.

#### **245. Danger or obstruction in public way or river**

Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or any public river or other navigable waterway, is guilty of an offence and is liable to a fine.

### ***Assaults (ss 246-249)***

#### **246. Common assault**

Any person who unlawfully assaults another, otherwise than in circumstances in which he is guilty of some other offence under this Code, is guilty of the offence termed common assault and is liable to imprisonment for a term not exceeding one year.

#### **247. Assaults occasioning actual bodily harm**

Any person who commits an assault occasioning actual bodily harm is guilty of an offence and is liable to imprisonment for a term not exceeding five years, with or without corporal punishment.

#### **248. Assaults on persons protecting wreck**

Any person who assaults and strikes or wounds any person lawfully authorized in or on account of the execution of his duty in or concerning the preservation of any wrecked or stranded vessel, or the goods or effects thereof, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

#### **249. Other assaults**

Any person who-

- (a) assaults any person with intent to commit an offence punishable under this Code with death, or with imprisonment for three years or more, or to resist or prevent the lawful apprehension or detainer of himself or of any other person for any offence;
- (b) assaults, resists, or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer;
- (c) assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages, or respecting any trade, business, or manufacture or respecting any person concerned or employed therein;
- (d) assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress with intent to rescue any property lawfully taken under such process or distress; or
- (e) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

#### ***Offences against Liberty (ss 250-262)***

#### **250. Definition of kidnapping from Botswana**

Any person who conveys any person beyond the limits of Botswana without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Botswana.

#### **251. Definition of kidnapping from lawful guardianship**

Any person who takes or entices any minor under 14 years of age if a male, or under 16 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

#### **252. Definition of abduction**

Any person who by force compels, or by any deceitful means induces, any person to go from

any place, is said to abduct that person.

### **253. Punishment for kidnapping**

Any person who kidnaps any person from Botswana or from lawful guardianship, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **254. Kidnapping or abducting in order to murder**

Any person who kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, is guilty of an offence and is liable to imprisonment for life.

### **255. Kidnapping or abducting with intent to confine**

Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **256. Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.**

Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

### **257. Wrongfully concealing or keeping in confinement kidnapped or abducted person**

Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of an offence and is liable to be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

### **258. Kidnapping or abducting child under 14 years with intent to steal from its person**

Any person who kidnaps or abducts any child under the age of 14 years with the intention of dishonestly taking any movable property from the person of such child, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **259. Punishment for wrongful confinement**

Whoever wrongfully confines any person is guilty of an offence and is liable to imprisonment for a term not exceeding one year or to a fine not exceeding P1400.

### **260. Detaining person as a slave**

Any person who detains any person as a slave against his will is guilty of an offence and is



liable to imprisonment for a term not exceeding five years.

### **261. Dealing in slaves**

Any person who buys, sells, or disposes of any person as a slave, or who traffics or deals in slaves, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **262. Unlawful compulsory labour**

Any person who unlawfully compels any person to labour against the will of that person is guilty of an offence.

## **DIVISION V OFFENCES RELATING TO PROPERTY (ss 263-325)**

### ***Theft (ss 263-281)***

### **263. Things capable of being stolen**

(1) Every corporeal inanimate thing whatever which is the property of any person, and which is movable, is capable of being stolen.

(2) Every corporeal inanimate thing which is the property of any person, and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

(3) Every tame animal, whether tame by nature or wild by nature and tamed, which is the property of any person, is capable of being stolen.

(4) Wild animals in the enjoyment of their natural liberty are not capable of being stolen; but a wild animal which is usually kept in confinement and which is the property of any person is capable of being stolen so long as it is in confinement, or, if it escapes, so long as it has not regained its natural liberty.

(5) A wild animal is deemed to be in confinement in a den, cage, sty, tank or other small enclosure, or is otherwise so placed that its owner can exercise effective control over it.

(6) A wild animal which has escaped from confinement is deemed to have regained its natural liberty if it has escaped from sight or if, although it is still in sight, its pursuit is difficult.

### **264. Definition of stealing**

(1) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than the general or special owner thereof, anything capable of being stolen, is said to steal that thing.

(2) A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say-

- (a) an intent permanently to deprive the general or special owner of the thing of it;
- (b) an intent to use the thing as a pledge or security;
- (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
- (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner,

and "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(3) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it, and it is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorized to dispose of it.

(4) A person shall not be deemed to take a thing unless he moves the thing or causes it to move.

(5) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

#### **265. Special case of factor**

When a factor pledges or gives a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him as factor from his principal at the time of pledging or giving the lien, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal, such dealing with the goods or document of title is not deemed to be theft.

#### **266. Funds, etc., held under direction**

When a person receives, either alone or jointly with another person, any money or valuable security or a power of attorney for the sale, mortgage, pledge, or other disposition of any property, whether capable of being stolen or not, with a direction in either case that such money or any part thereof, or any other money received in exchange for it, or any part thereof, or the proceeds or any part of the proceeds of such security or of such mortgage, pledge, or other disposition, shall be applied to any purpose or paid to any person specified in the direction, such money and proceeds are deemed to be the property of the person from whom the money, security, or power of attorney was received until the direction has been complied with.

## **267. Funds, etc., received by agents for sale**

When a person receives, either alone or jointly with another person, any property from another on terms authorizing or requiring him to sell it or otherwise dispose of it, and requiring him to pay or account for the proceeds of the property, or any part of such proceeds, or to deliver anything received in exchange for the property, to the person from whom it is received, or some other person, then the proceeds of the property, and anything so received in exchange for it, are deemed to be the property of the person from whom the property was so received, until they have been disposed of in accordance with the terms on which the property was received, unless it is a part of those terms that the proceeds, if any, shall form an item in a debtor and creditor account between him and the person to whom he is to pay them or account for them, and that the relation of debtor and creditor only shall exist between them in respect thereof.

## **268. Money received for another**

When a person receives, either alone or jointly with another person, any money on behalf of another, the money is deemed to be the property of the person on whose behalf it is received, unless the money is received on the terms that it shall form an item in a debtor and creditor account, and that the relation of debtor and creditor only shall exist between the parties in respect of it.

## **269. Theft by persons having an interest in the thing stolen**

When any person takes or converts anything capable of being stolen under such circumstances as would otherwise amount to theft, it is immaterial that he himself has a special property or interest therein, or that he himself is the owner of the thing taken or converted subject to some special property or interest of some other person therein, or that he is lessee of the thing, or that he himself is one of two or more joint owners of the thing, or that he is a director or officer of a corporation or company or society who are owners of it.

## **270. Husband and wife**

(1) While a man and his wife are living together, neither shall, subject to the provisions of subsection (3), be deemed to steal the separate property of the other; but any person who procures either of them to deal with anything which is, to his knowledge, the separate property of the other, in a manner which would be theft if they were not living together, is deemed to have stolen the thing, and may be charged with theft.

(2) If a man and his wife are married in community of property, the husband shall not, during the subsistence of the community, be deemed to steal from the joint estate; and while the husband and wife are living together, the provisions of subsection (1) shall have effect as if the property of the joint estate was the separate property of the husband.

(3) Nothing in subsection (1) shall apply to any property of a husband or wife stolen by the other spouse when leaving or deserting or about to leave or desert such husband or wife.

## **271. General punishment for theft**

Any person who steals anything capable of being stolen is guilty of the offence termed theft, and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for a term not exceeding three years.

#### **272. Stealing wills**

If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for a term not exceeding 10 years.

#### **273. Stealing postal matter, etc.**

If the thing stolen is postal matter or any goods, money or valuable security contained in any postal matter, the offender is liable to imprisonment for a term not exceeding 10 years.

#### **274. Stealing stock**

If the thing stolen is any of the following things, that is to say, a horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig, or ostrich, or the young thereof, the offender is liable to imprisonment for a term not exceeding 14 years.

#### **275. Stealing from the person: stealing goods in transit, etc.**

If a theft is committed under any of the following circumstances, that is to say-

- (a) if the thing is stolen from the person of another;
- (b) if the thing is stolen in a dwelling-house, and its value exceeds P10, or the offender at or immediately before or after the time of stealing uses or threatens to use violence to any person in the dwelling-house;
- (c) if the thing is stolen from any kind of vessel or vehicle or place of deposit used for the conveyance or custody of goods in transit from one place to another;
- (d) if the thing stolen is attached to or forms part of a railway;
- (e) if the thing is stolen from a vessel which is in distress or wrecked or stranded;
- (f) if the thing is stolen from a public office in which it is deposited or kept;
- (g) if the offender, in order to commit the offence, opens any locked room, box, or other receptacle, by means of a key or other instrument,

the offender is liable to imprisonment for a term not exceeding 10 years.

#### **276. Stealing by persons in public service**

If the offender is a person employed in the public service and the thing stolen is the property of the State or came into the possession of the offender by virtue of his employment, he is liable to imprisonment for a term not exceeding seven years.

### **277. Stealing by clerks and servants**

If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employer, he is liable to imprisonment for a term not exceeding seven years.

### **278. Stealing by directors or officers of companies**

If the offender is a director or officer of a corporation or company, and the thing stolen is the property of the corporation or company, he is liable to imprisonment for a term not exceeding seven years.

### **279. Stealing by agents, etc.**

If the thing stolen is any of the following things, that is to say-

- (a) property which has been received by the offender with a power of attorney for the disposition thereof;
- (b) property which has been entrusted to the offender either alone or jointly with any other person for him to retain in safe custody or to apply, pay, or deliver for any purpose or to any person the same or any part thereof or any proceeds thereof;
- (c) property which has been received by the offender either alone or jointly with any other person for or on account of any other person;
- (d) the whole or part of the proceeds of any valuable security which has been received by the offender with a direction that the proceeds thereof should be applied to any purpose or paid to any person specified in the direction;
- (e) the whole or part of the proceeds arising from any disposition of any property, which have been received by the offender by virtue of a power of attorney for such disposition, such power of attorney having been received by the offender with a direction that such proceeds should be applied to any purpose or paid to any person specified in the direction,

the offender is liable to imprisonment for a term not exceeding seven years.

### **280. Stealing by tenants or lodgers**

If the thing stolen is a fixture or goods let to the offender to be used by him with a house or lodging, and its value exceeds P10, he is liable to imprisonment for a term not exceeding seven years.

### **281. Stealing after previous conviction**

If the offender, before committing the theft, had been convicted of a theft punishable under any of sections 271 to 280, he is liable to imprisonment for a term not exceeding seven years.

## ***Offences allied to Stealing (ss 282-290)***

### **282. Concealing registers**

Any person who, with intent to defraud, conceals or takes from its place of deposit any register which is authorized or required by law to be kept for authenticating or recording the execution of any deed or the title to any property, or for recording births, baptisms, marriages, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public office, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

### **283. Concealing wills**

Any person who, with intent to defraud, conceals any testamentary instrument, whether the testator is living or dead, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years.

### **284. Concealing deeds**

Any person who, with intent to defraud, conceals the whole or part of any document which is evidence of title to any land or of any right or interest in any land, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### **285. Killing animals with intent to steal**

Any person who kills any animal capable of being stolen with intent to steal the skin or carcass, or any part of the skin or carcass is guilty of an offence, and is liable to the same punishment as if he had stolen the animal.

### **286. Severing with intent to steal**

Any person who makes anything movable with intent to steal it is guilty of an offence, and is liable to the same punishment as if he had stolen the thing after it has become movable.

### **287. Fraudulent disposal of mortgaged goods**

(1) Any person who, being the mortgagor of mortgaged goods, removes or disposes of the goods without the consent of the mortgagee, and with intent to defraud, is guilty of an offence.

(2) In this section the term "mortgaged goods" means any corporeal movables which, while remaining in the possession of the mortgagor, are subject, by virtue of the provisions of a written instrument, to any general or special mortgage.

### **288. Fraudulently dealing with minerals in mines**

Any person who takes, conceals, or otherwise disposes of any ore or any metal or mineral in or about a mine, with intent to defraud any person, is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

## **289. Fraudulent appropriation of power**

Any person who fraudulently abstracts or diverts to his own use or to the use of any other person any mechanical, illuminating, or electrical power derived from any machine, apparatus or substance, the property of another person, is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

## **290. Unlawful use of vehicles, animals, etc.**

Any person who unlawfully and without colour of right, but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person, any draught or riding animal or any vehicle or cycle, however propelled, or any vessel, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding P100, or to both.

### ***Robbery and Extortion (ss 291-298)***

## **291. Definition of robbery**

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the offence termed robbery.

## **292. Punishment of robbery**

(1) Any person who commits the offence of robbery is liable to imprisonment for a term not exceeding 20 years with corporal punishment.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes, or uses any other personal violence to any person, he shall be sentenced to a term of imprisonment of not less than 10 years.

## **293. Attempted robbery**

(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years with corporal punishment.

(2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he shall be sentenced to a term of imprisonment of not less than 10 years.

#### **294. Assault with intent to steal**

Any person who assaults any person with intent to steal anything is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

#### **295. Demanding property by written threats**

Any person who, with intent to extort or gain anything from any person, and knowing the contents of the writing, causes any person to receive any writing demanding anything from any person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

#### **296. Attempts at extortion by threats**

- (1) Any person who, with intent to extort or gain anything from any person-
- (a) accuses or threatens to accuse any person of committing any offence, or of offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence;
  - (b) threatens that any person shall be accused by any other person of any offence, or of any such act; or
  - (c) knowing the contents of the writing, causes any person to receive any writing containing any such accusation or threat aforesaid,

is guilty of an offence, and if the accusation or threat of accusation is of-

- (i) an offence for which the punishment of death or imprisonment for life may be inflicted;
- (ii) any of the offences defined in sections 141 to 169, or an attempt to commit any of such offences;
- (iii) an assault with intent to have carnal knowledge of any person against the order of nature, or an unlawful and indecent assault upon a male person; or
- (iv) a solicitation or threat offered or made to any person as an inducement to commit or permit the commission of any of the offences aforesaid,

the offender is liable to imprisonment for a term not exceeding 14 years; and in any other case the offender is liable to imprisonment for a term not exceeding 10 years.

(2) It is immaterial whether the person accused or threatened to be accused has or has not committed the offence or act of which he is accused or threatened to be accused.

#### **297. Procuring execution of deeds, etc. by threats**

Any person who, with intent to defraud, and by means of any unlawful violence to, or



restraint of, the person of another, or by means of any threat of violence or restraint to be used to the person of another, or by means of accusing or threatening to accuse any person of committing any offence or by offering or making any solicitation or threat to any person as an inducement to commit or permit the commission of any offence, compels or induces any person-

- (a) to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or
- (b) to write any name or impress or affix any seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security,

is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **298. Demanding property with menaces**

Any person who, with intent to steal anything demands it from any person with menaces or force, is guilty of an offence and is liable to imprisonment for a term not exceeding five years.

### ***Burglary, Housebreaking and Similar Offences (ss 299-306)***

### **299. Definition of breaking and entering**

(1) A person who breaks any part, whether external, or internal, of a building, or opens by unlocking, pulling, pushing, lifting, or any other means whatever, any door, window, shutter, cellar, flap, or other thing, intended to close or cover an opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

(2) A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

(3) A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters an aperture of the building left open for any purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

### **300. House-breaking and burglary**

- (1) Any person who-
  - (a) breaks and enters any building, tent or vessel used as a human dwelling with intent to commit therein any offence punishable under this Code with death or with imprisonment for three years or more; or
  - (b) having entered any building, tent or vessel used as a human dwelling with intent to commit such an offence therein, or having committed such an offence in any such building, tent or vessel, breaks out thereof,

is guilty of an offence termed housebreaking and is liable to imprisonment for a term not

exceeding 10 years with corporal punishment.

(2) If the offence is committed in the night, it is termed burglary, and the offender is liable to imprisonment for a term not exceeding 14 years, with corporal punishment.

### **301. Entering dwelling-house with intent to commit certain serious offences**

(1) Any person who enters or is in any building, tent or vessel used as a human dwelling with intent to commit any offence punishable under this Code with death or with imprisonment for three years or more, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, with corporal punishment.

(2) If the offence is committed in the night, the offender is liable to imprisonment for a term not exceeding 10 years with corporal punishment.

### **302. Breaking into building and committing certain serious offences**

Any person who-

- (a) breaks and enters a schoolhouse, shop, warehouse, store, office, counting-house, garage, pavilion, club, factory or workshop, or any building belonging to the State, or to any local authority, or a building which is adjacent to a dwelling-house and occupied with it, but is not part of it, or any building used as a place of worship, and commits therein any offence punishable under this Code with death or with imprisonment for a term of three years or more; or
- (b) breaks out of the same having committed any such offence therein,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, with corporal punishment.

### **303. Breaking into building with intent to commit certain serious offences**

Any person who breaks and enters a schoolhouse, shop, office, counting-house, garage, pavilion, club, factory or workshop or any building belonging to the State, or to any local authority, or a building which is adjacent to a dwelling-house and occupied with it, but is not part of it, or any building used as a place of worship, with intent to commit therein any offence punishable under this Code with death or with imprisonment for three years or more, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, with corporal punishment.

### **304. Being armed, etc. with intent to commit certain serious offences**

(1) Any person who is found under any of the following circumstances, that is to say-

- (a) being armed with any dangerous or offensive weapon or instrument, and being so armed with intent to break or enter a dwelling-house, and to commit therein any offence punishable under this Code with death or with imprisonment for three years or more;

- (b) being armed as aforesaid by night, and being so armed with intent to break or enter any building whatever, and to commit such an offence therein;
- (c) having in his possession by night without lawful excuse, the proof of which lies on him, any instrument of house-breaking;
- (d) having in his possession by day any such instrument with intent to commit such an offence;
- (e) having his face masked or blackened or being otherwise disguised, with intent to commit such an offence;
- (f) being in any building whatever by night with intent to commit such an offence therein;
- (g) being in any building whatever by day with intent to commit such an offence therein, and having taken precautions to conceal his presence,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(2) If the offender has been previously convicted of an offence relating to property which is punishable under this Code with death or with imprisonment for three years or more, he is liable to imprisonment for a term not exceeding 10 years.

### **305. Criminal trespass**

- (1) Any person who-
  - (a) enters into or upon property in the possession of another with intent to commit an offence or to intrude upon the privacy of any woman or girl or to intimidate, insult or annoy any person lawfully in possession of such property;
  - (b) having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence or to intrude upon the privacy of any woman or girl,

is guilty of the offence termed criminal trespass and is liable to imprisonment for a term not exceeding three months.

(2) If the property upon which the offence is committed is any building, tent or vessel used as a human dwelling or any building used as a place of worship or as a place for the custody of property the offender is liable to imprisonment for a term not exceeding one year.

### **306. Forfeiture**

When any person is convicted of an offence, or of an attempt to commit an offence or of counselling or procuring the commission of an offence, under this Division, the court may order that any dangerous or offensive weapon or instrument of house-breaking carried or used in connection with the offence shall be forfeited to the State.

## ***False Pretences (ss 307-316)***

### **307. Definition of false pretence**

Any representation, made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false or does not believe to be true, is a false pretence.

### **308. Obtaining by false pretence**

Any person who by any false pretence, and with intent to defraud, obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen, is capable of an offence and is liable to imprisonment for a term not exceeding seven years.

### **309. Obtaining execution of a deed or security by false pretences**

Any person who by any false pretence, and with intent to defraud, induces any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, or to write any name or impress, or affix any seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **310. Cheating**

Any person who by means of any fraudulent trick or device obtains from any other person anything capable of being stolen, or induces any other person to deliver to any person anything capable of being stolen or to pay or deliver to any person any money or goods or any greater sum of money or greater quantity of goods than he would have paid or delivered but for such trick or device, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **311. Obtaining credit, etc. by false pretences**

Any person who-

- (a) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud;
- (b) with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery, or transfer of or any charge on his property; or
- (c) with intent to defraud his creditors or any of them conceals, sells or removes any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### **312. Conspiracy to defraud**

Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

### **313. Pretending to tell fortunes**

Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of an offence.

### **314. Obtaining registration, etc., by false pretence**

Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any law by any false pretence, is guilty of an offence.

### **315. False declaration for passport**

Any person who makes a statement which is to his knowledge untrue for the purpose of procuring a passport, whether for himself or any other person, is guilty of an offence.

### **316. Travelling on train without free pass or a ticket prohibited**

(1) Subject to the provisions of this section, no person shall enter a coach or other vehicle of the railways in the country for the purpose of travelling therein as a passenger unless he has with him a valid pass or ticket.

(2) If a passenger travels in a train without having a free pass or valid ticket with him, or being in or having alighted from a train, fails or refuses to present for examination or to deliver up his free pass or ticket immediately on being required to do so, he shall be liable to pay on the demand of any authorized servant, the excess charge determined by the General Manager.

(3) A passenger on whom a demand is made to pay the excess charge in accordance with the provisions of subsection (2) shall be liable to pay in addition to the ordinary fare for the distance which he has travelled or is travelling or, if there is any doubt as to the station from which he originally started, the fare from the station from which the train originally started or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary fare from the place where the tickets were examined or, if they have been examined more than once, the place where they were last examined.

(4) If a passenger travels or attempts to travel in a portion of a train of a higher class than that for which he has obtained a free pass or ticket, or travels beyond the place authorized by his free pass or ticket, he shall be liable to pay on the demand of any authorized servant, the excess charge determined by the General Manager in addition to any difference between any fare paid by him and the fare in respect of such journey as he has made:

Provided that the excess charge shall in no case exceed-

- (i) if the liability to pay it arises under subsections (2) and (3), the amount of the ordinary

single fare which the passenger incurring the charge is liable to pay under those subsections, or

- (ii) if the liability to pay arises under this subsection, the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made:

Provided further that the General Manager may prescribe particular circumstances under which no excess charge shall be demanded.

(5) If any person wilfully refuses to pay the amounts due by him under this section to any servant demanding such amount, it shall be lawful for any station master or other authorized employee to arrest that person without warrant and detain him in custody and bring him as speedily as possible before a court having jurisdiction to be dealt with according to law on a charge of such wilful refusal; and he shall be liable on conviction to undergo corporal punishment not exceeding six strokes or to a fine not exceeding P100, or to both:

Provided that no person shall be arrested or detained without a warrant unless there is reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay, trouble or expense.

(6) It shall be the duty of the court passing any sentence under this section to impose, in addition to the sentence, a further fine equal to the amount payable to the railways for the fare and excess charge payable or due by the accused in respect of the journey performed by him in the class in which he was travelling, and such court may, in addition order that if on the payment of the fine or at the expiration of the sentence the further fine has not been paid, the person convicted shall be imprisoned for a further period not exceeding one month.

(7) The railways shall refund any fare or difference in fare paid under the provisions of this section:

Provided that-

- (i) application for the refund is made within 14 days from the date of payment, and
- (ii) the applicant had at the time he made the payment a valid subsisting ticket or free pass available for the journey on which he was found without a ticket, or some *bona fide* reason for being without such ticket or free pass.

(8) For the purposes of this section the "General Manager" means the person designated as General Manager under section 10 of the Botswana Railways Act or performing the functions of the General Manager.

### ***Receiving Property Stolen or Unlawfully Obtained and Like Offences (ss 317-320)***

#### **317. Receiving stolen property, etc.**

(1) Any person who receives or retains any property knowing or having reason to believe the same to have been stolen, or unlawfully taken, extorted, obtained or disposed of, in a manner

which constitutes an offence punishable under this Code with death, or with imprisonment for three years or more, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

(2) Any person who receives or retains any property knowing or having reason to believe the same to have been unlawfully taken, obtained, converted or disposed of in a manner which constitutes any other offence, is guilty of an offence and is liable to the same punishment as the offender by whom the property was unlawfully obtained, converted or disposed of.

(3) Any person who assists in concealing or disposing of or making away with any property which he knows or has reason to believe to have been stolen or obtained, in any way whatsoever under circumstances which amount to an offence, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

(4) No person shall be convicted of an offence under this section unless it is proved that the property which is the subject matter of the charge has in fact been stolen, or unlawfully taken, extorted, obtained, converted or disposed of.

### **318. Person suspected of possessing, carrying or conveying stolen property**

Any person who is found by a peace officer to be in possession of, or carrying or conveying in any manner, anything which is reasonably suspected of having been stolen or unlawfully obtained and he is unable to give a satisfactory account as to how he came by it is guilty of an offence.

### **319. Marking and possession of public stores**

(1) The Minister may, by order published in the *Gazette*, give directions as to the marks which may be applied in or on any stores under the control of any branch or department of, and being the property of, the Government of Botswana.

(2) Any person who is charged with conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores so marked, which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court how he came by the same, is guilty of an offence.

(3) Any person conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores being the property of the armed forces of Botswana, which may reasonably be suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court of how he came by the same, shall be guilty of an offence.

(4) For the purposes of this section, "stores" means goods and includes any single store or article or part thereof; and "marks" includes any part of a mark.

### **320. Receiving goods stolen outside Botswana**

Any person who, without lawful excuse, knowing or having reason to believe the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act

had been committed in Botswana the person committing it would have been guilty of an offence, receives or has in his possession any property so stolen or obtained outside Botswana or having himself so stolen or obtained such property, brings the same into, or has it in his possession within Botswana is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

***Frauds by Trustees and Persons in a Position of Trust,  
and False Accounting (ss 321-325)***

**321. Trustees fraudulently disposing of trust property**

(1) Any person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorized by the trust, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

(2) For the purposes of this section the term "trustee" includes the following persons and no others, that is to say-

- (a) trustees upon express trusts created by a deed, will or instrument in writing, whether for a public or private or charitable purpose;
- (b) trustees appointed by or under the authority of any written law for any such purpose;
- (c) persons upon whom the duties of any such trust as aforesaid devolve;
- (d) executors and administrators.

**322. Fraudulent appropriation or accounting by directors or officers**

Any person who-

- (a) being a director or officer of a corporation or company, receives or possesses himself as such of any of the property of the corporation or company otherwise than in payment of a just debt or demand, and, with intent to defraud, omits either to make a full and true entry thereof in the books and accounts of the corporation or company, or to cause or direct such an entry to be made therein; or
- (b) being a director, officer, or member of a corporation or company, does any of the following acts with intent to defraud, that is to say-
  - (i) destroys, alters, mutilates or falsifies any book, document, valuable security or account, which belongs to the corporation or company, or any entry in any such book, document or account, or is privy to any such act,
  - (ii) makes, or is privy to making, any false entry in any such book, document, or account, or
  - (iii) omits or is privy to omitting any material particular from any such book, document or account,



is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **323. False statements by officials of companies**

Any person who, being a promoter, director, officer or auditor of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating or publishing any written statement or account which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following purposes, that is to say-

- (a) to deceive or to defraud any member, shareholder, or creditor of the corporation or company, whether a particular person or not;
- (b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **324. Fraudulent false accounting by clerk or servant**

Any person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud, that is to say-

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his employer, or has been received by him on account of his employer, or an entry in any such book, document or account, or is privy to any such act;
- (b) makes, or is privy to making, any false entry in any such book, document or account; or
- (c) omits, or is privy to omitting, any material particular from any such book, document or account,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **325. False accounting by public officer**

Any person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statements or return of any money or property received by him or entrusted to his care, or of any balance of money or property in his possession or under his control, is guilty of an offence.

**DIVISION VI**  
**MALICIOUS INJURIES TO PROPERTY (ss 326-338)**  
*Offences Causing Injury to Property (ss 326-338)*

### **326. Arson**

Any person who wilfully and unlawfully sets fire to-

- (a) any building or structure whatever, whether completed or not;
- (b) any vessel, whether completed or not;
- (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or
- (d) a mine, or the workings, fittings, or appliances of a mine,

is guilty of an offence and is liable to imprisonment for life.

### **327. Attempts to commit arson**

Any person who-

- (a) attempts unlawfully to set fire to any such thing as is mentioned in section 326; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in section 326 is likely to catch fire from it,

is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **328. Setting fire to crops and growing plants**

Any person who wilfully and unlawfully sets fire to-

- (a) a crop of cultivated produce, whether standing, picked or cut;
- (b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing, picked or cut; or
- (c) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **329. Attempting to set fire to crops, etc.**

Any person who-

- (a) attempts to set fire to any such thing as is mentioned in section 328; or
- (b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in that section is likely to catch fire from it,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **330. Casting away vessels**

Any person who-

- (a) wilfully and unlawfully casts away or destroys any vessel, whether completed or not;

- (b) wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or
- (c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark, or signal used for purposes of navigation, or exhibits any false light or signal,

is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **331. Attempts to cast away vessels**

Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **332. Injuring animals**

(1) Any person who wilfully and unlawfully kills, maims, or wounds any animal capable of being stolen, is guilty of an offence.

(2) If the animal in question is a horse, mare, gelding, ass, mule, bull, cow, ox, ram, ewe, wether, goat, pig, or ostrich or the young of any such animal, the offender is liable to imprisonment for a term not exceeding 14 years, and, in any other case, to imprisonment for a term not exceeding three years.

### **333. Malicious injuries to property**

(1) Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence and he is liable, if no other punishment is provided, to imprisonment for a term not exceeding five years.

(2) If the property in question is a dwelling-house or a vessel, and the injury is caused by the explosion of any explosive, and if-

- (a) any person is in the dwelling-house or vessel; or
- (b) the destruction or damage actually endangers the life of any person,

the offender is liable to imprisonment for life.

(3) If the property in question-

- (a) is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or work which appertains to a dock, reservoir, or inland water, and the injury causes actual danger of inundation or damage to any land or building;
- (b) is a railway or is a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a railway, highway, or canal passes, and the property is destroyed; or

- (c) being a railway, or being any such bridge, viaduct, or aqueduct, is damaged, and the damage is done, with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same or any part thereof, dangerous or impassable, and the same or any part thereof is thereby rendered dangerous or impassable,

the offender is liable to imprisonment for life.

(4) If the property in question is a testamentary instrument, whether the testator is living or dead, or a register which is authorized or required by law to be kept for authenticating or recording the execution of any deed or the title to any property, or for recording births, baptisms, marriages, deaths, or burials, or a copy of any part of any such register which is required by law to be sent to any public office, the offender is liable to imprisonment for a term not exceeding 14 years.

(5) If the property in question is a vessel in distress or wrecked, or stranded, or anything which belongs to such vessel, the offender is liable to imprisonment for a term not exceeding seven years.

(6) If the property in question is any part of a railway, or any work connected with a railway, the offender is liable to imprisonment for a term not exceeding 14 years.

(7) If the property in question-

- (a) being a vessel, whether completed or not, is destroyed;
- (b) being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless;
- (c) is a light, beacon, buoy, mark or signal, used for the purposes of navigation, or for the guidance of persons engaged in navigation;
- (d) is a bank or wall of a river, canal, aqueduct, reservoir, or inland water, or which is used for the purposes of lading or unloading goods;
- (e) being a railway, or being a bridge, viaduct, or aqueduct which is constructed over a highway, railway, or canal, or over which a highway, railway, or canal passes, is damaged, and the damage is done with intent to render the railway, bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof, dangerous or impassable;
- (f) being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing implement, or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed;
- (g) being any such thing, machine, implement, or appliance, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to

render it useless;

- (h) is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working;
- (i) is a machine, appliance, apparatus, building, erection, bridge or road, appertaining to or used with a mine, whether the thing in question is completed or not;
- (j) being a rope, chain, or tackle, or whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed;
- (k) being any such rope, chain, or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or
- (l) is a well, or bore for water, or the dam, bank, wall, or floodgate of a millpond or pool,

the offender is liable to imprisonment for a term not exceeding 10 years.

(8) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or interest in land, the offender is liable to imprisonment for a term not exceeding 10 years.

### **334. Attempts to destroy property by explosives**

Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive in any place whatever, is guilty of an offence and is liable to imprisonment for a term not exceeding 14 years.

### **335. Communicating infectious diseases to animals**

Any person who wilfully and unlawfully causes, or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **336. Penalties for damage, etc. to railway works**

Any person who-

- (a) wilfully damages, injures, or obstructs any work, way, road, building, turnstile, gate, toll bar, fence, weighing machine, engine, tender, carriage, wagon, truck, material, or plant, acquired for or belonging to any railway works;
- (b) pulls up, removes, defaces or destroys, or in any way interferes with, any poles, stakes, flags, pegs, lines, marks, or anything driven or placed in or upon the ground, trees, stones, or buildings, or any other material, belonging to any railway works;
- (c) commits any nuisance or trespass in or upon any land, buildings, or premises, acquired for or belonging to any railway works; or

- (d) wilfully molests, hinders or obstructs the officer in charge of any railway or his assistants or workmen in the execution of any work done or to be done in reference to the construction or maintenance of any such railway,

is guilty of an offence and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding P120.

### **337. Sabotage**

Any person who, wilfully and unlawfully, destroys or damages, or does any act with intent to, or knowing it to be likely that such act will, impair the usefulness or efficiency or prevent or impede the working of, any property used or intended to be used in the service of the State or any local authority, or for the purposes of any airport or air service or any supply of water or electricity to any person or community of persons, or in the performance of any other service essential to the life of the community, is guilty of an offence and-

- (a) if the offence is committed with intent to endanger life or with the knowledge that it is likely to endanger life, is liable to imprisonment for life;
- (b) in any other case, is liable to imprisonment for a term not exceeding 10 years.

### **338. Threats to burn, etc.**

Any person who, knowing the contents thereof, sends, delivers, utters or directly or indirectly causes to be received, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay, or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim, or wound any cattle, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

## **DIVISION VII FORGERY, COINING AND COUNTERFEITING (ss 339-382)**

### ***Definitions (ss 339-342)***

### **339. Definition of forgery**

Forgery is the making of a false document with intent to defraud or to deceive.

### **340. Document**

In this Division, "document" does not include a trade mark or any other sign used in connection with articles of commerce though they may be written or printed.

### **341. Making a false document**

Any person makes a false document who-

- (a) makes a document purporting to be what in fact it is not;
- (b) alters a document without authority in such a manner that if the alteration had been

authorized it would have altered the effect of the document;

- (c) introduces into a document without authority whilst it is being drawn up matter which if it had been authorized would have altered the effect of the document;
- (d) signs a document-
  - (i) in the name of any person without his authority whether such name is or is not the same as that of the person signing,
  - (ii) in the name of any fictitious person alleged to exist, whether the fictitious person is or is not alleged to be of the same name as the person signing,
  - (iii) in the name represented as being the name of a different person from that of the person signing it and intended to be mistaken for the name of that person, or
  - (iv) in the name of a person personated by the person signing the document, provided that the effect of the instrument depends upon the identity between the person signing the document and the person whom he professes to be.

#### **342. Intent to defraud**

An intent to defraud is presumed to exist for the purposes of section 339 if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

#### ***Punishments for Forgery (ss 343-358)***

#### **343. Definition of currency note**

In this Division, the expression "currency note" includes any note (by whatever name called) which is legal tender in the country in which it is issued.

#### **344. General punishment for forgery**

Any person who forges any document is guilty of an offence and is liable, unless owing to the circumstances of the forgery or the nature of the thing forged some other punishment is provided, to imprisonment for a term not exceeding three years.

#### **345. Forgery of wills, etc.**

(1) Any person who forges any will, document of title to land, judicial record, power of attorney, bank note, currency note, bill of exchange, promissory note or other negotiable instrument, policy of insurance, cheque or other authority for the payment of money by a person carrying on business as a banker, is liable to imprisonment for a term not exceeding 10 years and the court may in addition order that any such document as aforesaid shall be forfeited to

the State.

(2) In this section, "document of title to land" includes any deed, diagram, plan, register or instrument in writing being or containing evidence of title, or of any part of the title or to any interest in or arising out of any land, or any authenticated copy thereof.

### **346. Forgery of judicial or official documents**

Any person who forges any judicial or official document is liable to imprisonment for a term not exceeding 10 years.

### **347. Forgery, etc. of stamps**

Any person who-

- (a) forges any stamp, whether impressed or adhesive, used for the purposes of revenue or accounting by any Government department;
- (b) without lawful excuse, the proof whereof shall lie upon him, makes or has knowingly in his possession any die or instrument capable of making the impression of any such stamp;
- (c) fraudulently cuts, tears in any way, or removes from any material any stamp used for purposes of revenue or accounting by any Government department, with intent that another use shall be made of such stamp or any part thereof;
- (d) fraudulently mutilates any such stamp as last aforesaid, with intent that another use shall be made of such stamp;
- (e) fraudulently fixes or places upon any material or upon any such stamp or part of a stamp as last aforesaid any stamp or part which whether fraudulently or not has been cut, torn, or in any way removed from any other material or out of or from any other stamp;
- (f) fraudulently erases or otherwise either really or apparently removes from any stamped material any name, sum, date, or other matter or thing whatsoever written thereon with the intent that another use shall be made of the stamp upon such material; or
- (g) knowingly and without lawful excuse, the proof whereof shall lie upon him, has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise really or apparently removed,

is liable to imprisonment for a term not exceeding seven years.

### **348. Uttering false document**

Any person who knowingly and fraudulently utters a false document is guilty of an offence of



the same kind, and is liable to the same punishment, as if he had forged the thing in question.

### **349. Uttering cancelled or exhausted documents**

Any person who knowingly utters as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled, or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

### **350. Procuring execution of documents by false pretences**

Any person who, by means of any false and fraudulent representations as to the nature, contents, or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

### **351. Altering crossings on cheques**

Any person who, with intent to defraud-

- (a) obliterates, adds to, or alters the crossing on a cheque; or
- (b) knowingly utters a crossed cheque, the crossing on which has been obliterated, added to, or altered,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **352. Making documents without authority**

Any person who, with intent to defraud-

- (a) without lawful authority or excuse, makes, signs, or executes, for or in the name or on account of another person, whether by procuration or otherwise, any document or writing; or
- (b) knowingly utters any document or writing so made, signed, or executed by another person,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **353. Demanding property upon forged testamentary instruments**

Any person who procures the delivery or payment to himself or any other person of any property or money by virtue of any letters of administration granted upon a forged testamentary instrument, knowing the testamentary instrument to have been forged, or upon or by virtue of any letters of administration obtained by false evidence, knowing the grant to have been so obtained, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document or thing by virtue whereof he procures the delivery or payment.

### **354. Purchasing forged notes**

Any person who, without lawful authority or excuse, the proof of which shall lie on him, imports into Botswana, or purchases or receives from any person, or has in his possession, a forged bank note, or currency note, whether filled up or in blank, knowing it to be forged, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **355. Falsifying warrants for money payable under public authority**

Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by any public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **356. Falsification of register**

Any person who, having the actual custody of any register or record kept by lawful authority, knowingly permits any entry which in any material particular is to his knowledge false, to be made in the register or record, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **357. Sending false certificate of marriage to registrar**

Any person who signs or transmits to a person authorized by law to register marriages, a certificate of marriage, or any document purporting to be a certificate of marriage, which in any material particular is to his knowledge false, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **358. False statements for registers of births, deaths and marriages**

Any person who knowingly and with intent to procure the same to be inserted in a register of births, deaths, or marriages, makes any false statement touching any matter required by law to be registered in any such register, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

## ***Offences relating to Coins and to Bank and Currency Notes (ss 359-372)***

### **359. Definitions**

In this Division-

"coin" includes any coin minted or lawfully current by virtue of any Act in Botswana, and coin of a Commonwealth country, or of a foreign Sovereign or State;

"counterfeit coin" means a coin not genuine but resembling or apparently intended to resemble or pass for a genuine coin; and includes a genuine coin prepared or altered so as to pass for a coin of a higher denomination;

"currency note" includes any note (by whatever name called) which is legal tender in the

country in which it is issued.

### **360. Counterfeiting coin**

Any person who makes or begins to make any counterfeit coin is guilty of an offence and is liable to imprisonment for life.

### **361. Preparations for coining**

Any person who-

- (a) gilds or silvers any piece of metal of a fit size or figure to be coined, with intent that it shall be coined into counterfeit coin;
- (b) makes any piece of metal into a fit size or figure to facilitate the coining from it of any counterfeit coin, with intent that such counterfeit coin shall be made from it; or
- (c) without lawful authority or excuse, the proof of which shall lie on him-
  - (i) buys, sells, receives, pays, or disposes of any counterfeit coin at a lower rate than it imports or is apparently intended to import, or offers to do any such thing;
  - (ii) brings or receives into Botswana any counterfeit coin, knowing it to be counterfeit;
  - (iii) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any stamp or mould which is adapted to make the resemblance of both or either of the sides of any coin, or any part of either side thereof, knowing the same to be a stamp or mould or to be so adapted;
  - (iv) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any tool, instrument or machine which is adapted and intended to be used for marking coin round the edges with marks or figures apparently resembling those on the edges of any coin, knowing the same to be so adapted and intended; or
  - (v) makes or mends, or begins or prepares to make or mend, or has in his possession, or disposes of any press for coinage, or any tool, instrument, or machine which is adapted for cutting round blanks out of gold, silver, or other metal, knowing such press, tool, instrument, or machine to have been used or to be intended to be used for making any counterfeit coin,

is guilty of an offence and is liable to imprisonment for life.

### **362. Making or having in possession paper or implements for forgery**

Any person who, without lawful authority or excuse, the proof of which shall lie on him-

- (a) makes, uses, or knowingly has in his custody or possession any paper intended to resemble and pass as a special paper such as is provided and used for making any

bank note or currency note;

- (b) makes, uses, or knowingly has in his custody or possession any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper;
- (c) engraves or in anywise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any bank note or currency note;
- (d) uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines or devices have been engraved or in anywise made as aforesaid; or
- (e) uses or knowingly has in his custody or possession any paper upon which such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid,

is guilty of an offence, and is liable to imprisonment for a term not exceeding seven years.

### **363. Clipping**

Any person who deals with any coin in such a manner as to diminish its weight with intent that when so dealt with it may pass as a coin, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **364. Melting down of currency**

Any person who melts down, breaks up, defaces by stamping thereon any name, word or mark, or uses otherwise than as currency any coin current for the time being in Botswana is guilty of an offence and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding P800, or to both.

### **365. Impounding and destruction of counterfeit coin**

(1) Any officer of the Government or the manager of any bank who receives, during the performance of his duties, any coin which he has reasonable ground for believing to be a counterfeit coin shall impound such coin and transmit it to the Accountant-General who may cut, deface or destroy it with or without compensation, as he thinks fit, if in his opinion it is counterfeit.

(2) For the purposes of this section the decision of the Accountant-General that a coin is counterfeit and that compensation shall be granted or withheld shall be final, and no person shall be entitled to claim and no proceedings or action shall be brought against the Accountant-General, the Government, the officer of the Government concerned, the manager of the bank concerned or his bank in respect of any loss or damage suffered by reason of such impounding and cutting, defacing or destruction.

### **366. Possession of clippings**

Any person who unlawfully has in his possession or disposes of any filings, or clippings of gold or silver, or any gold or silver in bullion, dust, solution, or any other state, obtained by dealing with a current gold or silver coin in such a manner as to diminish its weight, knowing the same to have been so obtained, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

### **367. Uttering counterfeit coin**

Any person who utters any counterfeit coin, knowing it to be counterfeit, is guilty of an offence.

### **368. Repeated uttering**

Any person who-

- (a) utters any counterfeit coin, knowing it to be counterfeit, and at the time of uttering has in his possession any other counterfeit coin;
- (b) utters any counterfeit coin, knowing it to be counterfeit, and either on the same day or on any of the 10 days next ensuing, utters any other counterfeit coin, knowing it to be counterfeit; or
- (c) receives, obtains, or has in his possession any counterfeit coin, knowing it to be counterfeit, with intent to utter it,

is guilty of an offence and is liable to imprisonment for a term not exceeding three years:

Provided that it shall not constitute the offence of using a currency coin otherwise than as currency under this section, where such use is approved, either specifically or in general terms, by the Minister of Finance and Development Planning.

### **369. Uttering metal or coin not current as coin**

(1) Any person who, with intent to defraud, utters as and for a coin any metal or piece of metal is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

(2) Any person who, with intent to defraud, utters as and for coin lawfully current in Botswana by virtue of any law or otherwise, any coin not so lawfully current is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

### **370. Exporting counterfeit coin**

Any person who, without lawful authority or excuse, the proof of which shall lie on him, exports or puts on board of a vehicle or vessel of any kind for the purpose of being exported from Botswana, any counterfeit coin whatever, knowing it to be counterfeit, is guilty of an offence.

### **371. Selling articles bearing designs in imitation of currency**

Any person who without lawful authority or excuse, the proof of which shall lie upon him, sells or offers or exposes for sale any article which bears a design in imitation of any currency or bank note or coin in current use in Botswana or elsewhere is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

### **372. Forfeiture**

When any person is convicted of an offence under sections 343 to 371, the court shall order the forfeiture to the State of any bank note or currency note or of any counterfeit coin or any stamp, mould, tool, instrument, machine, press, or any coin, bullion or metal, or any article bearing a design in imitation of any currency, bank note or coin used or employed in the commission of any such offence.

### ***Counterfeit Stamps (ss 373-374)***

### **373. Possession of die used for purpose of making stamps**

Any person who, without lawful authority or excuse, the proof of which shall lie on him-

- (a) makes or mends, or begins or prepares to make or mend, or uses, or knowingly has in his possession or disposes of any die, plate or instrument capable of making an impression resembling that made by any die, plate or instrument used for the purpose of making any stamp, whether impressed or adhesive, which is used for the purposes of the public revenue or of the Department of Postal Services in Botswana or in any other country, or capable of producing in or on paper any words, figures, letters, marks, or lines used in or on any paper specially provided by the proper authority for any such purpose;
- (b) knowingly has in his possession or disposes of any paper or other material which has on it the impression of any such die, plate, or instrument, or any paper which has on it or in it any such words, figures, letters, marks or lines as aforesaid;
- (c) fraudulently, and with intent that use may be made of any such stamp as aforesaid, or of any part of it, removes the stamp from any material in any way whatever;
- (d) fraudulently, and with intent that use may be made of any part of such stamp, mutilates the stamp;
- (e) fraudulently fixes or places upon any material or upon any such stamp, any stamp or part of a stamp which has been in any way removed from any other material, or out of or from any other stamp;
- (f) fraudulently, and with intent that use may be made of any such stamp which has been already impressed upon or attached to any material, erases or otherwise removes, either really or apparently, from such material, anything whatever written on it;
- (g) knowingly has in his possession or disposes of anything obtained or prepared by any

such unlawful act as aforesaid; or

- (h) fraudulently, or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue which he knows to have been used before,

is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, and any die, plate, instrument, paper or other thing as aforesaid which are found in his possession shall be forfeited to the State.

### **374. Paper and dies for postage stamps**

- (1) Any person who, without lawful authority or excuse, the proof of which shall lie on him-
  - (a) makes, or begins or prepares to make, or uses for any postal purpose, or has in his possession, or disposes of, any imitation or representation on paper or any other material of any stamp used for denoting any rate of postage in Botswana or in any other country; or
  - (b) makes or mends, or begins or prepares to make or mend, or uses, or has in his possession, or disposes of, any die, plate, instrument, or material for making any such imitation or representation,

is guilty of an offence and is liable to imprisonment for a term not exceeding one year, or to a fine not exceeding P300 and any stamps and any other such things as aforesaid, which are found in his possession, shall be forfeited to the State.

(2) For the purposes of this section a stamp purporting to denote a rate of postage of any country is to be taken to be a stamp used for postal purposes in that country until the contrary is shown.

## ***Counterfeiting Trade Marks (ss 375-376)***

### **375. Trade mark defined**

A trade mark is-

- (a) a mark lawfully used by any person to denote any goods to be an article or thing of the manufacture, workmanship, production, or merchandise of such person or to be an article or thing of any peculiar or particular description made or sold by such person;
- (b) any mark or sign which in pursuance of any law in force for the time being relating to registered designs is to be put or placed upon or attached to any goods during the existence or continuance of any copyright or other sole right acquired under the provisions of such law.

### **376. Counterfeiting trade marks offence**

- (1) Any person who does any of the following things with intent to defraud or to enable

another to defraud any person, that is to say-

- (a) forges or counterfeits any trade mark;
- (b) applies any trade mark, or any forged or counterfeit trade mark, to any goods not being the merchandise of any person whose trade mark is so forged or counterfeited;
- (c) applies any trade mark or any forged or counterfeited trade mark to any goods not being the particular or peculiar description of merchandise denoted or intended to be denoted by such trade mark or by such forged or counterfeited trade mark;
- (d) applies any trade mark or any forged or counterfeited trade mark to any thing intended for any purpose of trade or manufacture, or in, on or with which any goods are intended to be sold, or are sold, or offered or exposed for sale;
- (e) encloses or places any goods in, upon, under, or with any thing to which any trade mark has been falsely applied, or to which any forged or counterfeit trade mark has been applied;
- (f) applies or attaches any goods to any case, cover, reel, ticket, label, or other thing to which any trade mark has been falsely applied, or to which any false or counterfeit trade mark has been applied; or
- (g) encloses, places, or attaches any goods in, upon, under, with, or to any thing having thereon any trade mark of any other person,

is guilty of an offence.

- (2) Every person committing any such offence as aforesaid shall forfeit to the State-
  - (a) all goods to which any such trade mark or counterfeit trade mark is applied or caused or procured to be applied;
  - (b) every instrument for applying any such trade mark or counterfeit trade mark in his possession or power; and
  - (c) the goods and the things mentioned in paragraphs (a), (e) and (g) of subsection (1), and all similar things made to be used in like manner in his possession or power.

### ***Personation (ss 377-382)***

#### **377. Personation in general**

(1) Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of an offence.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he is liable to imprisonment for a term not exceeding seven years.



### **378. Falsely acknowledging deeds, recognizances, etc.**

Any person who, without lawful authority or excuse, the proof of which shall lie on him, makes, in the name of any other person, before any court or person lawfully authorized to take such acknowledgement, an acknowledgement of liability of any kind, or an acknowledgement of a deed or other instrument, is guilty of an offence.

### **379. Personation of a person named in a certificate**

Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

### **380. Lending, etc. certificate for personation**

Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives, or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of an offence.

### **381. Personation of person named in a testimonial**

Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial or character given to another person, is guilty of an offence and is liable to imprisonment for a term not exceeding one year.

### **382. Lending, etc. testimonial for personation**

Any person who, being a person to whom any such document as is mentioned in section 381 has been given, gives, sells, or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of an offence.

## **DIVISION VIII OFFENCES RELATING TO CORRUPT PRACTICES (ss 383-387)**

### ***Secret Commissions and Corrupt Practices (ss 383-387)***

### **383. Interpretation**

(1) For the purposes of this Division, the expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for

another; and the expression "principal" includes an employer.

(2) A public officer and any person serving under any local authority or any other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants and a member of any such authority or board or other public body is an agent within the meaning of this Division.

### **384. Corrupt practices**

If-

- (a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal's affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;
- (b) any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (c) any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particulars, and which to his knowledge is intended to mislead the principal,

he is guilty of an offence.

### **385. Secret commission on Government contracts**

Any person convicted of an offence under this Division shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government department or a local authority or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, or a subcontract to execute any work comprised in such contract, be liable to imprisonment for a term not exceeding five years.

### **386. Presumption as to corrupt practices**

Where in any proceeding against a person for an offence under this Division it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of the Government or any Government department or a local authority or other public body having power to impose rates or entrusted with the expenditure of any Government funds or grants, by or from a person or agent of a person holding or seeking to obtain a contract from the Government or any Government department, local authority or other public

body having power to impose rates or entrusted with the expenditure of any Government funds or grants, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this Division, unless the contrary is proved.

### **387. Consent of Director of Public Prosecutions to prosecution**

A prosecution for an offence under this Division shall not be instituted without the written consent of the Director of Public Prosecutions.

## **DIVISION IX ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMES, AND ACCESSORIES AFTER THE FACT (ss 388-395)**

### ***Attempts (ss 388-391)***

#### **388. Attempt defined**

(1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

(2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.

#### **389. Attempts to commit offences**

Any person who attempts to commit an offence is guilty of an offence.

#### **390. Punishment of attempts to commit certain offences**

Any person who attempts to commit an offence of such a kind that a person convicted of it is liable to the punishment of imprisonment for a term of 14 years or more, with or without other punishment, is liable, if no other punishment is provided, to imprisonment for a term not exceeding seven years.

#### **391. Soliciting or inciting others to commit offence**

Any person who solicits or incites or attempts to procure another to do any act or make any omission of such a nature that, if the act were done or the omission were made, whether by himself or that other person, an offence would thereby be committed, is guilty of an offence and liable to the same punishment as if he had himself attempted to commit that offence.

## ***Conspiracies (ss 392-393)***

### **392. Conspiracy to commit offence**

Any person who conspires with another person to commit an offence is guilty of an offence and is liable to imprisonment for a term not exceeding seven years, or, if the greatest punishment to which a person convicted of the offence in question is liable is less than imprisonment for seven years, then to such lesser punishment.

### **393. Other conspiracies**

Any person who conspires with another to effect any of the following purposes, that is to say-

- (a) to prevent or defeat the execution or enforcement of any written law;
- (b) to cause any injury to the person or reputation of any person, or unlawfully to depreciate the value of any property of any person;
- (c) unlawfully to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value;
- (d) unlawfully to injure any person in his trade or profession;
- (e) to prevent or obstruct, by means of any act or acts which if done by any individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation;
- (f) to effect any unlawful purpose; or
- (g) to effect any lawful purpose by any unlawful means,

is guilty of an offence.

## ***Accessories after the Fact (ss 394-395)***

### **394. Definition of accessories after the fact**

(1) A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence.

(2) A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting, in her husband's presence and by his authority, another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment; nor does a husband become an accessory after the fact to an offence of which his wife is guilty by receiving or assisting her in order to enable her to escape punishment.

### **395. Punishment of accessories after the fact**

Any person who becomes an accessory after the fact to an offence is guilty of an offence and is liable, if no other punishment is provided, to imprisonment for a term not exceeding three years, or, if the greatest punishment to which a person convicted of the offence in question is liable is less than imprisonment for three years, then to such lesser punishment.

**DIVISION X**  
**INDECENT ADVERTISEMENT (ss 396-399)**

***Prohibited Advertisements (ss 396-399)***

**396. Interpretation**

In this Division, unless the context otherwise requires-

"advertisement" means any publication, whether written, printed or oral, or by any other method whatsoever, referring to the offering for sale of, the supply of or offering to supply any medicine, surgical appliance or treatment and includes any notice, circular, label or wrapper or any other document;

"medicine" means any kind of medicament or other curative or preventive substance and includes a proprietary medicine or preparation, packed goods, or patent medicine or preparation;

"prohibited advertisement" means any advertisement of any medicine or surgical appliance referring to the administration of, or offering to administer any treatment whether directly or indirectly or by implication, as being effective for any of the following purposes-

- (a) the cure of venereal diseases, i.e. syphilis, gonorrhoea, soft chancre, or other genito-urinary diseases in any of their forms;
- (b) the prevention, relief or cure of Bright's disease, cancer, consumption or tuberculosis, leprosy, lupus, diabetes, epilepsy or fits, locomotor ataxy, paralysis or infantile paralysis;
- (c) the cure of arteriosclerosis, septicaemia, diphtheria, drops, erysipelas, gallstones, kidney stones and bladder stones, goitre, heart disease, tetanus or lockjaw, pleurisy, pneumonia, scarlet-fever, smallpox, trachoma, amenorrhoea, hernia or rupture, blindness or any structural or organic ailment of the auditory system; or
- (d) the cure of any habit associated with sexual indulgence, or of any ailment associated with those habits or for the promotion of sexual virility, desire or fertility or for the restoration or stimulation of the mental faculties;

"surgical appliance" includes any device which purports to be or is represented, directly or by implication, as being such an appliance.

**397. Offence to publish prohibited advertisement**

- (1) Any person shall be guilty of an offence who as principal, agent or servant, publishes or

causes or assists to be published any prohibited advertisement.

(2) In any prosecution for the contravention of this section it shall be a defence for the accused to prove-

- (a) that the advertisement to which the proceedings relate was published only in a publication of a technical character intended for circulation mainly amongst persons of the following classes, or of one or some of them-
  - (i) duly registered or licensed medical or veterinary practitioners,
  - (ii) selling dispensers, dispensers or chemists and druggists,
  - (iii) the governing body or managers of a hospital, infirmary or asylum; or
- (b) that the said advertisement was published in connection with an application for a patent submitted to the appropriate authority so far as may be requisite for the purpose of the application.

### **398. Offence to publish advertisement relating to abortion**

Any person shall be guilty of an offence who, as principal, agent or servant, publishes or causes or assists to be published any advertisement referring to any article, or articles of any description, in terms which are calculated to lead to the use of that article or articles of that description for procuring the miscarriage of women.

### **399. Penalties**

Any person contravening section 397 or 398 shall be guilty of an offence and liable to a fine not exceeding P400 or, in default of payment thereof, to imprisonment for a term not exceeding one year.