



04548

ADMINISTRATION OF JUSTICE LAW,  
No. 44 OF 1973

OF

THE NATIONAL STATE ASSEMBLY

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## SCHEDULE







*Administration of Justice Law,  
No 44 of 1973*

L. D.—O. 51/73.

A LAW TO PROVIDE FOR THE ESTABLISHMENT AND CONSTITUTION OF A NEW SYSTEM OF COURTS FOR THE ADMINISTRATION OF JUSTICE WITHIN THE REPUBLIC OF SRI LANKA, TO DEFINE THE JURISDICTION OF THE COURTS, TO REGULATE THE PROCEDURE IN AND BEFORE SUCH COURTS, INCLUDING SPECIAL PROCEDURE IN RESPECT OF TESTAMENTARY MATTERS, TO REPEAL CERTAIN WRITTEN LAWS AND TO MAKE PROVISION FOR ALL OTHER MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

BE it enacted by the National State Assembly of the Republic of Sri Lanka as follows:—

1. This Law may be cited as the Administration of Justice Law, No. 44 of 1973, and shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may appoint by Order published in the *Gazette*.

Short title and  
dates of opera-  
tion.

2. The provisions of this Law are intended and shall be construed to achieve the following objectives:—

Construction of  
this Law.

(a) simplicity and uniformity in procedure,

(b) fairness in administration,

(c) the elimination of unjustifiable expense and delay; and

(d) the just determination of every judicial proceeding.

3. (1) (a) The British Courts Probates (Resealing) Ordinance, the Courts Ordinance, the Court of Criminal Appeal Ordinance, the Ceylon Courts of Admiralty Ordinance, the Court of Appeal Act, the Criminal Procedure Code, the Destruction of Valueless Documents Ordinance, the Fiscals Ordinance, the Law Society Ordinance, the Legal Practitioners Ordinance, the Rural Courts Ordinance, the Supreme Court Appeals (Special Provisions) Act and the Supreme Court (Vacation) Ordinance are hereby repealed.

Repeals.



(b) Sections 516 to 554, sections 712 to 744, sections 753 to 778 and sections 801 to 833A of the Civil Procedure Code and sections 19 to 21 and sections 26 to 36 of the Public Trustee Ordinance are hereby repealed.

(c) Such of the provisions of the Ceylon (Parliamentary Elections) Order in Council, 1946, the Prevention of Crimes Ordinance and the Probation of Offenders Ordinance as are inconsistent with the provisions of this Law shall be deemed to be repealed.

(2) Unless and until rules are made under this Law, all rules in force immediately before the appointed date relating to the exercise of jurisdiction of courts established under the several enactments repealed by this Law shall *mutatis mutandis* apply to the exercise of jurisdiction by the court vested with such jurisdiction under this Law.

(3) Every reference in any other existing written law to a court or to a Judge thereof shall be so read and construed as to give effect to the principles and provisions of this Law.

Regulations.

4. No regulation made under this Law by the Minister shall become operative until such regulation has been approved by the National State Assembly and published in the *Gazette*:

Provided that the Minister may make any regulation which he is empowered under this Law to make and the National State Assembly may approve such regulation and such regulation may be published in the *Gazette* at any time after the enactment of this Law and before the appointed date:

Provided further that no regulation so made, approved and published in the *Gazette* shall become operative before the appointed date.



## CHAPTER I

## THE JUDICATURE

5. (1) The institutions for the administration of justice in the Republic of Sri Lanka shall be:—

Institutions for the administration of justice.

- (a) the Supreme Court;
- (b) High Courts;
- (c) District Courts; and
- (d) Magistrates' Courts.

(2) This Law shall not affect the powers or jurisdiction of tribunals and other institutions established for the adjudication and settlement of industrial disputes, of Conciliation Boards, of administrative bodies vested with the power of making decisions of a judicial or quasi judicial nature, or of Commissions established under the Criminal Justice Commissions Act or appointed under the Commissions of Inquiry Act.

6. (1) For the purposes of the administration of justice, Sri Lanka shall be divided into the zones set out in the Schedule hereto.

Division of Sri Lanka for judicial purposes.

(2) Each zone shall be divided into districts and divisions, and the limits of each zone, district and division shall be as determined by the Minister by regulation.

7. The sittings of every court shall be held in public, and all persons shall be entitled freely to attend such sittings. A Judge may, however, in his discretion, whenever he considers it desirable—

Sittings of every court to be public.

- (a) in proceedings relating to family relations,
- (b) in proceedings relating to sexual offences, or
- (c) in the interests of order and security within the court premises,

exclude therefrom such persons as are not directly interested in the proceedings therein.

## THE SUPREME COURT OF SRI LANKA

8. (1) There shall be a Supreme Court of the Republic of Sri Lanka which shall consist of the Chief Justice, and of not less than ten and not more than twenty other Judges.

Constitution of the Supreme Court.



(2) The Judges of the Supreme Court shall be appointed to their offices by the President of the Republic of Sri Lanka by Acts of Appointment under the Public Seal of the Republic.

(3) Every Judge of the Supreme Court may hold office until he attains the age of sixty-three years.

(4) When a Judge of the Supreme Court is unable to perform the duties of his office due to illness, absence from Sri Lanka or any other cause, the President may appoint a fit and proper person to act in that office.

(5) Every person appointed to be, or to act as, a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President the oath or affirmation of office prescribed in the Schedule hereto.

(6) The salaries of the Judges of the Supreme Court shall be as set out in the Schedule hereto.

Performance of  
other functions  
by Judges of  
the Supreme  
Court.

9. (1) A Judge of the Supreme Court may be required by the President of the Republic of Sri Lanka to discharge or perform any other appropriate duties or functions under any other written law.

(2) No Judge of the Supreme Court may accept or perform any other office or place of profit or emolument not authorized by law without the consent of the President.

(3) No person who has held permanent office as a Judge of the Supreme Court may appear, plead or act as an attorney-at-law in any court established under this Law without the consent of the President.

Seal of the  
Supreme Court.

10. The Supreme Court shall have and use a Seal which shall be known as "The Seal of the Supreme Court of the Republic of Sri Lanka", and which shall be kept in the custody of the Chief Justice.



11. The Supreme Court shall be the only superior court of record and shall have, subject to the provisions of this Law, jurisdiction for the correction of all errors in fact or in law committed by any subordinate court, and sole and exclusive cognizance by way of appeal, revision and *restitutio-in-integrum* of all actions, proceedings and matters of which such subordinate court may have taken cognizance, and such other jurisdiction as may be vested in the Supreme Court by law. In the exercise of its jurisdiction, the Supreme Court may, in accordance with law, affirm, reverse or vary any judgment or order, or give directions to such subordinate court, or order a new trial or a further hearing. It may, if necessary, receive and admit new evidence additional to, or supplementary of, the evidence already taken in such subordinate court:

Appellate jurisdiction of the Supreme Court.

Provided that no judgment or order pronounced by any subordinate court shall on appeal or revision be reversed or varied on account of any error, defect or irregularity in the proceedings which shall not have prejudiced the substantial rights of either party or occasioned a failure of justice.

12. (1) The Supreme Court may grant and issue, according to law, mandates in the nature of writs of *mandamus*, *quo warranto*, *certiorari*, *procedendo* and prohibition:

Supreme Court may issue mandates in the nature of writs.

Provided that no such mandate may be granted and issued against a Criminal Justice Commission established under the Criminal Justice Commissions Act.

(2) The Supreme Court may grant and issue mandates in the nature of writs of *habeas corpus* to bring up before such court—

(a) the body of any person to be dealt with according to law; or

(b) the body of any person illegally or improperly detained in public or private custody;

and to discharge or remand any person so brought up or otherwise deal with such person according to law:

Provided that it shall be lawful for the Supreme Court to require the body of such person to be brought up in the most convenient subordinate court and to



direct the Judge of such court to forthwith inquire into and report upon the cause of the alleged imprisonment or detention, and to make such provision for the interim custody of the body produced as to such Court may seem fit.

(3) The Supreme Court may direct—

(a) that a prisoner detained in any prison be brought before a court-martial or any Commissioners acting under the authority of any Commission from the President of the Republic of Sri Lanka for trial or to be examined relating to any matter pending before such court-martial or Commissioners respectively; or

(b) that a prisoner detained in prison be removed from one custody to another for the purposes of trial.

Supreme Court  
may inspect  
records.

13. The Supreme Court may, *ex mero motu* or on application made, inspect and examine the records of any subordinate court and, in the exercise of its revisionary powers, make any order thereon as the interests of justice may require.

Exercise of  
jurisdiction.

14. (1) The jurisdiction of the Supreme Court may be exercised in different matters at the same time by the several Judges of the Court sitting separately:

Provided that, subject to the provisions of Chapter IV of this Law, its jurisdiction in respect of judgments and orders of Magistrates' Courts shall be exercised by at least two Judges, and its jurisdiction in respect of judgments and orders of District Courts and High Courts shall be exercised by at least three Judges:

Provided further that its jurisdiction under section 12 shall be exercised at all times by not less than three Judges in such manner as may be prescribed by rules of court.

(2) In the event of any difference of opinion between two Judges constituting a Bench, the decision of the court shall be suspended until three Judges shall be present.



(3) The Chief Justice may—

(a) of his own motion,

(b) at the request of two or more Judges hearing an appeal, or

(c) on the application of a party to the proceedings on the ground of general or public importance of the matter in dispute,

direct that any case pending before the Supreme Court be heard by a Bench of five or more Judges.

(4) The judgment of the Court shall be delivered with the concurrence of a majority of the Judges present at the hearing of the case.

(5) The judgment of the Supreme Court shall, in all cases, be final and conclusive.

15. (1) The Chief Justice and not less than half the number of other Judges of the Supreme Court may, from time to time, with the concurrence of the Minister, make rules of court for regulating all or any of the following matters:—

Rules of court.

(a) the form and manner of proceeding to be observed in the Supreme Court and in all subordinate courts;

(b) the nature and extent of costs that may be awarded by all courts and the manner in which such costs may be taxed;

(c) the admission, enrolment, suspension and removal of attorneys-at-law;

(d) the preparation of copies of records for the purpose of appellate proceedings;

(e) the manner in which panels of jurors may be prepared, and the mode of summoning, empanelling and challenging of jurors;

(f) the taking of bail and the release without bail of persons on remand awaiting trial;

and generally make such rules as may be necessary for giving effect to the provisions of this Law, and for regulating any matters relating to practice and procedure not specially provided for by written law.

(2) Every rule of court shall be published in the *Gazette* and shall come into operation on the date of such publication, or on such later date as may be specified in such rule.



(3) All rules of court made under this Law shall, as soon as convenient after their publication in the *Gazette*, be brought before the National State Assembly for approval. Any such rule which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

#### ESTABLISHMENT OF SUBORDINATE COURTS

Establishment  
of High Courts,  
District Courts  
and Magistrates'  
Courts.

16. The Minister may, by Order published in the *Gazette*, establish within each zone one Court to be called "The High Court" of such zone, within each district one Court to be called "The District Court" of such district, and within each division one Court to be called "The Magistrate's Court" of such division. Each such court shall be held by one Judge who shall be called "High Court Judge", "District Judge" or "Magistrate" as the case may be. Each court so constituted shall be held at such convenient place or places within such zone, district or division as the Minister shall, by regulation, from time to time appoint:

Provided that nothing in this section shall be construed to restrict or curtail the power possessed by every Judge to hold court at any convenient spot within his territorial jurisdiction.

Additional  
Judges.

17. (1) It shall be lawful, as occasion may require, to appoint more than one Judge to the same court. It shall also be lawful to appoint any District Judge or Magistrate to have concurrent jurisdiction with any other District Judge or Magistrate over any district or division or any part thereof respectively.

(2) Whenever any additional Judge is appointed to any court, he shall sit separately, for the purpose of exercising the jurisdiction vested in such court.

#### HIGH COURTS

Appointment of  
High Court  
Judges.

18. (1) The High Court Judges shall be appointed to their offices by the President of the Republic of Sri Lanka by Acts of Appointment under the Public Seal of the Republic.



(2) A High Court Judge may hold office until he attains the age of sixty-one years.

(3) Whenever a High Court Judge is unable to perform the duties of his office due to illness, absence from Sri Lanka or any other cause, the President may appoint a fit and proper person to act in that office.

(4) Every person appointed to be or to act as a High Court Judge shall, before he enters upon his office, make and subscribe the oath or affirmation of office prescribed in the Schedule hereto.

(5) The salaries of High Court Judges shall be as set out in the Schedule hereto.

19. Every High Court Judge shall have concurrent jurisdiction with every District Judge and Magistrate of districts and divisions situated within the limits of the zone for which the High Court is constituted.

Concurrent  
jurisdiction.

20. (1) A High Court shall have power and authority and is hereby required to hear, try, and determine in the manner provided for by written law, all prosecutions upon indictment instituted therein against any person in respect of—

Criminal Juris-  
diction.

(a) any offence committed wholly or in part within its jurisdiction;

(b) any offence committed by any person on or over the territorial waters of Sri Lanka;

(c) any offence committed by any person on the high seas where such offence is piracy by the law of nations;

(d) any offence committed on the high seas on board any ship or upon any aircraft registered in Sri Lanka; or

(e) any offence committed by any person who is a citizen of Sri Lanka on the high seas or upon any aircraft.

(2) A High Court may impose any sentence or other penalty prescribed by written law.

(3) Subject to the provisions of this Law, every trial as aforesaid shall be by jury before a High Court Judge:

Provided that the Chief Justice may, in his discretion, order that any trial shall be held within a zone to be specified by him by jury before three High Court Judges to be nominated by him.



(4) Whenever a direction is made under Chapter II of this Law by the Minister that a person charged be tried at Bar by three Judges without a jury, the Chief Justice shall nominate three High Court Judges for the purpose and shall specify the zone within which the trial shall be held.

Power to grant  
injunctions.

21. A High Court may grant and issue an injunction to prevent any irremediable mischief which might ensue within its jurisdiction before the party applying for such injunction could prevent the same by bringing an action in any District Court or Magistrate's Court:

Provided that it shall not be lawful for any High Court to grant an injunction to prevent a party to any action in any court from appealing to or prosecuting an appeal in the Supreme Court, or to prevent any party to any action in any court, from insisting upon any ground of action, defence, or appeal or to prevent any person from suing or prosecuting an action in any court, except where such person has instituted two separate actions in different courts for and in respect of the same cause of action, in which case the High Court shall have power by an injunction to restrain him from prosecuting one or the other of such actions as to it may seem fit.

Election juris-  
diction.

22. The jurisdiction to try an election petition in terms of the provisions of the Ceylon (Parliamentary Elections) Order in Council, 1946, shall be vested in the High Court and may be exercised by any High Court Judge nominated for the purpose by the Chief Justice.

Appointment  
of High Courts  
for admiralty  
purposes.

23. (1) The Minister may, by Order published in the *Gazette*, appoint any High Court to have admiralty jurisdiction and assign to such Court as its zone for admiralty purposes any one or more zones or any part or parts thereof, and the zone so constituted for such Court, with the territorial waters adjacent thereto, shall be deemed its zone for admiralty purposes; and accordingly such High Court shall have jurisdiction for those purposes throughout the zone as if the same was a zone defined and determined under section 5.

(2) If more than one court is appointed under subsection (1), any proceeding may be commenced in a High Court so appointed within whose jurisdiction the



vessel or property to which the cause relates is at the commencement of the proceedings, or the owner of such vessel or property or his recognized agent in Sri Lanka resides. If such owner or agent does not reside within the jurisdiction of any High Court so appointed, such proceeding may be commenced in the High Court having admiralty jurisdiction nearest to the place where such owner or agent, as the case may be, resides.

### DISTRICT COURTS

24. (1) District Judges shall be appointed to their offices by the Cabinet of Ministers after receiving the recommendation of the Judicial Services Advisory Board.

Appointment  
of District  
Judges.

(2) The age of retirement of District Judges shall be as provided by rules made under the Public and Judicial Officers (Retirement) Ordinance.

(3) Every person appointed to be, or to act as, a District Judge shall, before he enters upon his office, make and subscribe the oath or affirmation of office prescribed in the Schedule hereto.

(4) The salaries of District Judges shall be as set out in the Schedule hereto.

25. Every District Judge shall have concurrent jurisdiction with every Magistrate of divisions situated within the limits of the district for which the District Court is constituted.

Concurrent  
jurisdiction.

26. A District Court shall within its district have original jurisdiction in all civil, revenue, matrimonial, insolvency and testamentary matters, except such of the aforesaid matters as are by this or any other written law exclusively assigned by way of original jurisdiction to any other court or vested in any other authority, and shall, in like manner, also have jurisdiction over the persons and estates of persons of unsound mind, minors, and wards, over the estates of *cestuis que trust*, and over guardians and trustees, and in any other matter in which jurisdiction may hereafter be given to District Courts by law.

Civil jurisdic-  
tion.



Criminal juris-  
diction.

27. (1) A District Court shall have jurisdiction and is hereby required to hear, try, and determine in the manner provided for by written law, all prosecutions upon indictment instituted therein against any person in respect of any offence committed wholly or in part within its district.

(2) A District Court may impose any of the following sentences:—

- (a) imprisonment for a term not exceeding five years;
- (b) fine not exceeding five thousand rupees;
- (c) whipping;
- (d) any lawful sentence combining any two of the sentences aforesaid.

(3) In every case of a continuing offence in respect of which a District Court may exercise jurisdiction, it shall also have the power and authority to remove or abate the act, matter, or thing complained of.

Revenue Juris-  
diction.

28. A District Court shall have jurisdiction to entertain causes affecting the revenue, and to inquire into all offences against the revenue laws of Sri Lanka committed wholly or in part within its district, and to hear, try, and determine all actions and prosecutions commenced by the State against any person in respect of any such offences, and to impose the fines, penalties and forfeitures appertaining to such offences, although the same may exceed the sum which such court is authorized to impose in the exercise of its ordinary criminal jurisdiction.

#### MAGISTRATES' COURTS

Appointment  
of Magistrates.

29. (1) Magistrates shall be appointed to their offices by the Cabinet of Ministers after receiving the recommendation of the Judicial Services Advisory Board.

(2) The age of retirement of Magistrates shall be as provided by rules made under the Public and Judicial Officers (Retirement) Ordinance.

(3) Every person appointed to be, or to act as, a Magistrate shall, before he enters upon his office, make and subscribe the oath or affirmation of office prescribed in the Schedule hereto.

(4) The salaries of Magistrates shall be as set out in the Schedule hereto.



30. (1) A Magistrate's Court shall, within its division, have exclusive original jurisdiction to hear and determine all actions, proceedings or matters in which the debt, damage, demand or claim, or the value of the movable or immovable property or the particular share, right or interest in dispute or the land to be partitioned or sold does not exceed one thousand five hundred rupees.

Civil jurisdiction.

(2) It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in a Magistrate's Court. Any plaintiff having a cause of action for an amount exceeding the amount in respect of which a Magistrate's Court has jurisdiction, may abandon the excess, and seek to recover an amount not exceeding the amount in respect of which such court has jurisdiction, and the judgment of the court shall be in full discharge of all demands in respect of such cause of action.

(3) Where in any proceeding before any Magistrate's Court any defence or claim in reconvention of the defendant involves matter beyond the jurisdiction of the court, such defence or claim in reconvention shall not affect the competence or duty of the court to dispose of the matter in issue, but no relief exceeding that which the court has jurisdiction to grant shall be given to the defendant upon any such claim in reconvention:

Provided that it shall be lawful for the appropriate High Court Judge, on the application of any party to the proceeding, to order that the whole proceeding be transferred to the appropriate District Court; and in such case the record in such proceeding shall be transmitted by the Magistrate to such District Court and such proceeding shall thenceforth be continued in such court as if it has been originally commenced therein.

31. (1) A Magistrate's Court shall have jurisdiction and is hereby required to hear, try and determine in the manner provided for by written law, all prosecutions instituted therein against any person in respect of any offence committed wholly or in part within its division:

Criminal jurisdiction.

Provided that no Magistrate's Court shall try any offence in respect of which the maximum punishment prescribed is in excess of seven years' imprisonment or a fine of seven thousand rupees.



(2) A Magistrate's Court may impose any of the following sentences:—

- (a) imprisonment for a term not exceeding eighteen months;
- (b) fine not exceeding one thousand five hundred rupees;
- (c) whipping;
- (d) any lawful sentence combining any two of the sentences aforesaid.

(3) Nothing in this section shall be deemed to repeal or affect the provisions of any other written law whereby special powers of punishment are given to Magistrates' Courts.

(4) A Magistrate's Court shall have jurisdiction to hold inquiries into deaths in accordance with the provisions of Chapter II of this Law and to exercise and perform all such powers and duties conferred or required by law to be exercised or performed by such court.

#### ATTORNEY-GENERAL

Duties of Attorney-General.

32. (1) It shall be the duty of the Attorney-General to represent the Republic of Sri Lanka in courts established under this Law, to give advice to the Government of Sri Lanka upon all legal matters, and to discharge the functions conferred on him by or under this or any other written law.

(2) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in Sri Lanka.

#### THE LEGAL PROFESSION

Admission of attorneys-at-law.

33. The Supreme Court may admit and enrol as attorneys-at-law persons of good repute and of competent knowledge and ability.

Rights and liabilities of attorneys-at-law.

34. (1) Every attorney-at-law shall be entitled to assist and advise clients and to appear, plead or act in every court or other institution established by law for the administration of justice.



(2) It shall be lawful for attorneys-at-law to practise in partnership, or to employ such other persons as may be necessary or expedient for the proper and efficient discharge of their duties and functions. It shall also be lawful for an attorney-at-law to be assisted or instructed by another attorney-at-law.

(3) Every attorney-at-law who renders professional advice or assistance to a client shall have the right to sue for the recovery of any fee due to him and he may also be liable to be sued by his client for professional negligence.

35. Every attorney-at-law who shall be guilty of any deceit, malpractice, offence or other conduct unworthy of an attorney-at-law may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together.

Suspension and removal of attorneys-at-law.

36. (1) Every person who on the day preceding the appointed date was an advocate or proctor of the Supreme Court shall be deemed to have been admitted and enrolled as an attorney-at-law of the Supreme Court under this Law.

Advocates and proctors to continue in office.

(2) An attorney-at-law who on the day preceding the appointed date was an advocate shall, notwithstanding anything to the contrary in the Notaries Ordinance, be entitled on application to a warrant in terms of section 3 of that Ordinance, if such application is supported by a certificate from a Judge of the Supreme Court or High Court Judge or District Judge to the effect that he has had experience of practice in cases relating to land for a period of at least eight years.

(3) Every reference in any other existing written law to an advocate or proctor shall be read and construed as a reference to an attorney-at-law.

### HONORARY OFFICERS

37. (1) The President of the Republic of Sri Lanka and the officers (whether holding office permanently or temporarily) enumerated in the Schedule hereto shall be *ex officio* Justices of the Peace for the Republic of Sri Lanka or for such portion thereof respectively as is indicated in the said Schedule.

Justices of the Peace and Unofficial Magistrates.



(2) The Minister may, from time to time by notice in the *Gazette*, appoint persons to be Justices of the Peace for the Republic of Sri Lanka, or for such zones, districts or divisions as to the Minister shall seem expedient.

(3) The Minister may, from time to time by notice in the *Gazette*, appoint any Justice of the Peace to be an Unofficial Magistrate for any division or divisions, and any Justice of the Peace so appointed shall have all the powers and authority vested by this Law in Magistrates' Courts, except the power to hear, try, or determine civil or criminal cases.

(4) Every Justice of the Peace and every Unofficial Magistrate shall make and subscribe an oath or affirmation of office in such form as may be determined by the Minister, before a High Court Judge, District Judge or Magistrate, and every such Judge is hereby empowered and required, upon application in that behalf, to administer the same, and to enter in the records of his court that the said oath or affirmation was duly administered and taken before him, and forthwith to transmit a copy of every such entry to the Registrar of the Supreme Court to be entered in the records of that court.

(5) All Unofficial Magistrates and Justices of the Peace appointed under the Courts Ordinance shall be deemed to be Unofficial Magistrates and Justices of the Peace, as the case may be, appointed under this Law.

State  
Attorneys.

38. (1) The Minister may, from time to time, appoint for such period as may be specified, an attorney-at-law engaged in private practice to be a State Attorney for any zone, district or division

(2) A State Attorney shall perform such functions as may be assigned to him by the Attorney-General and shall receive such remuneration as may be determined by the Attorney-General.

(3) A State Attorney shall not be entitled in any action, proceeding or matter before any court to appear, plead or act against the Republic of Sri Lanka.



(4) Nothing in this section shall be deemed to affect the power of the Attorney-General or of the Director of Public Prosecutions to appoint an attorney-at-law to act specially in any particular case or to act generally on behalf of the State.

### GENERAL PROVISIONS

39. (1) There shall be appointed to each court established under this Law a Registrar, Fiscal and such other officers as may be necessary for the administration and for the due execution of the powers and the performance of the duties of such court, including the service of process and the execution of decrees of court and other orders enforceable under any written law.

Registrar and other officers of court.

(2) During the absence from duty of any ministerial or other officer of any court who is authorized or required by law to sign any process of the court or certificate or other document or execute any instrument or perform any other specified duty or function, the Judge of the court shall have power to direct any other officer of the court to sign such process, certificate or document, execute such instrument or perform such duty or function, and every act done in that behalf by such officer in conformity with any such direction of the Judge shall be deemed to be valid and effectual for all purposes.

40. The jurisdiction vested in any court by this Law shall include all ministerial powers and duties incidental to such jurisdiction, and nothing in this Law shall be deemed to limit or affect the power of any court to make such orders as may be necessary to do justice or to prevent the abuse of the process of the court.

Ministerial powers and duties.

41. (1) Every District Court and Magistrate's Court may, for the purpose of maintaining its proper authority and efficiency, take cognizance of, and punish in accordance with law, every offence of contempt of court committed in the presence of the court itself, and any offence which is committed in the course of any act or proceeding in such court and which is declared by any law to be punishable as a contempt of court.

Power to punish for contempt of court.



(2) Every High Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority or any offence of contempt committed within its jurisdiction against or in disrespect of the authority of any other court or other institution established by law which such court or institution has not the jurisdiction to take cognizance of and punish, and on conviction impose a sentence of imprisonment not exceeding five years or a fine not exceeding five thousand rupees or both such imprisonment and fine.

(3) The Supreme Court may take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority and on conviction may impose a sentence of imprisonment not exceeding seven years or a fine not exceeding seven thousand rupees or both such imprisonment and fine.

Powers of  
courts to grant  
injunctions.

42. (1) In any action instituted in any District Court or Magistrate's Court—

(a) where it appears from the plaint that the plaintiff demands and is entitled to a judgment against the defendant restraining the commission or continuance of an act or nuisance the commission or continuance of which would produce injury to the plaintiff; or

(b) where it appears that the defendant during the pendency of the action is doing or committing, or procuring or suffering to be done or committed, or threatens or is about to do or procure or suffer to be done or committed, an act or nuisance in violation of the plaintiff's rights in respect of the subject-matter of the action and tending to render the judgment ineffectual; or

(c) where it appears that the defendant during the pendency of the action threatens or is about to remove or dispose of his property with intent to defraud the plaintiff,

the court may, on its appearing by the affidavit of the plaintiff or any other person that sufficient grounds exist therefor, grant an injunction restraining any such defendant from—



- (i) committing or continuing any such act or nuisance;
- (ii) doing or committing or procuring or suffering to be done or committed any such act or nuisance;
- (iii) removing or disposing of such property.

(2) For the purpose of this section, any defendant who has in his answer set up any claim in reconvention, shall be deemed a plaintiff, and shall have the same right to an injunction as he would have in an action brought by him against the plaintiff for the cause of action stated in the claim in reconvention, and the plaintiff shall be deemed the defendant and the claim in reconvention the plaintiff.

(3) Such injunction may be granted to accompany the summons, or at any time after the commencement of the action and before final judgment, and with or without notice in the discretion of the court. Where the defendant has answered, it shall be granted only upon notice or an order to show cause. Where an application for an injunction is made upon notice or an order to show cause, either before or after answer, the court may grant an injunction restraining the defendant until the hearing and decision of the application.

43. (1) Whenever any defendant, or accused has pleaded in any action, proceeding or matter brought in any court, without pleading to the jurisdiction of such court, neither party shall be afterwards entitled to object to the jurisdiction of such court, and such court shall be deemed to have had jurisdiction over such action, proceeding or matter.

Objection to jurisdiction.

(2) Whenever any accused has pleaded to any indictment, or charge presented against him in any court and it appears in evidence that the crime or offence with which he is charged was committed outside the limits of the zone, district or division in which such court is being held, such court shall nevertheless proceed to try such crime or offence as if such crime or offence had been committed within its Jurisdiction.

(3) If any action or proceeding is commenced in any District Court for any debt, damage or demand which might have been recovered in a Magistrate's



Court, the plaintiff in such action or proceeding shall not be entitled to any costs whatever, but it shall be competent for the Judge to make such order as to costs as justice may require.

Transfer of  
cases.

44. (1) Whenever it appears to the Supreme Court—

(a) that a fair and impartial trial cannot be had in any particular court or place; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that a view of the place in or near which any offence is alleged to have been committed may be required for the satisfactory trial of the same; or

(d) that it is expedient on any other ground,

the Court may make order upon such terms as to payment of costs or otherwise as the Court may deem fit, for the transfer of any action, proceeding or matter pending before the High Court from any zone to any other zone, or for the transfer of any action, proceeding or matter pending in any court other than the High Court to any other such court, and accordingly in every such case the court to which any such action, proceeding or matter is transferred shall, notwithstanding anything to the contrary in this or any other written law in regard to the territorial limits of the jurisdiction of such court, have jurisdiction to hear, try and determine such action, proceeding or matter.

(2) Every application for a transfer under this section shall be supported by an affidavit setting out the grounds on which it is based.

(3) The Supreme Court, in making an order for transfer under this section may, if it thinks fit, direct that the court to which such action, proceeding or matter is transferred shall call all or any of the witnesses who have been examined before the court from which the transfer is made and take their evidence afresh.

Power of Attorney-General to decide court or place at which trial should be held.

45. (1) Whenever it appears to the Attorney-General that it is expedient that the trial of any criminal offence should be transferred from any court or place to any other court or place, he may by his fiat in writing designate such last-mentioned court or



place, and such trial shall be held accordingly on the authority of such fiat, which shall be filed of record with the proceedings in such trial.

(2) Any party considering himself aggrieved by any transfer made on any such fiat of the Attorney-General may apply to the Supreme Court, by motion supported by affidavit setting out the grounds of such application, for a retransfer or for a transfer to any other court or place, and the Supreme Court may, after notice to the Attorney-General, who shall, if he thinks fit, be heard to show cause against such motion, if it considers that good cause has been shown why the application should be granted, make order accordingly.

(3) Every accused person making any application under section 44 or under this section shall give to the Attorney-General, and also to the complainant, notice in writing of such application, together with a copy of the grounds on which it is made. No order shall be made on the merits of the application unless and until at least forty-eight hours have elapsed between the receipt of such notice and the hearing of the application.

46. (1) The Minister may, by regulation, nominate a court or courts situated anywhere in Sri Lanka for the purposes of trial and disposal of such categories of actions, proceedings or matters as shall be specified in such regulation, and accordingly, subject to the provisions of subsection (2), such court or courts shall, notwithstanding anything to the contrary in this or any other written law in regard to the territorial limits of the jurisdiction of such court, have jurisdiction to hear, try and determine all such actions, proceedings or matters, as the case may be.

Minister to  
nominate court  
for specific  
categories of  
offences.

(2) Where a regulation made under this section has become operative, all actions, proceedings or matters of the specified category which have been instituted and are pending in any other court and in which no evidence has been recorded may, by Order of the Minister, be transferred to any court so nominated.



Provision for continuing any case begun before a Judge becoming disabled.

47. In case of the death, sickness, resignation, removal from office, absence from Sri Lanka, or other disability of any Judge before whom any action, proceeding or matter has been instituted or is pending, such action, proceeding or matter may be continued before the successor of such Judge, who shall have power to act on the evidence already recorded by his predecessor or partly recorded by his predecessor and partly recorded by him or, if he thinks fit, to re-summon the witnesses and commence afresh:

Provided that in any such case, either party may request that the witnesses shall be re-summoned and re-heard, in which case the trial shall be commenced afresh.

Provision for hearing of cases where Judge is a party.

48. (1) Except with the consent of both parties thereto, no Judge shall be competent, and in no case shall any Judge be compellable, to exercise jurisdiction in any action, proceeding or matter in which he is a party or personally interested.

(2) No Judge shall hear an appeal from or revise any judgment, sentence or order passed by himself.

(3) When any Judge who is a party or personally interested is a High Court Judge, District Judge or Magistrate, the High Court, District Court or Magistrate's Court, as the case may be, of any adjoining zone, district or division shall have jurisdiction to hear, try, and determine such action, proceeding or matter.

Conviction or acquittal no bar to any civil action.

49. The alleged commission of a crime or offence, or the conviction or acquittal of any person of a crime or offence, shall not be a bar to a civil action for damages against such person at the instance of any person who may have suffered any injury, or who may allege that he has suffered any injury, from or by reason of the commission of any such crime or offence.

In what court offences declared punishable by fine or imprisonment generally may be tried.

50. Where any crime or offence is declared by any written law to be punishable by such punishment as the court before which a conviction is obtained may impose, or by such fine or imprisonment as the aforesaid court may impose, such crime or offence may be tried in any court having criminal jurisdiction which the Attorney-General may elect for the purpose, jurisdiction for such purpose being hereby given to such



court. However, the accused person shall, in case of conviction, receive no larger amount of fine or longer term of imprisonment than the court by which he is tried is empowered to impose in the exercise of its ordinary jurisdiction. Such right of electing the court may be exercised by the Attorney-General, even where the prescribed maximum punishment exceeds that which a District Court or Magistrate's Court is empowered to impose.

51. The Minister may, with the concurrence of the Minister of Finance, make regulations providing—

Expenses of witnesses.

- (a) for the payment out of the Consolidated Fund of the expenses of persons attending to give evidence or called to give evidence at the instance of the court, for the expenses, trouble, or loss of time properly incurred in or incidental to their attendance before court and the conditions on which such payment may be allowed;
- (b) for the payment out of the Consolidated Fund of the expenses of persons summoned to serve as jurors;
- (c) for the persons by whom, and the manner in which, the amounts of such expenses shall be ascertained and payments made.

#### TRANSITIONAL PROVISIONS AND INTERPRETATION

52. (1) Nothing in this Law shall affect, or be deemed or construed to affect, the legality, constitution, jurisdiction or powers of a Commission established before the appointed date under the Criminal Justice Commissions Act; and accordingly, all inquiries and proceedings commenced by or before any such Commission shall and may be held and continued as required by the said Act.

Criminal  
Justice  
Commissions.

(2) Where before the proceedings of any Commission established (whether before or after the appointed date) under the said Act are concluded, the Chairman or any other member of that Commission retires from, or ceases to hold, the office of Chief Justice or Judge of the Supreme Court upon reaching the age of retirement fixed by law or upon the coming into operation of this Law, he may, notwithstanding such retirement



or cessation of office, continue to hold office as the Chairman or as a member of that Commission until the termination of the proceedings of that Commission and shall be entitled while so continuing to the salary and to the privileges and immunities attaching to the office held by him before such retirement or cessation of office.

(3) Subsection (5) of section 3 of the Criminal Justice Commissions Act is hereby repealed.

Pending  
proceedings.

**53.** (1) All appellate proceedings pending in the Court of Appeal established under the Court of Appeal Act, in the Court of Criminal Appeal established under the Court of Criminal Appeal Ordinance, and in the Supreme Court established under the Courts Ordinance on the day preceding the appointed date shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the aforesaid courts delivered or made before the appointed date in appellate proceedings shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(2) All original proceedings pending in the Supreme Court established under the Courts Ordinance or in the Colonial Court of Admiralty established under the Ceylon Courts of Admiralty Ordinance on the day preceding the appointed date shall stand removed to the appropriate Court established under this Law, and such Court shall have jurisdiction to hear and determine or to continue and complete the same, and the judgments and orders of the aforesaid courts delivered or made before the appointed date in original proceedings shall have the same force and effect as if they had been delivered or made by the appropriate Court established under this Law.

(3) All actions, proceedings or matters pending in District Courts established under the Courts Ordinance on the day preceding the appointed date shall stand removed to the appropriate Court established under this Law, and such Court shall have jurisdiction to hear and determine or to continue and complete the same, and the judgments and orders of the aforesaid courts delivered or made before the appointed date shall have the same force and effect as if they had been delivered or made by the appropriate Court established under this Law.



Provided that all actions, proceedings and matters of a testamentary nature shall not be so removed but shall be dealt with by the Public Trustee in the manner provided in Chapter III of this Law, and any determination already made in the District Court shall be deemed and construed to be a determination made in terms of the aforesaid Chapter.

(4) All actions, proceedings or matters pending in Magistrates' Courts established under the Courts Ordinance, Courts of Requests established under the Courts Ordinance and Rural Courts established under the Rural Courts Ordinance on the day preceding the appointed date shall stand removed to the appropriate Magistrate's Court established under this Law, and such Magistrate's Court shall have jurisdiction to hear and determine or to continue and complete the same, and the judgments and orders of the aforesaid courts delivered or made before the appointed date shall have the same force and effect as if they had been delivered or made by a Magistrate's Court established under this Law:

Provided that all pre-trial proceedings of a non-summary nature shall not be so removed, but shall terminate and be dealt with thereafter in the manner provided in Chapter II of this Law.

(5) Where by virtue of the provisions of this Law, any area previously forming part of the jurisdiction of any District Court or Magistrate's Court is excluded therefrom, and any action, proceeding or matter in that Court on the day preceding the appointed date ceases to be within the jurisdiction of that Court by reason only of the exclusion of that area, such action, proceeding or matter may, notwithstanding anything in this Law, be heard and determined or continued and completed by that Court as if such area had not been so excluded from the jurisdiction of that District Court or Magistrate's Court, as the case may be.

54. In this Chapter, unless the context otherwise requires—

Interpretation.

“ action ” means a proceeding for the prevention or redress of a wrong;

“ admiralty jurisdiction ” means, until otherwise provided for by written law, the admiralty jurisdiction for the time being of the High Court of England;



“cause of action” means the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury;

“Magistrate’s Court” includes the Court of any Municipal Magistrate;

“offence” means any act or omission made punishable by any written law in Sri Lanka;

“subordinate court” means any High Court, District Court or Magistrate’s Court.

## CHAPTER II

### CRIMINAL PROCEDURE

**Inquiry  
and trial of  
offences.**

55. All offences punishable under the written law of Sri Lanka shall be inquired into and tried according to the provisions hereinafter contained, subject however to any special law for the time being in force regulating the manner or place of inquiring into and trying one or more of such offences.

### PREVENTION OF OFFENCES

**Security for  
keeping the  
peace or for  
good  
behaviour.**

56. Whenever a Magistrate receives information—

- (a) that any person is likely to commit within his jurisdiction a breach of the peace or a disturbance of the public tranquillity or do any wrongful act that may probably occasion a breach of the peace or disturbance of the public tranquillity ; or
- (b) that there is within his jurisdiction a person who is likely to commit a breach of the peace or disturbance of the public tranquillity or do any wrongful act as aforesaid in any place beyond his jurisdiction; or
- (c) that -within his jurisdiction any person is taking precautions to conceal his presence and that there is reason to believe that such person is taking such precautions with a view to committing an offence; or



(d) that within his jurisdiction there is a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself ; or

(e) that any person living within his jurisdiction is a habitual offender,

the Magistrate may require such person to show cause why he should not be ordered to execute a bond for keeping the peace or for his good behaviour for such period not exceeding eighteen months as the Magistrate thinks fit to fix.

57. (1) When a Magistrate proposes to act under the preceding section, he shall cause the person in relation to whom the inquiry is to be held to appear in court.

Procedure for inquiry.

(2) When such person appears in court, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted and to take such further evidence as may appear necessary. The inquiry shall be held as nearly as may be practicable in the manner prescribed for the conduct of trials. For the purpose of this section, the fact that a person is a habitual offender may be proved by evidence of general repute.

(3) Before commencing the inquiry, the Magistrate may order such person to execute a bond for keeping the peace or for maintaining good behaviour, as the case may be, pending the termination of the inquiry. No appeal shall lie against any order made under this subsection.

(4) If upon inquiry it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that such person should execute a bond, the Magistrate shall make an entry on the record to that effect and if such person is in custody only for the purposes of the inquiry shall release him, or if such person is not in custody shall discharge him.

(5) If upon inquiry it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that such person should execute a bond, the Magistrate shall make order accordingly.



(6) The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive, and when such person is a minor the bond shall be executed only by his sureties. The court may in any case allow time for furnishing the security.

(7) At the time of making an order requiring security, the court may direct that until such security is furnished such person shall be detained in prison:

Provided that such period of detention shall not in any case exceed a period of six months :

Provided further that whenever the court is of opinion that such person may be released from prison without hazard to the community or to any other person, it may order his discharge.

(8) The bond to be executed by such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission, the attempted commission or the abetment of any offence punishable with imprisonment, wherever it may be committed, shall be deemed to be a breach of the bond.

(9) A surety may at any time apply to court for the cancellation of the bond. Thereupon the Magistrate shall cause the person for whom such surety is bound, to appear in court, and when such person so appears, the Magistrate shall cancel the bond and shall order such person to give fresh security for the unexpired portion of the term of such bond. Every such order shall have the same effect as the original order.

Dispensal of  
unlawful  
assembly.

58. (1) Any Magistrate or any police officer not below the rank of Inspector, may command any unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public



peace to disperse, and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) If upon being so commanded any such assembly does not disperse or if without being so commanded it conducts itself in such a manner as to show a determination not to disperse, the Magistrate or police officer may proceed to disperse such assembly by force and may require the assistance of any male person (not being a member of the Army, Navy or Air Force, whether of Sri Lanka or of any other country, acting as such) for the purpose of dispersing such assembly and if necessary arresting and confining the persons who form part of it in order to disperse such assembly or that they may be punished according to law.

(3) If any such assembly cannot be otherwise dispersed and if it is necessary for the public security that it should be dispersed, the Government Agent of the district or any Magistrate having jurisdiction who is present or the Inspector-General of Police may cause it to be dispersed by requiring any commissioned or non-commissioned officer in command of any personnel of the Sri Lanka Army, Navy or Air Force, to disperse and confine such persons forming part of it as such officer may be directed or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. Every such officer shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force and do as little injury to person and property as may be consistent with dispersing the assembly and arresting and detaining such persons.



(4) When the public security is manifestly endangered by any such assembly and when the Government Agent, Magistrate, or the Inspector-General of Police cannot be communicated with, any commissioned officer of the Sri Lanka Army, Navy or Air Force may disperse such assembly by military force and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but if while he is acting under this section it becomes practicable for him to communicate with the Government Agent, Magistrate, or the Inspector-General of Police he shall do so and shall thereafter obey the instructions of such State officer as to whether he shall or shall not continue such action.

(5) No prosecution against any Government Agent, Magistrate, or the Inspector-General of Police or any military officer, police officer or other personnel of the Sri Lanka Army, Navy or Air Force for any act purporting to be done under this section shall be instituted in any criminal court except with the sanction of the Attorney-General; and

- (a) no Government Agent, Magistrate, or police officer acting under this section in good faith;
  - (b) no officer acting under subsection (4) in good faith;
  - (c) no person doing any act in good faith in compliance with a requisition under subsection (2) or subsection (3); and
  - (d) no inferior officer of the Sri Lanka Army, Navy or Air Force doing any act in obedience to any order which under military law he was bound to obey,
- shall be deemed to have thereby committed an offence.



59. Upon complaint made to any Magistrate on oath of the abduction or unlawful detention of a woman or of a female child under the age of fourteen years for any unlawful purpose, the Magistrate may after such inquiry as he may deem fit, if such woman or child is within his division, make an order for the immediate restoration of such woman to her liberty or of such female child to her lawful guardian, and may compel compliance with such order using such force as may be necessary.

Power to compel restoration of abducted females.

60. (1) Whenever a Magistrate considers on receiving a report or other information and on taking such evidence (if any) as he thinks fit—

Action in respect of public nuisance.

(a) that any unlawful obstruction or nuisance should be removed from any way, harbour, lake, river or channel which is or may be lawfully used by the public or from any public place;

(b) that any trade or occupation or the keeping of any goods or merchandise should by reason of its being injurious to the health or physical comfort of the community be suppressed or removed or prohibited;

(c) that the construction of any building or the disposal of any substance should as being likely to occasion conflagration or explosion be prevented or stopped;

(d) that any building or tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by and that in consequence its removal, repair, or support is necessary; or

(e) that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

he may make a conditional order accordingly:

Provided that, if the Magistrate considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may make order *ex parte* and may use or cause to be used such means as he thinks fit to obviate such danger or to prevent such injury.



(2) No order made under this section shall be called in question in any civil court.

(3) For the purpose of this section a "public place" includes also property belonging to the State or vested in any State officer or department of State for public purposes and ground left unoccupied for sanitary or recreative purposes.

Conditional  
order to be  
made absolute  
or rescinded.

61. (1) Any order made under the preceding section shall be served on the person against whom it is made in the manner provided for the service of summons.

(2) The person against whom such order is made shall within the prescribed time—

(a) perform the act directed thereby; or

(b) appear in court and show cause and move to have the order set aside or modified.

(3) If such person does not perform such act or appear and show cause he shall be liable to be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the order shall be made absolute:

Provided that if such person be a corporate body it shall be liable to a fine not exceeding one thousand five hundred rupees.

(4) If such person appears and seeks to show cause against the order the court shall take evidence in the matter. If such court is satisfied that the order is not reasonable and proper it shall either rescind the same or modify it in accordance with the requirements of the case, and in the latter case the order as modified shall be made absolute. If such court is not so satisfied the order shall be made absolute.

(5) When an order has been made absolute the court shall give notice of the same to the person against whom it was made and shall further require him to perform the act directed within the prescribed time and inform him that in case of disobedience he will be liable to the penalties provided by subsection (3). If such act is not performed within the prescribed time the court may cause it to be performed and may recover the cost of performing it either by the sale of any building, goods, or other property removed by its order or by the seizure and



sale of any other movable property of such person within or without the jurisdiction of such court.

(6) A Magistrate may order any person not to repeat or continue a public nuisance as defined in any written law.

(7) No suit shall lie in respect of anything done in good faith under this section.

62. (1) Whenever a Magistrate, on information furnished by any police officer or otherwise, has reason to believe that the existence of a dispute affecting any land situated within his jurisdiction is likely to cause a breach of the peace, he may issue a notice—

Inquiries into  
disputes  
affecting  
lands.

(a) fixing a date for the holding of an inquiry into the dispute ; and

(b) requiring every person concerned in the dispute to attend at such inquiry and to furnish to the court, on or before the date so fixed, a written statement setting out his claim in respect of actual possession of the land or the part in dispute and in respect of any right which is the subject of the dispute.

(2) A copy of the notice shall, in the manner provided for the service of summons, be served upon such person or persons as the Magistrate may direct, and at least one copy of such notice shall be affixed in some conspicuous place at or near the land which is the subject of the dispute. Where a copy of the notice has been so affixed, an inquiry may be held and an order made notwithstanding that the notice may not have been served on any party concerned in such dispute.

(3) Every inquiry shall be held in a summary manner on the date fixed or on such other date or dates to which the inquiry may be adjourned by the Magistrate. Pending the conclusion of such inquiry the Magistrate may make an interim order containing any provision which he is empowered to make in an order at the conclusion of the inquiry.

(4) In this section "dispute affecting land" includes any dispute as to the right to the possession or to the boundaries of any land or part of a land, or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land or part of a land, or as to any right in the nature of a servitude affecting the land.



Determination  
and order of  
Magistrates.

63. (1) Where at the inquiry it appears that the dispute relates to the right to the possession of any land or any part of a land and such dispute is likely to lead to a breach of the peace, it shall be the duty of the Magistrate to determine as to who was in possession of the land or the part in dispute on the date of issue of the notice under section 62. Where he makes a determination he may, unless the provisions of subsection (3) apply, make an order under subsection (2).

(2) An order under this subsection shall declare any one or more persons therein specified to be entitled to the possession of the land or the part of such land in dispute in the manner specified in such order until such person or persons are evicted therefrom under a judgment, order or decree of a competent court, and prohibit all disturbance of such possession or otherwise than under the authority of such judgment, order or decree.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Magistrate is satisfied that any person who had been in possession of such land or part has been forcibly dispossessed within a period of two months immediately before the date on which the notice was issued under section 62, he may make a determination to that effect and make an order under subsection (4).

(4) An order under subsection (2) may contain, in addition to the declaration and prohibition referred to in that subsection, a direction that any party specified in the order shall be restored to the possession of the land or any part specified in such order.

(5) Where the dispute relates to any right to any land or any part of a land other than the right to possession of such land or part, the Magistrate shall determine as to who is entitled to the right which is the subject of the dispute and make an order under subsection (6).

(6) An order under this subsection may declare that any person named therein shall be entitled to any such right in or in respect of the land or in any part of the land as may be specified in the order until such person is deprived of such right by virtue of a judgment of a competent court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of a judgment as aforesaid. Such order may also contain such other



directions as the Magistrate may think fit with regard to the exercise of such right or the sale of any crop or produce of the land or part of the land or to the custody or disposal of the proceeds of the sale of such crop or produce.

(7) A determination under the six immediately preceding subsections shall be made after examination and consideration of any statements furnished in compliance with the notice issued under section 62 and of all such evidence as may be admitted by the Magistrate in his discretion :

Provided, however, that a determination under subsection (1) or subsection (2) may be made without reference to the merits of the claims of any persons to the possession of the land or part of the land.

(8) Where the terms of settlement of a dispute affecting any land are voluntarily agreed on between the persons concerned in the dispute and are approved by the Magistrate, an order under the preceding provisions of this section may be made in accordance with the terms as settled.

(9) Except in the case provided for by subsection (8), a Magistrate of the court by which an order under this section was made may, on application made to him in that behalf by any person affected by the order, rescind the order or vary it in such manner as he may consider expedient.

(10) No appeal shall lie against an order made under this section.

64. Any person who acts in contravention of or fails to comply with an order under section 62 or section 63 shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to imprisonment for a term not exceeding six months or to a fine not exceeding five hundred rupees, or to both.

Penalty for contravention of or failure to comply with order.

65. No order under section 62 or section 63 shall affect or prejudice any right or interest in any land or part of land which any person may be able to establish in a civil suit; and it shall be the duty of a Magistrate before commencing to hold the inquiry to explain the effect of these sections to the persons concerned in the dispute.

Order not to affect right or interest which may be established in civil suit.

66. The provisions of the Conciliation Boards Act shall not apply in relation to any proceeding for the prevention of offences under the preceding provisions of this Chapter.

Provisions of Conciliation Boards Act not to apply.



## INVESTIGATION

Duty to give  
information  
of crimes and  
sudden  
deaths.

67. (1) Every person aware—

(a) of the commission of or the intention of any other person to commit any offence punishable under the following sections of the Penal Code, namely, 114, 115, 116, 117, 118, 119, 120, 121, 122, 126, 296, 297, 371, 380, 381, 382, 383, 384, 418, 419, 435, 436, 442, 443, 444, 445, and 446; or

(b) of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without it being known how such person came by death,

shall, in the absence of a reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to a police officer or grama sevaka who shall convey such information to the officer in charge of the nearest police station.

(2) When any person dies while in the custody of the police or in a mental or leprosy hospital or prison, the officer who had the custody of such person or was in charge of such hospital or prison shall forthwith give information of such death to a Magistrate of the Magistrate's Court within whose jurisdiction the body is found and such Magistrate or an inquirer authorized by him shall view the body and hold an inquiry into the cause of death and report thereon, if he is of opinion that the cause of death was homicide, to the Director of Public Prosecutions.

Inquests of  
deaths.

68. (1) The Minister may appoint any person by name or office to be an inquirer for any area the limits of which shall be specified in such appointment.

(2) Every inquirer on receiving information that a person has died suddenly in circumstances in which a death certificate signed by a duly qualified medical practitioner has not been issued or from a cause which is not known, shall immediately proceed to the place where the body of such deceased person is and, unless an inquiry is being held by a Magistrate, inquire into and report on the apparent cause of death. He shall describe such wounds, fractures, bruises, and other marks of injury as may be found



on the body and such marks, objects and circumstances as in his opinion may relate to the cause of death and state in what manner such marks appear to have been inflicted. The report shall be signed by such inquirer and in cases where the inquirer is of opinion that the cause of death was homicide he shall forthwith forward such report to the Director of Public Prosecutions; in all other cases he shall forward such report to the nearest Magistrate.

(3) An inquirer may, if he considers it expedient, issue process to compel the attendance of any witness to give evidence before him, or to produce any document or other thing. Every person who fails to attend, or who refuses to take the oath of a witness, or refuses to answer any question which shall be legally asked of him, or fails or refuses to produce any document or other thing, shall be guilty of an offence, and shall be liable on conviction thereof to a fine not exceeding five hundred rupees, or to imprisonment for a period not exceeding six months, or to both.

(4) An inquirer may, if he considers it expedient, call upon a Government medical officer or any other duly qualified medical practitioner, to hold a post-mortem examination of the dead body and to report regarding the cause of death. For the purposes of the post-mortem examination the inquirer may, if the dead body has already been buried, cause that body to be disinterred.

(5) An inquirer holding an inquiry under this section shall record the evidence and his finding thereon.

(6) The place in which any inquiry under this section is held shall be a place open to the public. But an inquirer may on special grounds of public policy or expediency in his discretion exclude the public at any stage of the inquiry.

69. (1) Information relating to the commission of an offence may be given orally or in writing to a police officer.

Information relating to the commission of an offence.

(2) Any such information if given orally, shall be recorded in the manner provided in subsection (3) of section 70.

(3) Where in pursuance of any information given under this section proceedings are instituted in a Magistrate's Court under section 163, the Magistrate shall, if the person giving the information has been named under section 163 (2) as a witness, cause a



copy of such information and of any statement made under subsection (3) of section 70 by the person against whom or in respect of whom the accused is alleged to have committed an offence, to be furnished to the accused forthwith.

(4) Any information given under this section by any person may be used in evidence in accordance with the provisions of the Evidence Ordinance.

Investigation  
by the Police.

**70.** (1) If from information received or otherwise a police officer has reason to suspect the commission of an offence or to apprehend a breach of the peace, he shall where necessary proceed in person to the spot to investigate the facts and circumstances of the case and to take such measures as may be necessary for the discovery and arrest of the offender where the offence is one for which he may arrest without warrant<sup>4</sup>.

(2) Any police officer making an investigation may by order in writing require the attendance before himself of any person living within the limits of the station of such police officer or any adjoining station, who, from information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required.

(3) Any police officer making an investigation may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined. The whole of such statement, including any question in clarification asked by the police officer and the answer thereto, shall be recorded in full in Sinhala or in any other language in which such person is examined, and such record shall be shown or read to him or if he does not understand the language in which it is written it shall be interpreted to him in a language he understands and he shall be at liberty to explain or add to his statement. The person making the statement shall then sign that statement immediately below the last line of the record of such statement and may call upon any person in attendance to sign as a witness to his signature. The police officer recording the statement shall append below each statement recorded by him the following certificate:—

I ..... hereby declare that  
I have faithfully and accurately recorded the state-  
ment of the abovenamed .....



If such statement is not recorded in the Information Book a true copy thereof shall as soon as may be convenient be entered by such police officer in the Information Book.

(4) It shall be the duty of a police officer before examining a person to inform him that he is bound to answer truly all questions relating to such case put to such person by him, except such questions as have a tendency to expose him to a criminal charge or to a penalty or forfeiture; and such person shall be bound to answer truly all questions relating to such case put to him by such officer other than the aforesaid questions.

(5) No police officer or person in authority shall offer or make or cause to be offered or made any inducement, threat, or promise to any person charged with an offence to induce such person to make any statement with reference to the charge against such person. But no police officer or person in authority shall prevent or discourage by any caution or otherwise any person from making in the course of any investigation any statement which he may be disposed to make of his own free will.

(6) A statement made by any person to a police officer in the course of any investigation may be used in accordance with the provisions of the Evidence Ordinance except for the purpose of corroborating the testimony of such person in court.

(7) In any proceedings under this Law, the production of a certified copy of the information referred to in section 69 or of any statement recorded under this section shall be *prima facie* evidence of the fact that such information was given or that such statement was made to the police officer by whom it was recorded; and notwithstanding the provisions of any other law it shall not be necessary to call such officer as a witness solely for the purpose of producing such certified copy.



Examination  
by medical  
practitioner.

71. (1) Where any police officer making an investigation considers that the examination of any person by a medical practitioner is necessary for the conduct of the investigation, he may, with the consent of such person, cause such person to be examined by a medical practitioner. The medical practitioner shall report to the police officer setting out the result of the examination.

(2) Where any person referred to in subsection (1) does not consent to being so examined, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing a medical practitioner named therein to examine such person and report thereon. Where such an order is made the medical practitioner shall report to the Magistrate setting out the result of the examination.

Taking of  
finger  
impressions,  
specimens of  
hair, &c.  
of suspected  
persons.

72. (1) Where any police officer making an investigation is of opinion that it is necessary to do so for the purpose of the investigation, he may cause any finger, palm or foot impression or impression of any part of the body of any person suspected of the offence under investigation or any specimen of hair or finger nail or any scraping from a finger nail of such person to be taken with his consent.

(2) Where any person referred to in subsection (1) does not consent to any such impression, specimen or scraping being taken, the police officer may apply to a Magistrate within whose jurisdiction the investigation is being made for an order authorizing such police officer to take any such impression, specimen or scraping.

(3) Any police officer referred to in subsection (1) may, where it is necessary for the purpose of the investigation to compare any handwriting, require a specimen of the handwriting of any such suspect to be taken with his consent.

(4) Where any such suspect refuses to give a specimen of his handwriting the police officer may apply to a Magistrate referred to in subsection (2) for an order requiring such suspect to give a specimen of his handwriting, and such suspect shall comply with such order.



73. (1) Whenever a police officer making an investigation considers that the production of any document or thing is necessary for the conduct of the investigation—

Search by  
police  
officer.

(a) he may issue a notice to the person in whose possession or control such document or thing is believed to be, requiring him to attend and produce it at a time and place stated in the summons; or

(b) if such person has failed to comply with any such notice, or if the officer has reason to believe that he is not likely to produce such document or thing if so required by such a notice, or if such officer does not know in whose possession such document or thing is, such officer may re-search or cause a search to be made for the same in any place where it is believed or suspected to be.

(2) If such officer is unable to conduct the search in person, he may require any grama sevaka to make the search, and he shall deliver to such grama sevaka an order in writing specifying the document or other thing for which a search is to be made and the place to be searched, and such grama sevaka may thereupon search for such thing in such place.

74. (1) Every Magistrate to whom application is made in that behalf shall assist the conduct of an investigation by making and issuing appropriate orders and processes of court, and may, in particular—

Magistrate  
to assist  
investigation.

(a) hold, or authorize the holding of, an identification parade for the purpose of ascertaining the identity of the offender, and for such purpose require a suspect or any other person to participate in such parade, and make or cause to be made a record of the proceedings of such parade;

(b) record any statement made to him at any time before the commencement of a trial and forward such statement to the officer in charge of the appropriate police station.

(2) The whole of a statement made under this section shall be recorded in full in the language in which it is made, and such record shall be shown or read to the person making the same and he may explain or add to his statement. When the whole is made conformable to what he declares is the truth,



the record shall be signed by the Magistrate who shall certify under his own hand that it was taken in his presence and in his hearing and contains accurately the whole of the statement made to him.

(3) No Magistrate shall record any statement under this section being a confession unless upon questioning the person making it he has reason to believe that it was made voluntarily, and when he records any such statement he shall make a memorandum at the foot of such record to the following effect:—

I believe that this statement was voluntarily made. It was taken in my presence and hearing and was read over by me to the person making it and admitted by him to be correct, and it contains accurately the whole of the statement made by him.

(Signed) A.B.

Magistrate of the Magistrate's Court  
of .....

(4) The person making a statement under this section shall sign or attest by his mark such statement, and in the event of his refusing to do so the Magistrate shall record such refusal.

When investigation cannot be completed in twenty-four hours.

75. (1) Whenever an investigation cannot be completed within a period of twenty-four hours, and there are grounds for believing that the information is well founded, the police officer in charge of the investigation shall forthwith transmit to the nearest Magistrate a report of the case, together with a summary of the statements, if any, made by each of the witnesses examined in the course of such investigation relating to the case, and shall at the same time send the suspect before such Magistrate.

(2) The Magistrate before whom a suspect is sent under this section, if he is satisfied that there are grounds for believing that the information is well founded and that, for reasons to be recorded by him, it is expedient to detain the suspect in custody pending further investigation, may by warrant addressed to the superintendent of any prison authorize the detention of the suspect for a total period of fifteen days and no more. If before the end of the said period of fifteen days no proceedings are instituted



in the Magistrate's Court, the Magistrate may either discharge the suspect or require him to execute a bond to appear if and when so required:

Provided that if the offence under investigation is not one that is triable by a Magistrate's Court, the Magistrate may from time to time authorize the detention of the accused for successive periods of fifteen days, for a period not exceeding three months in the aggregate:

Provided further that at the end of each period of remand within the aggregate limit of three months, the Magistrate shall cause the suspect to be produced in court, and shall ascertain from the police officer in charge of the investigation the progress made in regard to the investigation, and whether there is need for any further order for remand, and if the Magistrate is not so satisfied he shall order the suspect to be released unconditionally or on the execution of a bond.

(3) If a suspect is a woman or under the age of sixteen years, the Magistrate may, in lieu of remanding such person to the custody of the superintendent of a prison, direct that for the period for which such remand has been ordered, such person shall remain in the custody of a probation officer or in an approved home. In this subsection "approved home" means a home or other similar institution for women or persons under the age of sixteen years, which has been approved by the Minister by Notification published in the *Gazette*.

(4) If the Magistrate considers that, in lieu of authorizing detention as aforesaid, it is sufficient to require the suspect to execute a bond, he may require the suspect to execute a bond to appear before the court if and when required within a period of fourteen days after the date of the execution of the bond.

(5) During the period that a suspect is in the lawful custody of a superintendent of prisons, a Magistrate may upon application made by the police officer in charge of the investigation authorize such officer to have access during reasonable hours to such suspect for the purpose of the continuation of the investigation and may likewise authorize such officer to take the suspect from place to place if in the opinion of the Magistrate such action is considered necessary for the purposes of the investigation.



Release of  
suspect if  
evidence  
deficient.

76. Where it appears to the police officer in charge of an investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the sending of the suspect to a Magistrate's Court, the officer shall if such suspect is in custody release him on his executing a bond as such officer may direct to appear if and when so required at any time within fourteen days from the date of the execution of the bond, before a court having jurisdiction to try the offence.

Procedure  
upon  
completion of  
investigation.

77. (1) Every investigation shall be completed without unnecessary delay, and as soon as it is completed the police officer in charge of the investigation shall forward a report—

- (a) if the offence investigated is one triable by a Magistrate's Court, to the appropriate Magistrate;
  - (b) if the offence investigated is not one triable by a Magistrate's Court, to the Director of Public Prosecutions, and to the Magistrate within whose division the investigation was made.
- (2) Upon receipt of a report in terms of subsection (1) (b), if it appears that there is sufficient evidence or reasonable ground to justify further proceedings—
- (a) the Magistrate shall cause the suspect to be produced in court and may direct him to execute a bond to appear again in court if and when so required. If, however, for reasons to be recorded by him, the Magistrate considers it expedient to detain the suspect in custody pending the consideration of the aforesaid report by the Director of Public Prosecutions, he may, by warrant addressed to the superintendent of any prison, authorize the detention of the suspect for a period not exceeding three months in the aggregate;
  - (b) the Magistrate shall cause the suspect's fingerprints to be taken in court and forwarded for identification to the Registrar of Fingerprints. The Registrar shall compare the fingerprints so forwarded with his records of fingerprints and shall issue to the Director of Public Prosecutions a certificate in the prescribed form stating whether or not the fingerprints forwarded are identical with the fingerprints of a registered criminal and



setting out the prescribed particulars of each conviction for a crime entered against such criminal; and

- (c) the Magistrate may require the complainant, if any, and so many of the persons who appear to be acquainted with the circumstances of the case as he may think necessary, to execute bonds to appear before the appropriate court and give evidence in the matter of the charge against the suspect. The officer in whose presence each bond is executed shall send such bond to the appropriate court. If any person fails or refuses to execute such bond, the officer shall report such failure or refusal to the appropriate court which may thereupon cause such person to appear before it:

Provided that the Director of Public Prosecutions may in his discretion authorize any person who has executed a bond under this section to be absent from Sri Lanka during such period as may be specified in such authority; and the failure of any such person to attend the trial to give evidence, if occasioned only by his absence from Sri Lanka during such period, shall not be deemed to constitute a breach of his bond.

(3) Upon the report of any investigation being forwarded to the Director of Public Prosecutions the Director shall, after considering the material submitted to him—

- (a) indict the suspect for trial before a High Court or a District Court of appropriate jurisdiction; or
- (b) order the discharge of the suspect, who, if he is in custody in connection with the offence investigated, shall be released therefrom.

Before acting under this subsection the Director may, if he considers it expedient to do so, direct further investigation to be made in regard to any matter which may be specified.

78. It shall be lawful for the Director of Public Prosecutions, for good cause, to make an application to the appropriate High Court, that a suspect who is held in custody upon an order by a Magistrate made in terms of the proviso to section 75 (2) or under

Director of  
Public  
Prosecutions  
may apply  
for further  
detention.



section 77 (2) (a) be held in further custody pending the completion of the investigation or the consideration of the report of the police officer in charge of the investigation, as the case may be, and the High Court may, in its discretion, authorise the superintendent of the prison in which the suspect is detained to detain such suspect for a further period not exceeding three months.

Warrants  
of remand or  
detention.

79. (1) Every warrant of remand or detention issued under this Law shall be in the prescribed form and shall be delivered to the superintendent of the prison to whom it is addressed who shall forthwith take custody of the person named therein, and the said warrant shall be full authority for so doing and for detaining the said person for the purpose.

(2) The superintendent shall, upon delivery to him as aforesaid of the person named in the warrant, detain him and keep him safely in custody for such time as may be specified by the warrant and shall otherwise comply with its terms and with any order lawfully issued to him by any court with respect to such person.

Police  
reports to  
be made to  
the Director  
of Public  
Prosecutions.

80. The Superintendent or Assistant Superintendent of Police in charge of any area shall, in respect of offences alleged to have been committed within that area, report to the Director of Public Prosecutions at the earliest opportunity—

- (a) every offence not triable by a Magistrate's Court;
- (b) every offence for the prosecution of which the law requires the consent or sanction of the Director;
- (c) every offence in which the prosecution is withdrawn or is not proceeded with within a reasonable time;
- (d) every case in which a request for information has been made by the Director;
- (e) every case in which it appears that the advice or assistance of the Director is desirable;
- (f) every offence specified by the Attorney-General by Order to be an offence in respect of which a report under this section is necessary.



81. A report made under the preceding section shall contain—

Contents of  
police  
reports.

- (a) a full report of the circumstances;
- (b) copies of the statements of all witnesses;
- (c) report of any proceedings taken before any judicial officer, Unofficial Magistrate, or inquirer in connection with the offence; and
- (d) such other information, documents or productions as may be relevant or as may be required by the Director of Public Prosecutions.

82. (1) The Director of Public Prosecutions shall in the exercise and performance of his powers and duties under this or any other written law be subject to the directions, whether general or special, of the Attorney-General.

Powers and  
duties of the  
Director of  
Public  
Prosecutions.

(2) The Director may give advice, whether on application or on his own initiative, to the police, any Government Department or Public Corporation or to such other person as he may think proper, in any criminal matter, and may intervene in such matter whenever it appears to him for any reason that his intervention is necessary.

83. Nothing in the preceding sections shall preclude any person from instituting or carrying on any criminal proceedings authorized or permitted by this or any other written law, but the Director of Public Prosecutions may undertake at any stage the conduct of those proceedings if he thinks fit.

Right to  
institute  
private  
prosecutions  
unaffected.

## ARREST

84. (1) Every warrant of arrest issued by a court shall be signed by a Judge of that court and shall be in the prescribed form. Every such warrant shall remain in force until it is cancelled by the court which issued it or until it is executed.

Arrest upon  
a warrant

(2) A court issuing a warrant for the arrest of any person may in the case of any non-bailable offence and shall in the case of a bailable offence direct by endorsement on the warrant that if such person executes a bond, with or without sureties as to the arresting authority shall seem fit or as directed by court, for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the



officer to whom the warrant is directed shall take such security, if any, and shall release such person from custody.

(3) The endorsement shall state—

(a) the number of sureties;

(b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(c) the day and the hour at which he is to attend before the court.

(4) Whenever security is taken under this section the officer to whom the warrant is directed shall forward the bond to the court.

(5) A warrant of arrest shall ordinarily be directed to the officer in charge of the nearest police station but may be executed in any part of Sri Lanka by any police officer.

(6) Where a police officer has reasonable grounds to believe that a person is one for whose arrest a warrant of arrest has been issued, he may arrest that person in execution of the warrant, notwithstanding that the warrant is not in his possession for the time being.

85. (1) Any police officer may without a warrant arrest—

(a) any person who in his presence commits any breach of the peace;

(b) any person who has been concerned in any offence in respect of which he may be arrested without a warrant or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

(c) any person having in his possession without lawful excuse (the burden of proving which excuse shall lie on such person) any implement of house-breaking;

(d) any person who has been proclaimed as an offender;

(e) any person in whose possession anything is found which may reasonably be suspected to be property stolen or fraudulently obtained and who may reasonably be suspected of having committed an offence with reference to such thing;

Arrest by  
a police  
officer  
without  
warrant.



- (f) any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;
- (g) any person reasonably suspected of being a deserter from the Sri Lanka Army, Navy, or Air Force;
- (h) any person found taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence in respect of which he may be arrested without a warrant;
- (i) any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Sri Lanka, which if committed in Sri Lanka would have been punishable as an offence and for which he is under any law relating to extradition or to fugitive offenders or otherwise liable to be apprehended or detained in custody in Sri Lanka.

Nothing in this section shall be held to interfere with or modify the operation of any other law empowering a police officer to arrest without a warrant.

(2) When any person in the presence of a police officer is accused of committing an offence in respect of which he may not be arrested without a warrant and refuses on the demand of such police officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such police officer in order that his name or residence may be ascertained.

(3) When any person is accused of committing an offence and a police officer has reason to believe that such person has no permanent residence in Sri Lanka and that he is about to leave Sri Lanka, he may be arrested by such police officer.

(4) For the purpose of arresting any person whom he has power to arrest without a warrant a police officer may pursue any such person into any part of Sri Lanka.



(5) A police officer making an arrest under this section shall without unnecessary delay and subject to the provisions herein contained as to bail take or send the person arrested before the Magistrate within whose jurisdiction the arrest was made.

(6) Officers in charge of police stations shall report to the Magistrates' Courts of their respective districts the cases of all persons arrested without warrant by any police officer attached to their stations or brought before them and whether such persons have been admitted to bail or otherwise.

(7) The offences in respect of which a police officer may arrest without a warrant shall be as set out in the Schedule hereto.

Arrest by  
private  
persons.

86. Any private person may arrest any person who has been proclaimed as an offender, or who in his presence commits, or is running away and whom he reasonably suspects of having committed, an offence in respect of which the offender may be arrested without a warrant, and shall without unnecessary delay make over the person so arrested to the nearest police officer or in the absence of a police officer take such person to the nearest police station. If there is reason to believe that such person has committed an offence, a police officer shall re-arrest him. If there is no reason to believe that he has committed any offence he shall be at once discharged.

Arrest by  
a Judge.

87. (1) Any Judge may at any time arrest or direct the arrest in his presence within his jurisdiction of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

(2) When any offence is committed in the presence of a Judge within his jurisdiction, he may himself arrest or order any person to arrest the offender.

Pursuit and  
re-arrest  
of person  
escaping  
from lawful  
custody.

88. (1) If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place, either within or outside the jurisdiction where he was so in custody, and deal with such person as he might have done on the original taking.

(2) The provisions of subsections (2) and (4) of section 90 shall apply to arrests under this section although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.



89. (1) Every person shall be bound to assist a Judge or a police officer reasonably demanding his aid—

Assistance from public to Judges, police officers and other persons.

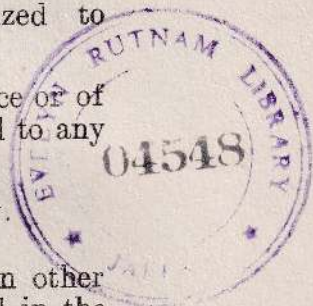
- (a) in the taking of any other person whom such Judge or police officer is authorized to arrest;
- (b) in the prevention of a breach of the peace or of any injury attempted to be committed to any public property; or
- (c) in the suppression of a riot or any affray.

(2) When a warrant is directed to a person other than a police officer any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of his warrant.

90. (1) In making an arrest the person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action. If such person forcibly resists the endeavour to arrest him or attempt to evade the arrest, the person making the arrest may use all means necessary to effect the arrest. Nothing in this subsection shall, however, give the right to cause the death of a person who is not accused of an offence punishable with death.

Manner of making arrest.

(2) If any person acting under a warrant of arrest or having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place, the person residing in or in charge of such place shall on demand of such person acting or having authority as aforesaid allow him free ingress thereto and afford all reasonable facilities for a search therein. If ingress to such place cannot be obtained, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place to break open any outer or inner door of any place whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made he cannot otherwise obtain admittance.





(3) Whenever a search for anything is or is about to be lawfully made in any house or place in respect of any offence all persons found therein may be lawfully detained in such house or place until the search is completed, and they may, if the thing sought be in its nature capable of being concealed on the person, be searched for it by or in the presence of a Magistrate or a police officer not below the rank of Inspector.

(4) Any person authorized to make an arrest may break open any outer or inner door or window of any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

(5) The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

(6) Whenever a person—

(a) is arrested by a police officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) is arrested without warrant or by a private person under a warrant and cannot legally be admitted to bail or is unable to furnish bail,

the police officer making the arrest, or when the arrest is made by a private person the police officer to whom he hands over the person arrested, may search such person and place in safe custody all articles other than necessary wearing apparel found upon him; and any of such articles which there is reason to believe were the instruments or the fruits or other evidence of the crime may be detained until his discharge or acquittal. Whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.

(7) The person making any arrest may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the court or officer before which or whom the person making the arrest is required by law to produce the person arrested.

(8) The person executing a warrant of arrest shall notify the substance thereof to the person arrested, and endorse on it the time when and the place where



the arrest was made, and shall, if so required, show him the warrant. He shall also deliver to the person arrested a copy of the complaint or report or other document upon which proceedings against him have been instituted. Where a person is arrested without a warrant, the person making the arrest shall at the time of the arrest inform such person, as far as practicable, of the reasons for his arrest.

91. (1) The person executing a warrant of arrest shall (subject to the provisions relating to security) without unnecessary delay bring the person arrested before the court before which he is required by law to produce such person or before the nearest Magistrate's Court and such latter Magistrate's Court shall, if the person arrested appears to be the person intended by the court which issued the warrant, direct his removal to such last-mentioned court:

Person  
arrested to  
be produced  
before  
Judge.

Provided that if the offence be bailable and the person arrested is ready and willing to give bail to the satisfaction of court before which he shall have been brought, or a direction has been so endorsed on the warrant and such person is ready and willing to give the security required by such direction, the court shall take such bail or security as the case may be and forward the bond to the court which issued the warrant.

(2) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

(3) No person who has been arrested by a police officer shall be discharged except on his own bond or on bail or under the special order in writing of a Magistrate.

92. (1) When any person whose appearance or arrest may be compelled under this Law is present in court, the Judge of such court may require such person to execute a bond with or without sureties for his further appearance in such court.

Power to  
take bond  
for  
appearance.

(2) When any person who is bound by any bond taken under this Law to appear before a court does



not so appear, the Judge of such court may issue a warrant directing that such person be arrested and produced before him.

### PROCLAMATION AND ATTACHMENT

Proclamation  
for person  
absconding.

93. (1) If any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published by such proclamation, or a translation thereof in a language prescribed by court, being—

- (a) publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- (b) affixed to some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of such town or village; and
- (c) affixed to some conspicuous part of the court-house.

(3) A statement by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

Attachment  
of property of  
persons  
absconding.

94. (1) The court may after issuing a proclamation under the last preceding section order the attachment of any property, movable or immovable or both, belonging to the proclaimed person, whether such property be within the jurisdiction of such court or not.



(2) If the property ordered to be attached be debts or other movable property, the attachment under this section shall be made—

- (a) by seizure; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods as the court thinks fit.

(3) If the property ordered to be attached be immovable, the attachment under this section shall be made through the Government Agent or Assistant Government Agent of the district in which such property is situate—

- (a) by taking possession; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf;  
or
- (d) by all or any two of such methods as the court thinks fit.

(4) The powers, duties, and liabilities of a receiver appointed under this section shall be the same as those of a receiver in a civil proceeding.

(5) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of the Minister, but it shall not be sold until the expiration of six months from the date of the attachment unless it is subject to speedy and natural decay or the court considers that the sale would be for the benefit of the owner, in either of which cases the court may cause it to be sold whenever it thinks fit.

(6) Notice of every such order of attachment of immovable property shall be forthwith given by the court making the same to the Registrar of Lands for the district in which such property is situate, who shall forthwith register the same, and no such order shall take effect until the same is registered under the provisions of the Registration of Documents Ordinance.



(7) In the case of the sale of immovable property the conveyance to the purchaser shall be executed by the Government Agent or the Assistant Government Agent of the district in which such property is situate, and a conveyance so executed shall vest such property in the purchaser in like manner as if such conveyance had been executed by the proclaimed person.

(8) If within one year from the date of the attachment any person whose property is or has been at the disposal of the Minister under this section appears voluntarily or is apprehended and brought before the court by whose order the property was attached and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or if the same has been sold the net proceeds of the sale or if part only thereof has been sold the net proceeds of the sale and the residue of the property, shall after payment of all costs incurred in consequence of the attachment be delivered to him.

#### SEARCH

When search  
warrants  
may be  
issued.

95. (1) (a) Where any court has reason to believe that a person to whom a summons or a requisition has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition; or

(b) where such document or other thing is not known to the court to be in the possession of any person; or

(c) where the court considers that the purposes of any proceeding under this Law will be served by a search or inspection,

it may issue a general search warrant or a warrant restricted to a particular place or part thereof, in the prescribed form and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(2) Every warrant issued under subsection (1) shall remain in force for a reasonable number of days to be specified in such warrant.

(3) The provisions of sections 84 (1), 84 (5) and 89 (2) shall so far as may be, apply to all search warrants.



96. If a court upon information and after such inquiry as it thinks necessary has reason to believe that any place is used for the deposit or sale of stolen property or of property unlawfully obtained, or for the purpose of the commission of a crime, or for the deposit of any implements which have been or are capable of being used in the commission of a crime, it may by warrant authorize the person to whom such warrant is directed—

Search of house suspected to contain stolen property.

- (a) to enter such place with such assistance as may be required; and
- (b) to search the same in manner specified in the warrant; and
- (c) to take possession of any property found therein; and
- (d) to convey such property before court or to guard the same on the spot until the offender is taken before a court or otherwise to dispose thereof in some place of safety; and
- (e) to take into custody and produce before a court every person found in such place who appears to have been privy to the deposit, sale, or manufacture, or keeping of any such property, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, used or retained.

97. When in the execution of a search warrant at any place beyond the jurisdiction of the court which issued the same any of the things for which search is made are found, such things together with a list of the same prepared under the provisions hereinafter contained shall be immediately taken before the court issuing the warrant unless such place is nearer to a court having jurisdiction therein; in which case the list and things shall be immediately taken before such last-mentioned court, and unless there be good cause to the contrary such last-mentioned court shall make an order authorizing them to be taken to the court issuing the warrant.

Disposal of things found in search beyond jurisdiction.

98. If any court has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, it may issue a search warrant; and the person to whom such warrant is directed may search for the person so confined and

Search for persons wrongfully confined.



such search shall be made in accordance therewith; and the person if found shall be immediately taken before such court, which shall make such order as in the circumstances of the case seems proper.

Manner of  
executing  
search  
warrant.

99. (1) Whenever any place liable to search or inspection under this Law is closed any person residing in or being in charge of such place shall on demand of the person executing the warrant and on production of the warrant allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress into such place cannot be so obtained the person executing the warrant may proceed in the manner set out by subsection (2) of section 90.

(3) The person executing the search warrant shall make a list of all things seized in the course of the search and of the places in which they are respectively found and shall sign such list.

(4) The occupant of the place searched or some person on his behalf shall in every instance be permitted to attend during the search and a copy of the list prepared under the last preceding subsection, signed by the person executing the warrant, shall be delivered to such occupant or person at his request.

Court may  
impound  
things  
produced.

100. Any court may if it thinks fit impound any document or other thing produced before it under this Chapter.

Powers of  
Judge when  
present at  
search.

101. Any Judge may orally direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

Disposal of  
property  
seized by a  
police officer.

102. (1) The seizure by any police officer of property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate who shall make such order as he thinks fit in respect of the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, in respect of the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks



fit. If such person is unknown, the Magistrate may detain it and shall in such case issue a public notification specifying the articles of which such property consists and requiring any person who may have a claim thereto to come before him and establish his claim within a prescribed time.

(3) If no person within such period establishes his claim to such property and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government and may be sold under the orders of the Magistrate.

(4) If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold.

### BAIL

103. (1) The Minister may by regulation determine what offences, if any, shall be non-bailable for the purposes of this Law.

Grant of  
bail.

(2) When any person, other than a person accused of a non-bailable offence, appears or is brought before court on any process or after being arrested without a warrant—

- (a) the court may discharge him on his executing a bond without sureties for his appearance before court to answer the charge and to continue so to appear on every date to which the trial may be postponed or adjourned ; or
- (b) if the court for good reason does not discharge such person in terms of paragraph (a), the court shall, if he is prepared at any time or at any stage of the proceedings to give bail, release him on his executing a bond with one or more sureties for his appearance as aforesaid:

Provided that the court may accept as a surety a relative, friend or other person whom it considers having regard to all the circumstances a sufficient surety, without requiring the production of a certificate of worth or the deposit of cash security:

Provided further that the court may require an accused person being released under this section to report at such intervals as shall be fixed to a police officer to be named by court.



(3) A court may, at any time or at any stage of a proceeding, release on the execution of a bond with or without sureties, any person suspected or accused of any non-bailable offence:

Provided that a person suspected or accused of an offence punishable with death may be admitted to bail only with the consent of the Director of Public Prosecutions.

(4) Notwithstanding anything contained in this section, the Supreme Court may in any case direct that any person be admitted to bail or that the amount of the bond fixed by any original court be reduced or increased.

(5) Notwithstanding the provisions of subsection (2), a court may refuse to admit a person to bail if the court has reason to believe that if such person were admitted to bail he would—

- (a) not appear to stand his trial ;
- (b) interfere with the evidence against him ; or
- (c) commit an offence.

(6) In determining whether a person is a sufficient surety, the court shall have regard to the question whether such person is likely to be able to secure the attendance of the person accused in terms of the bond.

(7) When any person is released on bail or on his own bond he shall give to the court or officer taking such bail or bond an address at which service upon him of all notices and process may be made, and if thereafter he cannot be found or for other reasons service on him cannot be effected any notice or process left for him at such address shall be deemed to have been duly served upon him.

Quantum of  
bond.

**104.** (1) Where any court is required or empowered to determine the amount of a bond to be executed by any person, it shall do so with due regard to the nature of the offence and the punishment prescribed therefor by law and to the means of the person by whom it is to be executed.

(2) The amount to be fixed under this section shall not be excessive having regard to the circumstances of the case.

(3) Where a person has not been released by reason that a bond for the amount fixed by court has not been executed whether by himself or by a surety,



the court may at any time while he is in custody reduce the amount so fixed.

(4) When any person is required to execute a bond, the court may, except in the case of a bond for good behaviour, permit such person to deposit a sum of money to the credit of the court at an appropriate bank in lieu of executing such bond.

105. (1) A surety may at any time apply to the court to discharge the bond in so far as it relates to him. On such application being made the court shall issue a warrant of arrest directing that the person so released be brought before it. On the appearance of such person pursuant to the warrant or on his voluntary surrender the court shall direct the bond to be discharged either wholly or so far as relates to the applicant and shall call upon such person to find another sufficient surety, and if he fails to do so may commit him to custody.

Discharge of surety.

(2) A surety may at any time arrest the person for whose attendance and appearance he is bound and forthwith bring him before the court, which shall thereupon discharge such surety's bond and shall call upon such person to find another sufficient surety, and if he fails to do so shall commit him to custody.

106. (1) Whenever a court is satisfied that a bond has been forfeited, the court may call upon any person bound by such bond, to pay the penalty thereof or to show cause why it should not be paid.

Forfeiture of bond.

(2) If sufficient cause is not shown and the penalty is not paid the court may proceed to recover the same by issuing a warrant for the attachment and sale of the movable or immovable property, wherever situated belonging to such person. Whenever immovable property has been sold under the provisions of this section it shall be lawful for the officer under whose direction the attachment and sale was carried out to execute a conveyance in favour of the purchaser, and a conveyance so executed shall vest the property sold in the purchaser in like manner as if such conveyance had been executed by the person against whom the warrant for the attachment and sale of such immovable property was issued.

(3) If such penalty be not paid and cannot be recovered by such attachment and sale the person so bound shall be liable by order of the court which issued the warrant to imprisonment for a term which may extend to six months.



(4) The court may at its discretion remit any portion of the penalty mentioned and enforce payment in part only.

Extension  
of bond.

107. When any person who has entered into a bond appears before a court, it shall be lawful for such court to order the bond of such person and the obligation of his sureties, if any, to be extended till such time as the said court shall appoint ; and thereupon the condition of such bond and the obligation of the said sureties shall be extended to such time and place as shall be appointed in such order; and the parties, whether principal or sureties, bound by such bond shall continue to be liable thereunder as fully as if such extended time and place had been originally inserted in the condition thereof.

### THE CHARGE

Contents  
of charge.

108. (1) Every charge under this Law shall state the offence with which the accused is charged. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as will give the accused notice of the matter with which he is charged. The law and section of the law under which the offence is punishable shall also be mentioned.

(2) The charge shall contain such particulars as to the time and place of the alleged offence and as to the person (if any) against whom and as to the thing (if any) in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and to show that the offence is not prescribed.

(3) When the accused is charged with criminal breach of trust or dishonest misappropriation of movable property, it shall be sufficient to specify the gross sum or, as the case may be, the gross quantity in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence:

Provided that the time included between the first and last of such dates shall not exceed one year.



(4) When the nature of the case is such that the particulars mentioned in the preceding subsections do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

(5) In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

109. (1) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Validity of charge.

(2) The charge shall, at the trial, be read to the accused in a language which he understands.

(3) No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

(4) If the Supreme Court in the exercise of its powers of appeal or revision is of opinion that any person convicted of an offence was misled in his defence by an error in the indictment or charge, it shall direct a new trial to be had upon a charge or indictment framed in whatever manner it thinks fit. If, however, such Court is of opinion that the facts of the case are such that no valid charge can be preferred against the accused in respect of the facts proved, it shall quash the conviction.

110. (1) Any court may alter any indictment or charge at any time before judgment is pronounced or, in the case of trials before the High Court, before the verdict of the jury is returned. Every such alteration shall be read and explained to the accused.

Amendment of indictment or charge.

(2) The substitution of one charge for another in an indictment or the addition of a new charge to an indictment and in a Magistrate's Court the substitution of one charge for another shall be deemed to be an alteration of such charge within the meaning of this section.



(3) If the alteration made under this section is such that proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may in its discretion after such alteration has been made proceed with the trial as if the altered indictment or charge had been the original indictment or charge.

(4) If the alteration made under this section is such that proceeding immediately with the trial is likely in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the indictment or charge as altered under this section alleges an offence for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained unless sanction has been already obtained for a prosecution on the same facts as those of which the altered charge is founded.

(6) Whenever an indictment or charge is altered by the court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or re-summon and examine with reference to such alteration any witness who may have been examined.

*Joinder  
of charges.*

111. (1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in the next succeeding subsections which said subsections may be applied either severally or in combination.

(2) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences he may be charged with and tried at one trial for any number of them not exceeding three, and in trials before the High Court or a District Court such charges may be included in one and the same indictment. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the law.

(3) If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person he may be charged



with and tried at one trial for every such offence, and in trials before the High Court or a District Court such charges may be included in one and the same indictment.

(4) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished the person accused of them may be charged with and tried at one trial for each of such offences, and in trials before the High Court or a District Court such charges may be included in one and the same indictment.

(5) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one or more of such acts, and in trials before the High Court or a District Court such charges may be included in one and the same indictment.

(6) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all or any one or more of such offences and any number of such charges may be tried at one trial and in a trial before the High Court or a District Court may be included in one and the same indictment ; or he may be charged with having committed one of the said offences without specifying which one. If, however, the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of this subsection, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

(7) When more persons than one are accused of jointly committing the same offence or of different offences committed in the same transaction or when one person is accused of committing any offence and another of abetment of or attempt to commit such offence, they may be charged and tried together or separately as the court thinks fit.



Separation  
of trials of  
same person  
on different  
charges.

112. Where before trial or at any stage of a trial the court is of opinion that the accused may be prejudiced or embarrassed in his defence by reason of his being tried on more charges than one at one trial, or that for any other reason it is desirable to direct that the accused should be tried separately for any one or more offences, the court may order a separate trial on any charge or charges.

If offence  
proved is  
included in  
offence charged.

113. (1) When a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete minor offence and such combination is proved but the remaining particulars are not proved he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence he may be convicted of the minor offence although he was not charged with it.

(3) Nothing in this section shall be deemed to authorize a conviction for any offence for the prosecution of which previous sanction is necessary until such sanction is obtained.

If attempt  
to commit an  
offence is  
proved though  
attempt is  
not separately  
charged.

114. When a person is charged with an offence and it is proved that he attempted to commit that offence and that in such attempt he did an act towards the commission of that offence he may be convicted of an attempt to commit that offence although he was not charged with such attempt:

Provided that nothing in this section shall be deemed to authorize the conviction of any person for an attempt to commit an offence unless an attempt to commit that offence is made punishable by any written law for the time being in force in Sri Lanka.

If convicted  
on one charge,  
remaining  
charges may  
be withdrawn.

115. (1) When more charges than one are made against the same person and when a conviction has been had on one or more of them, the officer conducting the prosecution may with the consent of the court withdraw the remaining charge or charges or the court of its own accord may stay trial of such charge or charges.

(2) Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction is set aside, in which case the said court (subject to the order of the court setting aside the conviction) may proceed with the trial of the charge or charges so withdrawn.



116. It shall be lawful for the Minister to prescribe by regulation the offences in respect of which no prosecution may be instituted except with the previous sanction or on the complaint of a specified officer or person. No court shall thereupon take cognizance of any such offences except with the previous sanction or on the complaint of the officer or person specified in such regulation.

Conditions necessary for the institution of prosecutions in certain cases.

117. The right of prosecution for murder or treason shall not be barred by any length of time, but the right of prosecution for any other crime or offence (save and except those as to which special provision is or shall be made by law) shall be barred by the lapse of twenty years from the time when the crime or offence shall have been committed.

Period of prescription for crimes or offences.

118. (1) The Attorney-General may, at any time before judgment is pronounced, with a view to obtaining at the trial the evidence of any person believed to have been directly or indirectly concerned in or privy to any offence, tender a pardon to such person on condition that he makes a full and true disclosure of the whole of the circumstances within his knowledge relating to such offence and to every other person concerned whether as principal or abettor in the commission thereof.

Power of Attorney-General to tender pardon.

(2) A person accepting a tender under this section shall be examined as a witness in the case, and may be detained in custody until the termination of the trial.

(3) If such person, either by wilfully concealing anything essential or by giving false evidence, does not comply with the condition on which the pardon was tendered, he may be tried for the offence in respect of which the pardon was so tendered or for any other offence of which he appears to have been guilty in connection with the same matter, and the statement made by him may be given in evidence against him at such trial.

(4) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the Attorney-General.



Compounding  
offences.

119. (1) It shall be lawful for the Minister to prescribe by regulation the offences which may be compounded and to specify the persons, if any, in addition to the accused and the injured or aggrieved party, by whom they may be so compounded.

(2) Each offence so prescribed may, whether a prosecution for such offence is actually pending or not, be compounded by the person specified in the regulation, and notified in writing under the signature of both parties, to the appropriate Magistrate's Court.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a person of unsound mind, any person competent to contract on his behalf may compound such offence.

(5) The compounding of an offence under this section shall have the effect of an acquittal of the accused.

No person  
to be tried  
twice for  
same offence.

120. (1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall while such conviction or acquittal remains in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made or for which he might have been convicted in terms of subsection (6) of section 111.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial in terms of subsection (3) of section 111.

(3) A person convicted of any offence constituted by any act causing consequences which together with such act constituted a different offence from that of which he was convicted may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may notwithstanding such acquittal or conviction be subsequently charged with



and tried for any other offence constituted by the same acts which he may have committed, if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

121. (1) The plea of a previous acquittal or conviction may be tendered either orally or in writing and may be in the following form or to the following effect:—

Plea of previous acquittal or conviction.

“ the accused says that by virtue of section 120 of the Administration of Justice Law he is not liable to be tried ”.

(2) Such plea may be tendered together with any other plea, but the issue raised by such plea shall be tried and disposed of by the Judge, before the issues raised by the other pleas are tried.

(3) On the trial of an issue on a plea of a previous acquittal or conviction the depositions transmitted to the court on the former trial, together with the Judge's notes if available, the depositions transmitted to the court on the subsequent charge and the register maintained under the law relating to the destruction of court records, shall be admissible in evidence to prove or disprove the identity of the charges.

## PROCESS

122. (1) If for the purpose of any trial in any court the prosecutor or the accused applies to the court to issue process to compel the attendance of any witness or the production of any document or other thing, the court shall issue such process unless for reasons to be recorded the court deems it unnecessary so to do.

Power to compel attendance of witnesses.

(2) If the court suspects that process to compel the attendance of any witness is applied for, for the purpose of vexation or delay or for defeating the ends of justice, the court may require the applicant to satisfy it by affidavit or otherwise that there are reasonable grounds for believing that the evidence of such witness is material, and if it is not so satisfied may refuse to summon the witness (recording its reasons for such refusal) or may before summoning him require such sum to be deposited as the court thinks necessary to defray the expense of obtaining the attendance of such witness. If the evidence actually



given by such witness is, in the opinion of the court, material, the court may direct that the sum so deposited be returned to the applicant.

Power to  
summon  
material  
witness or  
examine  
person present.

123. Any court may at any stage of a proceeding under this Law summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined, if the evidence of such person appears to it essential to the just decision of the case.

Power to  
order  
prisoner to  
be brought  
up for  
examination.

124. Any criminal court which desires to examine as a witness in any case pending before the court any person confined in any prison may issue an order to the officer in charge of the said prison requiring him to bring such prisoner to the court. The officer so in charge shall act in accordance with such order and shall provide for the safe custody of the prisoner for the purpose aforesaid.

Requisites  
of summons.

125. (1) Every summons issued by a court shall be signed by the Registrar of such court and shall be in the prescribed form. If the person summoned is a person who is believed not to be able to read Sinhala, a translation in a language in which he is believed to be conversant shall also be served on him.

(2) There shall be attached to every summons issued to an accused person a copy of the complaint or report or other document upon which proceedings against him have been instituted, together with a list specifying the names and addresses of the witnesses for the prosecution, if any.

Summons to  
be served by  
registered  
post.

126. (1) The summons shall ordinarily be served by registered post. In the case of a corporation or unincorporate body of persons, the summons may be sent to the registered office or if there is no registered office, the principal place of business of such corporation or body:

Provided that—

(a) where the person summoned is a State officer, the court may send the summons by registered post to the head of the department or office in which such person is employed, and it



shall be the duty of such head to cause the summons to be served personally on the person summoned;

(b) where the court is *prima facie* satisfied that the person to be summoned is in the employment of another person, the court may send the summons to the employer at his usual place of business or, where the employer is a company or corporation, to any secretary, manager or other like officer of the company or corporation; and it shall be the duty of such officer to cause the summons to be served personally on the person summoned.

(2) In every case in which the summons is sent by registered post to a person other than the person summoned, the court shall also forward a duplicate of such summons, and it shall be the duty of such head of department or office, employer or officer, as the case may be, to return such duplicate to the court forthwith with an acknowledgment of the summons by the person summoned or with a statement of the service endorsed thereon and signed by the person effecting the same, and countersigned by the person to whom the summons had been forwarded by the court if he has not himself effected the service.

(3) In this section, “ head of department or office ” shall mean—

(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, the Commanding Officer of that unit;

(b) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council, the Municipal Commissioner of that Council ; if the local authority is an Urban or a Town Council, the Secretary of that Council; and if the local authority is a Village Council, the Chairman of that Council;

(c) when used with reference to any other State officer, the head of the department of Government in which such person is employed.



Personal  
service.

127. The court shall, if it is reported that service could not be effected by registered post or is advised that service by registered post is inexpedient, and may, where summons having been so served the person summoned fails to appear, direct that such summons be served personally on the person summoned by delivering or tendering to him the said summons through a process officer of court, police officer, grama sevaka or such other officer as may be authorized by court. In the case of a corporation or unincorporate body of persons, summons may be served personally by delivering or tendering it to the secretary or like officer or a director or the person in charge of the principal place of business of such corporation, or to the president, the secretary or like officer of such unincorporate body.

Service  
when  
person  
summoned  
cannot be  
found.

128. When the person to be summoned cannot by the exercise of due diligence be found, the summons may be served by leaving it for him with some adult member of his family or with an employee residing with him.

Procedure  
When personal  
service  
cannot be  
effected.

129. If the service prescribed in the preceding sections cannot by the exercise of due diligence be effected, the process officer, police officer, grama sevaka or such other authorized officer, as the case may be, shall affix the summons to some conspicuous part of the house in which the person summoned ordinarily resides, or in the case of a corporation or unincorporate body, of the usual place of business or office of such corporation or body, and in every such case the summons shall be deemed to have been duly served.

Proof of  
service.

130. When a summons is served by registered post, the advice of delivery issued under the Inland Post Rules, and the endorsement of service, if any, and where the summons is served in any other manner, an affidavit of such service shall be sufficient evidence of the service of the summons and shall be admissible in evidence and the statements contained therein shall be deemed to be correct unless and until the contrary is proved.

Summons to  
run in any  
part of  
Sri Lanka.

131. All summonses to appear may be served in any part of Sri Lanka, provided that where a summons is required to be served personally outside the local limits of the jurisdiction of the court issuing the same, the summons shall be forwarded by such court to the court within whose jurisdiction the person summoned is believed to be residing, and it shall be the duty of the Judge of such latter court to cause the summons to be duly served.



132. A court may in any case in which it is empowered to issue a summons for the appearance of any person other than a juror issue, after recording its reasons in writing, a warrant for his arrest—

Issue of  
warrant in  
lieu of or  
in addition  
to summons.

(a) if either before the issue of summons or after the issue of the same but before the time fixed for his appearance the court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at the time he is required to attend court, he fails to appear and the summons is proved to have been duly served in time to enable him to appear in accordance therewith and no reasonable excuse is offered for such failure.

133. (1) Whenever any court considers that the production of any document or other thing is necessary or desirable for the purposes of any proceeding by or before such court it may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons.

Summons to  
produce  
document or  
other thing.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed to affect the provisions of sections 123 and 130 of the Evidence Ordinance.

134. (1) Where any court is of opinion that the production or inspection of any book, letter, post card, telegram or other document in the custody of the Department of Posts and Telecommunications is necessary or desirable for the purposes of any proceedings or investigation under this Law, the court may require any officer of that department to deliver such document to such person as the court may direct.

Procedure  
in regard to  
letters tele,  
grams, & c.

(2) If any book or document in the custody of the Department of Posts and Telecommunications is in the opinion of the Director of Public Prosecutions necessary or desirable for the purposes of any proceedings or investigation under this Law, he may require any officer of the said department to deliver such document to him or to any other officer or person.



## OF TRIALS GENERALLY

By whom  
prosecution  
may be  
conducted.

**135.** In every trial under this Law, the prosecution shall be conducted by the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, a State Counsel or State Attorney, or by an attorney-at-law generally or specially authorized by the Director of Public Prosecutions:

Provided that, in the absence of any of the aforesaid officers, a prosecution in the Magistrate's Court may be conducted by the complainant or any officer of any Government Department or local authority, appearing in person or by attorney-at-law in any case in which such complainant, Government Department or local authority is interested.

Right of  
accused to  
be defended

**136.** Every person accused before any criminal court may of right be defended by an attorney-at-law.

Appearance for  
a corporation  
in court.

**137.** (1) At any trial in any court in which a corporation is the accused, the corporation may be represented by a person appointed in writing as the representative of the corporation by the managing director, the secretary, or a like officer of the corporation.

(2) Where a corporation is represented by any person appointed in accordance with the provisions of subsection (1)—

(a) such person may answer to the charge against the accused and may, where the consent of the accused is required for any purpose, give or refuse such consent, and may exercise on behalf of the accused all or any of the rights of the accused, and

(b) any requirement of this Law that anything shall be done in the presence of, or shall be read or said to, the accused shall be construed as a requirement that such thing shall be done in the presence of, or read or said to, such person.



(3) Where a corporation is not represented by any person appointed in accordance with the provisions of subsection (1), the court shall, if the court is satisfied that summons has been served on the corporation, have the power to proceed with and conclude the trial notwithstanding the fact that the corporation is not represented at the trial.

138. (1) At every trial if and when the court calls upon the accused for his defence it shall, if he is not represented by an attorney-at-law, inform him that he is entitled to give evidence on his own behalf and of the legal consequences of his failure to do so, and shall call his attention to the principal points in the evidence for the prosecution which tell against him in order that he may have an opportunity of explaining them.

Case for prosecution to be explained by court to accused, if he is not represented by an attorney-at-law.

(2) The failure at any trial of the spouse of the accused to give evidence shall not be made the subject of adverse criticism by the prosecution.

139. (1) The trial of any person on indictment may commence or continue in his absence if the court is satisfied—

Trial may be held in absence of accused.

(a) that the indictment has been served on such person and that—

- (i) he is wilfully refusing or neglecting to attend court; or
- (ii) he is unable to attend or remain in court by reason of illness and has consented to the commencement or continuance of the trial in his absence; or
- (iii) he is unable to attend or remain in court by reason of illness and no prejudice will be caused to him by the commencement or continuance of the trial in his absence; or
- (iv) by reason of his conduct in court, he is obstructing or impeding the progress of the trial; or



- (b) that such person is evading arrest or absconding and it has not been possible to serve the indictment on him.

The commencement or continuance of a trial under this section, shall not be deemed or construed to affect or prejudice the right of such person to be defended by an attorney-at-law at such trial.

(2) Where in the course of or after the conclusion of the trial of an accused person under sub-paragraph (i) of paragraph (a) or under paragraph (b) of subsection (1), he appears before court and satisfies the court that his absence from the whole or part of the trial was *bona fide* then—

(a) where the trial has not been concluded, the evidence led against the accused up to the time of his appearance before court shall be read to him and an opportunity afforded to him to cross-examine the witnesses who gave such evidence; and

(b) where the trial has been concluded, the court shall set aside the conviction and sentence, if any, and order that the accused be tried *de novo*.

(3) The provisions of subsection (2) shall not apply if the accused person had been defended by an attorney-at-law at the trial during his absence.

Place of trial.

**140.** Every offence shall ordinarily be tried by a court within whose jurisdiction such offence was committed.

Place of trial  
in special cases.

**141.** (1) A person accused of an offence committed on or over the territorial waters of Sri Lanka or on the high seas, or on board any ship or upon any aircraft may be tried in any court.



(2) A person accused of an offence committed by reason of anything which has been done and of any consequence which has ensued, may be tried by a court within whose jurisdiction such thing was done or such consequence ensued.

(3) When a person is alleged to have committed an act which is an offence by reason of its relation to any other act which is also an offence or which would be an offence if he was capable of committing an offence, he may be tried by a court within whose jurisdiction either act was committed.

(4) A person accused of the offence of escaping from custody may be tried either by a court within whose jurisdiction he is or by a court within whose jurisdiction the offence was committed.

(5) A person accused of the offence of criminal misappropriation or of criminal breach of trust may be tried either by a court within whose jurisdiction any part of the property which is the subject of the offence was received by him or by a court within whose jurisdiction the offence was committed.

(6) A person accused of the offence of stealing may be tried by a court within whose jurisdiction such thing was stolen or was possessed by him or by any other person who received or retained the same knowing or having reason to believe it to be stolen.

(7) When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be tried by a court having jurisdiction over any of such local areas.

(8) A person accused of an offence committed in the course of performing a journey or voyage may be tried by a court through or into whose jurisdiction he or the person against whom or the thing in respect of which the offence was committed passed in the course of that journey or voyage.

(9) A person accused of an offence committed against the provisions of any law relating to public transport, telecommunications, postal services, or arms, ammunition and offensive weapons may be tried



by any court, whether or not the offence was committed within its jurisdiction, provided that the offender was found within the jurisdiction of such court.

Evidence to be  
taken in pre-  
sence of accused.

**142.** Except as otherwise expressly provided, the evidence at a trial shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his attorney-at-law.

How evidence  
to be taken  
down.

**143.** (1) The evidence of each witness shall be recorded in the form of a narrative under the personal direction of the Judge and shall be signed and dated by such Judge:

Provided that the Judge may in his discretion or on the application of either party cause any particular question and answer to be recorded.

(2) For the purpose of identifying a witness the following particulars shall be recorded, namely—

- (a) full name,
- (b) if a Tamil, the name of his or her father,
- (c) if a married woman, the name of her husband,
- (d) place of residence,
- (e) age,
- (f) occupation, and
- (g) the race.

(3) A Judge may record such remarks as he thinks material in respect of the demeanour of a witness while under examination.

interpretation  
of evidence to  
accused.

**144.** Whenever any evidence is given in a language not understood by the accused and he is present in person, such evidence shall be interpreted to him in a language understood by him if he so requests. When a document is produced, the court may in its discretion cause only so much thereof as appears relevant to be interpreted.

Documentary  
evidence.

**145.** (1) All documentary evidence shall be filed in the record and initialled by the Judge and dated with the date of its receipt by him.

(2) If any document is in a language other than Sinhala, there shall be filed with it a Sinhala translation thereof or of so much thereof as is material.



(3) When any documentary evidence is of such a nature that it is impractical or inconvenient to file the same in the record, the Judge may after initialling it for the purpose of identification return the same to the person producing it, who shall be legally bound to produce it again before the court, but the Judge shall in that case cause a copy to be made of such part or portion of the document as may be relevant and filed with the record.

**146.** (1) Whenever it appears to a court that the examination of a witness is necessary but that his attendance cannot be procured without an amount of delay, expense, or inconvenience which under the circumstances of the case would be unreasonable, it may after notice to the parties issue a commission to any court within whose jurisdiction such witness resides to take his evidence.

Court may  
issue  
commission  
for taking  
evidence of  
absent  
witness.

(2) The parties to the proceeding may forward any interrogatories in writing to the court of trial, and that court may, if it considers such interrogatories relevant to the issue, require the witness to be examined thereon.

(3) The court to which the commission is issued shall summon the witness but if from ill health or other cause his attendance cannot reasonably be procured the Judge shall proceed to the place where the witness is and there record his evidence.

(4) The accused may appear before such Judge and may examine, cross-examine and re-examine, as the case may be, the said witness.

(5) After any commission has been duly executed it shall be returned together with the deposition of the witness examined thereunder to the court out of which it issued and the commission, the return thereto, and the deposition shall be open at all reasonable times to inspection by the parties and may be read in evidence in the case by either party and shall form part of the record.

(6) In every case in which a commission is issued under this section the trial, or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

**147.** (1) Any document purporting to be a report under the hand of the Government Analyst, the Government Examiner of Questioned Documents, the

Reports of  
medical and  
other special  
witnesses.



Registrar of Finger Prints, a Government Radiologist or a Government medical officer, upon any person, matter or thing submitted to him for examination or analysis and report, or any skiagraph purporting to have been made by a Government Radiologist may be used as evidence although such officer is not called as a witness:

Provided that nothing in this section shall affect the necessity of proving the identity of the person, matter or thing so examined or analysed and reported on.

(2) The report of a medical witness other than a Government medical officer, made and attested before a Justice of the Peace, may be given in evidence although such person is not called as a witness.

(3) The report of any witness made and attested before a Justice of the Peace, and relating to the custody or disposal of any matter or thing used in the commission of an offence or forwarded to any State officer for examination or analysis and report or the accuracy of a plan or survey made by him may be given in evidence although such person is not called as a witness.

(4) For the purpose of proving any statement made by a deceased person, the report, made and attested before a Justice of the Peace, of the Magistrate by whom the statement was recorded and the person, if any, by whom it was interpreted may be given in evidence although such persons are not called as witnesses.

(5) The court may presume that the signature on any document referred to in this section is genuine and that the person signing it held the office he professed to hold at the time he signed it.

(6) If in any case the Judge either of his own motion or at the request of either party is of the opinion that it is necessary or expedient that the officer concerned should be present to give evidence, such officer shall be summoned and examined as a witness at any stage of the proceedings.

Affidavits  
before whom  
sworn.

148. An affidavit may be used in a criminal court if it is sworn or affirmed to—

(a) in Sri Lanka before any Justice of the Peace;



- (b) in any other place before a Judge or Justice of the Peace or other person qualified to administer oaths in that place or in any other way deemed sufficient by the court; or
- (c) before any person authorized by the Supreme Court to receive oaths out of Sri Lanka.

149. (1) If from the absence of a witness or any other reasonable cause it becomes necessary or advisable to postpone the commencement of or adjourn any trial, the court may from time to time order a postponement or adjournment on such terms as it thinks fit for such time as it considers reasonable and may remand the accused or take bail for his appearance:

Power to  
postpone or  
adjourn  
proceedings.

Provided, however, that when the accused is charged with a bailable offence and a postponement or adjournment is ordered upon the application of the prosecution, the accused shall be released on bail on his own recognizance:

Provided further that where the accused has attended court on summons, he shall be released on his simple undertaking to appear, unless for reasons to be recorded the court orders otherwise.

(2) No trial shall be postponed or adjourned on the ground of the absence of a witness unless the Judge has first satisfied himself that the evidence of such witness is material to the trial and that reasonable efforts have been made to secure his attendance, and has recorded the name of such witness and the nature of the evidence which he is expected to give.

(3) No Magistrate shall remand an accused under this section for any term exceeding fifteen days.

(4) Where an accused has been remanded, and the Magistrate is satisfied that by reason of illness or accident he is unable at the expiration of the period for which he was remanded to appear personally before court, the Magistrate may in the absence of the accused order him to be further remanded for such term as the Magistrate may consider reasonable in the circumstances of the case. This subsection shall have effect notwithstanding any other limitation by this Law of the term for which an accused may be remanded.



(5) Every order made under this section by a court other than the High Court shall state the reasons therefor, and shall be signed by the Judge.

(6) The Judge by whom an accused has been convicted may, before he has been sentenced or otherwise dealt with, order an adjournment of the case for any period not exceeding three weeks for the purpose of enabling inquiries to be made or for determining the most suitable method of dealing with his case; and in any such case the court may remand the accused, or take bail for his appearance.

(7) Where a case has been adjourned under the preceding subsection, the accused may be sentenced or otherwise dealt with by any other Judge at the same court, so however that such other Judge shall inquire into the circumstance of the case before sentencing or otherwise dealing with him.

Judge to  
transmit  
proceedings  
to Attorney-  
General when  
required.

**150.** A Magistrate, District Judge or High Court Judge shall whenever required in writing by the Attorney-General forthwith transmit to the Attorney-General the proceedings in any criminal case in which the trial has been or is being held before him, and thereupon such trial shall be suspended in the same and the like manner as upon an adjournment thereof.

Change of Judge  
during hearing.

**151.** Whenever a Judge after having heard and recorded the whole or any part of the evidence in a trial ceases to exercise jurisdiction therein and is succeeded by another Judge, the Judge so succeeding may act on the evidence already recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself or he may re-summon the witnesses and re-commence the trial:

Provided that:—

- (a) the accused may when the second Judge commences his proceedings require that the witnesses or any of them be re-summoned and re-heard;
- (b) the Supreme Court may, whether there be an appeal or not, set aside any conviction had on evidence not wholly recorded by the Judge before whom the conviction was had if such court is of opinion that the accused has been materially prejudiced thereby, and may order a new trial.



**152.** (1) Any person attending a criminal court although not under arrest or upon a summons may be detained by such court for the purpose of trial for any offence of which such court can take cognizance and which from the evidence he may appear to have committed and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending court.

(2) When the detention takes place after a trial has begun the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

**153.** No proceeding of any criminal court shall be invalid by reason of its being held on a Sunday or public holiday.

Proceedings may be had on Sundays and holidays.

**154.** (1) When any person is brought before a court and charged with an offence for which he is liable to be tried under military law, the Judge of such court may deliver him together with a statement of the offence of which he is accused to the commanding officer of the ship, regiment, corps or detachment to which he belongs or to the commanding officer of the nearest Army, Navy or Air Force station, as the case may be, for the purpose of being tried in accordance with military law.

Delivery to military authorities of persons capable of being tried by court-martial.

(2) The expression "military law" includes the Army Act, the Navy Act, and the Air Force Act.

**155.** If an accused though not insane cannot be made to understand the proceedings, the court may proceed with the trial, and in the case of a court other than the High Court if such trial results in a conviction the proceedings shall be forwarded to the High Court with a report of the circumstances of the case and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused who is not insane does not understand proceedings.

**156.** (1) When a court has reason to believe that the accused is of unsound mind it shall inquire into the fact of such unsoundness and shall cause such person to be examined by a medical officer and shall thereupon, if it is satisfied that the accused is of unsound mind and consequently incapable of making his defence, postpone further proceedings in the case.

Procedure in case of accused being of unsound mind.

(2) If the trial is by jury, the jury shall try the fact of such unsoundness and incapacity, and if satisfied of the fact shall find accordingly and thereupon the trial shall be postponed.



(3) Whenever an accused is found to be of unsound mind and incapable of making his defence the court may—

- (a) if the case is one in which bail may be taken, release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person and for his appearance when required before the court or such officer as the court may nominate;
- (b) if the case is one in which bail may not be taken or if sufficient security is not given, report the case to the Minister who may order the accused to be confined in a mental hospital or other suitable place of safe custody and the court shall give effect to such order;
- (c) if the court is of the view that the offence with which the accused is charged is of a trivial nature and that, having regard to the medical evidence, the accused may be discharged without danger of doing injury to himself or to any other person, order the accused to be discharged.

(4) Whenever a trial is postponed the court may at any time resume the inquiry or commence the trial *de novo* and require the accused to appear or be brought before it. When the accused has been released under subsection (3) (a) and the sureties for his appearance produce him to the officer nominated by court, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence. If when the accused appears or is brought before it the court considers him capable of making his defence, the trial shall proceed. If the court considers the accused person to be still incapable of making his defence it shall again act according to the preceding provisions of this section.

When accused  
appears to  
have been  
of unsound  
mind.

157. (1) Whenever any person is acquitted upon the ground that at the time at which he is alleged to have committed an offence he was by reason of unsoundness of mind incapable of knowing the nature of the act alleged as constituting the offence or that it was wrong or contrary to law, the verdict shall state specifically whether he committed the act or not.

(2) Whenever the verdict states that the accused committed the act alleged, the court shall, if such act



would but for such incapacity have constituted an offence, order such person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case to the Minister who may order such person to be confined in a mental hospital, prison, or other suitable place of safe custody until further orders.

153. (1) When any person is confined under the provisions of the two preceding sections, the Commissioner of Prisons if such person is confined in a prison, or the Visitors of the mental hospital, or any two of them if he is confined in a mental hospital, shall visit him once at least in every six months in order to ascertain his state of mind; and shall report thereon to the Minister.

Persons confined on ground of unsoundness of mind.

(2) If such person is confined pending trial and the Commissioner or the Visitors, as the case may be, certify that such person is capable of making his defence, he shall be taken before the court which may proceed with the trial, and the certificate of such Commissioner or Visitors as aforesaid shall be receivable in evidence.

(3) If such person is confined after trial and the Commissioner or the Visitors, as the case may be, certify that such person may be discharged without danger of his doing injury to himself or to any other person, the Minister may order him to be discharged or be detained in custody or be transferred to a mental hospital. If the Minister orders the transfer to a mental hospital, he shall appoint a committee of inquiry consisting of a Magistrate and two medical officers to inquire into and report upon the state of mind of such person, and the Minister may thereupon order his discharge or detention as he thinks fit.

(4) Whenever any relative or friend of any person confined after trial requests that such person be delivered over to his care and custody, the Minister, if he is satisfied that such person will be properly taken care of and will be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend. Whenever such person is so delivered it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Minister directs.



Procedure  
relating to  
offences  
affecting  
judicial  
proceedings.

**159.** (1) When any court is of opinion that there is ground for proceeding in respect of any offence committed before it or brought under its notice in the course of a judicial proceeding, such court may—

(a) send the case for trial to the nearest Magistrate's Court and may send the accused in custody or take sufficient security for his appearance before such court and may bind over any person to appear and give evidence on such trial, and such Magistrate's Court shall thereupon proceed according to law; or

(b) cause the offender to be detained in custody and shall, before the rising of the court on the same day, take cognizance of the offence, and after trial may sentence the offender to a punishment not exceeding the maximum punishment which that court is authorised to impose or is prescribed for such offence by law.

(2) In the case referred to in paragraph (b) of subsection (1) the court shall record on the proceedings the facts constituting the offence with the statement (if any) made by the offender as well as the finding and sentence and shall forthwith transmit a copy of such record to the Supreme Court so that the Supreme Court may if it thinks fit exercise its power of revision.

(3) The court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of such court or on apology being made to its satisfaction, and in such case it shall be unnecessary to forward the record to the Supreme Court as herein before required.

Imprisonment  
or committal  
of person  
refusing to  
answer or  
produce  
document.

**160.** (1) If any person before any court refuses to answer such questions as are put to him or to produce any document in his possession or power which the court requires him to produce and does not offer any reasonable excuse for such refusal, such court may for reasons to be recorded in writing order him to be detained as a civil prisoner for any term not exceeding seven days unless in the meantime such person consents to be examined and to answer or to produce the document. In the event of his persisting in his refusal after the expiration of the said term he may be dealt with according to the provisions of the preceding section.



(2) When an order is made under this section the court shall record the facts of the refusal with the statement if any made by the person so refusing and shall send a copy of such record together with a copy of the order to the Supreme Court so that the Supreme Court may if it thinks fit exercise its power of revision.

**161.** (1) If in the course of a trial in any court a witness shall on any material point contradict either expressly or by necessary implication the evidence previously given by him before a court, it shall be lawful for the Judge, at the conclusion of such trial, to try such witness for intentionally giving false evidence in a stage of a judicial proceeding. In a trial before a High Court or a District Court the indictment shall be prepared and signed by the Registrar, and where the trial is by jury, the accused may be tried by the same jury. At such trial it shall be sufficient to prove that the accused made the contradictory statements alleged in the indictment, and it shall not be necessary to prove which of such statements is false. The Judge may adjourn the trial for such period as he may think fit, and may commit such witness to custody or take bail.

Punishment  
for perjury.

(2) If any person giving evidence on any subject in open court in any judicial proceeding under this Law gives, in the opinion of the court before which the judicial proceeding is held, false evidence within the meaning of section 188 of the Penal Code, it shall be lawful for the court summarily to punish such witness as for a contempt of court. Whenever the power given by this section is exercised, the Judge shall record the reason for imposing such punishment.

**162.** (1) Where proceedings are taken against a person for having received goods knowing them to be stolen or for having in his possession stolen property, evidence may be given that there was found in his possession other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceeding.

When evidence  
of previous  
conviction  
or of other  
cases may be  
given.

(2) Where proceedings are taken against a person for having received goods knowing them to be stolen or for having in his possession stolen property and evidence has been given that the stolen property was found in his possession, then if such person had within



five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen:

Provided that at least seven days' notice in writing shall be given to the accused that such previous conviction would be proved; but it shall not be necessary for the purposes of this section to enter in the indictment the previous conviction of the person so accused.

### TRIAL BY MAGISTRATE'S COURT

Institution  
of  
proceedings.

163. (1) Proceedings in a Magistrate's Court may be instituted in one of the following ways:—

(a) on a complaint being made orally or in writing to the Magistrate that an offence has been committed which he has jurisdiction to try:

Provided that a complaint in writing shall be signed by the complainant and countersigned by an attorney-at-law; or

(b) on a written report to the like effect being made to the Magistrate by a police officer, an inquirer, an officer of a local authority, or by a State officer; or

(c) on any person being brought before the Magistrate in custody without process, accused of having committed an offence which he has jurisdiction to try; or

(d) upon a warrant under the hand of the Director of Public Prosecutions requiring the Magistrate to try the person named therein; or

(e) on a written complaint made by a court.

(2) Every complaint, report or warrant made under this section shall be accompanied by a statement specifying to the best of the knowledge of the person making it the names of the witnesses whose evidence is relied on in support of the complaint, report or warrant, and a list of all weapons or other articles, impressions and specimens which it may be necessary to produce at the trial which may be held in pursuance of the complaint, report or warrant.



(3) Where the person bringing an accused person before a Magistrate under paragraph (c) does not himself make a complaint against the accused person, he shall deliver to the Magistrate an affidavit by the person making the complaint in which shall be set out the facts complained of.

164. (1) Where proceedings have been instituted under the preceding section and the Magistrate is of opinion that there is sufficient ground for proceeding against some person who is not in custody, he shall by the issue of a summons secure the attendance of such person before court:

Issue of  
process.

Provided that the Magistrate may, in the first instance, issue a warrant if for reasons to be recorded by him, he considers it necessary or expedient to do so.

(2) (a) In any case under paragraph (a) or paragraph (b) of subsection (1) of the preceding section, the Magistrate shall before issuing a warrant, and may before issuing a summons, examine on oath the complainant or some material witness or witnesses.

(b) In any case under paragraph (c) of subsection (1) of the preceding section, the Magistrate shall forthwith examine on oath the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case.

(3) Every examination held by the Magistrate under this section shall be recorded and after being read over and if need be interpreted to the person examined shall be signed by him and by the Magistrate and dated. Such examination may if the Magistrate thinks fit be held in private.

(4) Every summons or warrant issued under this section shall contain a statement of the particulars of the offence charged and in the case of a summons shall require the accused to appear before the court at a time and place therein specified to answer the charge therein set forth.

(5) Whenever a Magistrate issues a summons he may in his discretion dispense with the personal attendance of the accused and permit him to tender a plea of guilt in writing in such form and manner as may be prescribed by regulations made by the Minister, or appear by an attorney-at-law:



Provided that the Magistrate may in his discretion at any stage of the proceedings direct the personal attendance of the accused and enforce his attendance.

(6) In any case where the personal attendance of the accused has been dispensed with and he has been permitted to appear by an attorney-at-law, the trial may be conducted in the absence of the accused and in the presence of such attorney-at-law, and the charge may be read to such attorney-at-law, and if such attorney-at-law is authorized by proxy to make an admission in answer to the charge any admission made by him shall be treated for the purposes of section 167 as a statement made by the accused. No stamp duty shall be payable on any proxy executed for the purposes of this subsection.

Procedure  
to be adopted  
if case not  
triable by  
Magistrate.

165. Where the offence appears to be one not triable by a Magistrate's Court the Magistrate shall forthwith forward the record of the proceedings to the Director of Public Prosecutions and may direct the officer in charge of the appropriate police station to conduct further inquiries.

Procedure on  
the appearance  
of the  
accused.

166. (1) Where the accused is brought before the court otherwise than on a summons or warrant the Magistrate shall, after examining on oath the person who has brought him before court and any other person who may be present in court able to speak to the facts of the case, if he is of opinion that there is sufficient ground for proceeding against the accused, frame a charge.

(2) Where the accused appears on summons or warrant it shall not be necessary to frame a charge but the statement of the particulars of the offence contained in the summons or warrant shall be deemed to be the charge and the provisions of this Law as to the amendment and alteration of charges shall apply to the same accordingly.

(3) The Magistrate shall read the charge to the accused and ask him if he has any cause to show why he should not be convicted.

Admission  
of offence  
by accused.

167. (1) If the accused upon being asked if he has any cause to show why he should not be convicted makes a statement which amounts to an unqualified admission that he is guilty of the offence of which he is accused, his statement shall be recorded as nearly



as possible in the words used by him; and the Magistrate shall record a verdict of guilty and pass sentence upon him according to law and shall record such sentence.

(2) If the accused does not make such statement as aforesaid the Magistrate shall fix a date for the trial.

168. (1) When the Magistrate proceeds to try the accused he shall take in the manner provided by law all such evidence as may be produced for the prosecution or defence respectively:

Procedure  
of trial.

Provided that it shall not be necessary to record afresh the statement of any person already examined by court under the preceding provisions, whether in the presence or absence of the accused, and such statement shall be deemed to be evidence recorded at the trial, but the accused shall be permitted to cross-examine or again cross-examine any witness whose statement has been so recorded.

(2) At the close of the case for the prosecution, if the Magistrate calls upon the accused for his defence, the Magistrate shall, before any evidence is called by the accused, inform him that he is entitled to give evidence in his own defence and shall tell him in ordinary language what the effect in law will be if he does not give evidence.

(3) If upon the Magistrate calling for the defence, the accused does not give evidence, the Magistrate, in determining whether the accused is guilty of the offence charged, may draw such inferences from such failure as appear proper.

(4) Nothing in this section shall be taken to render the accused compellable to give evidence on his own behalf.

(5) If any evidence is adduced on behalf of the accused, the prosecution shall, with the leave of the Magistrate, be entitled to call witnesses in rebuttal.

(6) The complainant and the accused shall be entitled to open their respective cases, but the complainant shall not be entitled to make any observations in reply upon the evidence given by or on behalf of the accused.

169. (1) If the Magistrate, after taking the evidence of the prosecution and defence and such further evidence (if any) as he may of his own motion cause to be produced, finds the accused not guilty he shall record a verdict of acquittal. If he finds the

Verdict  
and sentence.



accused guilty he shall record a verdict of guilty and shall pass sentence upon the accused according to law and record such sentence.

(2) The verdict shall be recorded not later than twenty-four hours after the conclusion of the taking of evidence, and the reasons for the verdict shall be recorded not later than fourteen days after recording the verdict.

(3) The sentence, if any, shall subject to the other provisions of this Law, be recorded at the time of recording of the verdict.

Proof of  
previous  
convictions.

**170.** (1) Notwithstanding the provisions of section 169, a Magistrate may, upon finding an accused guilty or holding that a charge is proved, cause the fingerprints of such person to be taken and forwarded in the manner provided in subsection (2) of section 77, and the Registrar of Fingerprints shall issue a certificate as required by that subsection. If the certificate so issued declares that the accused's fingerprints are identical with those of the registered criminal, the Magistrate shall read such certificate to the accused and call upon him to admit or deny separately each of the convictions set forth therein. If the accused on being so called upon admits all the convictions set forth in the certificate, the Magistrate shall pass sentence on him according to law. If the accused declines to make any reply or denies all or any of the convictions set forth in the certificate, the Magistrate shall, before passing sentence on him, proceed to take evidence in proof of such of the convictions as the accused does not admit. The Magistrate may, in his discretion, remand the accused or admit him to bail until the certificate of the Registrar of Fingerprints or the findings referred to in the subsection is available to court.

(2) The fact that any person has been previously convicted of a crime may be proved by the production of a certificate purporting to be signed by the Registrar of the Court stating the substance and effect of the charge and conviction, and certifying—

(a) that such person was so previously convicted before the court; or

(b) that on an occasion when such person was convicted by the court of another offence, he admitted that he was so previously convicted,



or was proved to have been so previously convicted;

and by proof of the identity of the person against whom a previous conviction is sought to be proved with the person named in the certificate.

171. Nothing herein before contained shall be deemed to prevent a Magistrate from discharging the accused at any stage of the case, if the Magistrate is satisfied, for reasons to be recorded by him, that further proceedings in the case will not result in the conviction of the accused.

Power of  
Magistrate  
to discharge  
accused at  
any time.

172. The Magistrate may, at any stage of the proceedings, send for the Information Book and examine and use in accordance with law all statements and notes recorded by the police in connection with the investigation.

Magistrate may  
examine  
Information  
Book.

173. If the Magistrate after taking the evidence adduced for the prosecution and the defence is of opinion that the accused is guilty of an offence which cannot be adequately punished by a Magistrate's Court, he shall not convict the accused but shall forward the record of the case to the Director of Public Prosecutions.

Where trial  
were  
appropriate  
before  
higher  
court.

174. If from the facts admitted or proved it appears that the accused has committed an offence within the jurisdiction of the Magistrate to try, other than that specified in the charge, the Magistrate may convict the accused of such offence, but before he so convicts he shall frame a charge and shall read and explain it to the accused, and such of the provisions of this Chapter as relate to altered charges shall apply to the charge framed under this section.

If different  
offence is  
disclosed  
in course  
of proceedings.

175. (1) If proceedings had been instituted under section 163 (1) (a) and upon the day and hour appointed for the appearance of the accused or at any time to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused unless for some reason he thinks proper to adjourn the hearing of the case to some other hour or date, and may in addition make an order for payment by the complainant of State costs as hereinafter provided.

Accused may  
be acquitted  
in the absence  
of complainant.

(2) No appeal shall lie against the acquittal of the accused under subsection (1).



(3) If the complainant appears in reasonable time and satisfies the Magistrate that his absence was due to sickness, accident, or some other cause over which he had no control, the Magistrate may, after giving the accused an opportunity of being heard, make order cancelling the acquittal of the accused.

(4) An appeal shall lie with sanction of the Director of Public Prosecutions against the refusal of the Magistrate to make such order of cancellation.

Withdrawal  
of charge  
by complainant.

176. If a complainant at any time before judgment is given satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw the charge the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused, but he shall record his reasons for doing so.

Accused may  
be discharged  
by Magistrate  
with sanction  
of Director  
of Public  
Prosecutions.

177. In any case instituted under this Law otherwise than upon a complaint under paragraph (a) of section 163 (1), the Magistrate may with the previous sanction of the Director of Public Prosecutions, for reasons to be recorded by the Magistrate, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon discharge the accused.

#### TRIAL BY DISTRICT COURT

Institutions  
of proceedings.

178. Every trial before a District Court shall be on an indictment brought in the name of the Attorney-General and signed by the Director of Public Prosecutions or a State Counsel or by an attorney-at-law generally or specially authorized by the Director in that behalf, and in the latter case the words, "By authority of the Director of Public Prosecutions" shall be affixed to the signature.

Contents of  
indictment.

179. (1) Every indictment shall contain a list of the witnesses which the prosecution intends to call at the trial and another list of all documents and things intended to be produced at such trial. But nothing in this subsection shall be deemed or construed to debar the prosecution, after notice to the accused, from calling any witness or producing any document or thing not specified in the indictment.

(2) To every indictment shall be annexed a copy of the statements, if any, made by the accused and by the person against whom or in respect of whom the offence is alleged to have been committed, and of each statement recorded in the Information Book made by a person who is intended to be called as a witness by the prosecution.



180. (1) The indictment shall be forwarded by the Director of Public Prosecutions to the appropriate court of trial to be filed in that court. The fact that the indictment has been so forwarded and filed shall be equivalent to a statement that all conditions required by law to constitute the offence charged and to give such court jurisdiction have been fulfilled in the particular case.

Indictment to be forwarded to appropriate court.

(2) The Director shall also forward to the court of trial, together with the indictment and its annexures, copies of all statements and notes recorded by the police in connection with the investigation and the certificate of the Registrar of Fingerprints.

181. (1) The Judge of the court of trial shall upon receipt of the indictment—

Duty of Judge upon receipt of indictment.

- (a) cause the accused to appear or to be brought before him;
- (b) cause a copy of the indictment to be served on each of the accused who will be tried upon that indictment;
- (c) inform the accused of the date of trial, such date being not less than fourteen days from the date on which the accused appears or is so brought before him;
- (d) direct the accused to execute a bond to appear in court for his trial or by warrant addressed to the superintendent of any prison authorize the detention of the accused pending his trial.

(2) An accused who has been remanded pending his trial in terms of subsection (1) shall, if he is not brought to trial within a period of forty-five days, be entitled to be admitted to bail, unless good cause be shown to the contrary, or unless the trial shall have been postponed on the application of such accused.

182. When the court is ready to commence the trial the accused shall appear or be brought before it and the indictment shall be read and explained to him and he shall be asked whether he is guilty or not guilty of the offence charged. If the accused pleads guilty and it appears to the satisfaction of the Judge that he rightly comprehends the effect of his plea, the plea shall be recorded on the indictment and he may be convicted thereon. If the accused does not plead or if he pleads not guilty, he shall be tried.

Arraignment of accused.



Case for the  
prosecution.

**183.** (1) The trial shall commence by the prosecutor stating his case to the court. The witnesses for the prosecution shall then be examined.

(2) When the case for the prosecution is closed, if the court wholly discredits the evidence led by the prosecution or is of opinion that such evidence fails to establish the commission of the offence alleged in the indictment or of any other offence of which the accused might be convicted on such indictment a verdict of acquittal shall be recorded.

Accused may  
make his de-  
fence.

**184.** (1) If the court calls upon the accused for his defence, the court shall, before any evidence is called by the accused, inform him that he is entitled to give evidence in his own defence and shall tell him in ordinary language what the effect in law will be if he does not give evidence.

(2) If upon the Judge calling for the defence, the accused does not give evidence, it shall be open to the prosecution to comment upon the failure of the accused to give evidence and the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from such failure as appear proper.

(3) Nothing in this section shall be taken to render the accused compellable to give evidence on his own behalf.

(4) The accused may enter upon his defence and may examine his witnesses, if any, and may then sum up his case.

(5) If the accused announces his intention not to adduce evidence, the prosecutor may address the court a second time in support of his case for the purpose of summing up the evidence against the accused.

When prosecu-  
tor entitled to  
reply.

**185.** (1) If any evidence is adduced on behalf of the accused the prosecutor shall be entitled to reply and with the leave of court to call witnesses in rebuttal.

(2) When the evidence for the defence consists only of the evidence of the accused or of documentary evidence, the prosecutor shall not be entitled to reply.



(3) In this section, the expression, "documentary evidence" includes a statement which is used in evidence to prove that a witness on a former occasion made a statement inconsistent with his present testimony.

186. (1) If the Judge, after taking the evidence of the prosecution and defence and such further evidence (if any) as he may of his own motion cause to be produced, finds the accused not guilty he shall record a verdict of acquittal. If he finds the accused guilty he shall record a verdict of guilty and shall pass sentence upon the accused according to law and record such sentence.

Verdict and sentence.

(2) The verdict shall be recorded not later than twenty-four hours after the conclusion of the taking of evidence, and the reasons for the verdict shall be recorded not later than fourteen days after recording the verdict.

(3) The sentence, if any, shall, subject to the other provisions of this Law, be recorded at the time of the recording of the verdict.

187. Where the accused is reported by the Registrar of Fingerprints to have previously committed an offence—

Proof of previous convictions.

(a) if the accused pleads guilty to or is convicted of the offence with which he is charged, he shall then be asked whether he admits the previous conviction;

(b) if he admits the previous conviction, the Judge may proceed to pass judgment on him accordingly;

but if he denies that he has been so previously convicted or refuses to or does not answer such question, the Judge shall proceed to take evidence in proof of such of the convictions as the accused does not admit in the manner provided in subsection (2) of section 170.

188. The Attorney-General may at any time before the verdict is recorded withdraw any indictment or any charge therein and the prosecutor may also with the permission of the court at any time before the

Attorney-General may withdraw prosecution.



verdict is recorded withdraw any indictment or charge therein, and thereupon all proceedings thereon shall be stayed and the accused shall be discharged of and from the same.

### TRIAL BEFORE THE HIGH COURT

Institution  
of proceedings.

189. Every trial before a High Court shall be on an indictment brought in the name of the Attorney-General and signed by the Director of Public Prosecutions or a State Counsel or by an attorney-at-law generally or specially authorized by the Director in that behalf, and in the latter case the words, "By authority of the Director of Public Prosecutions" shall be affixed to the signature.

Contents of  
indictment.

190. (1) Every indictment shall contain a list of the witnesses which the prosecution intends to call at the trial and another list of all documents and things intended to be produced at such trial. But nothing in this subsection shall be deemed or construed to debar the prosecution, after notice to the accused, from calling any witness or producing any document or thing not specified in the indictment.

(2) To every indictment shall be annexed a copy of the statements, if any, made by the accused and by the person against whom or in respect of whom the offence is alleged to have been committed, and of each statement recorded in the Information Book and made by a person who is intended to be called as a witness by the prosecution.

Indictment  
to be forwarded  
to appropriate  
court.

191. (1) The indictment shall be forwarded by the Director of Public Prosecutions to the appropriate court of trial to be filed in that court. The fact that the indictment has been so forwarded and filed shall be equivalent to a statement that all conditions required by law to constitute the offence charged and to give such court jurisdiction have been fulfilled in the particular case.

(2) The Director shall also forward to the court of trial, together with the indictment and its annexures, copies of all statements and notes recorded by the police in connection with the investigation and the certificate of the Registrar of Fingerprints.



**192.** (1) The Judge of the court of trial shall upon receipt of the indictment—

Duty of Judge upon receipt of indictment.

- (a) cause the accused to appear or to be brought before him;
- (b) cause a copy of the indictment to be served on each of the accused who will be tried upon that indictment;
- (c) inform the accused of the date of trial, such date being not less than fourteen days from the date on which the accused appears or is so brought before him;
- (d) request the accused to elect from which of the respective panels of jurors the jury shall be taken for his trial, and inform him that he shall be bound by and may be tried according to the election somade;
- (e) direct the accused to execute a bond to appear in court for his trial or by warrant addressed to the superintendent of any prison authorize the detention of the accused pending his trial.

(2) An accused who has been remanded pending his trial in terms of subsection (1) shall, if he is not brought a trial within a period of forty-five days, be entitled to be admitted to bail, unless good cause be shown to the contrary, or unless the trial shall have been postponed on the application of such accused.

**193.** Subject to the provisions of this Law all trials before the High Court shall be by jury before a Judge.

Trial to be ordinarily by jury.

**194.** Subject to the provisions contained in sections 195 and 196, every person residing within Sri Lanka who has attained the age of twenty-one years and has obtained a pass at the General Certificate of Education (Ordinary Level) Examination or at an equivalent examination in six subjects including Sinhala or Tamil Language, and is in receipt of an income of not less than three hundred rupees per month, shall be qualified and liable to serve as a juror, and every such person who is also a graduate of a recognised university or holds an equivalent professional qualification shall, in addition, be qualified and liable to serve as a special juror.

Liability to serve as a juror.



Persons who  
shall not serve  
as jurors.

195. The following persons shall not serve as jurors:—

- (a) the President of the Republic of Sri Lanka;
- (b) Judges of courts established under this Law;
- (c) Members of the National State Assembly;
- (d) Representatives of Foreign Governments;
- (e) Officers and other employees of the National State Assembly and of courts;
- (f) Inquirers appointed under this Law;
- (g) attorneys-at-law;
- (h) police and customs officers;
- (i) priests;
- (j) persons employed in the departments of the Attorney-General, Commissioner of Prisons and Commissioner of Probation Services;
- (k) persons who have suffered imprisonment for a term of one month or more;
- (l) persons who labour under such bodily or mental incapacity or profess such religious tenets as render them unfit to discharge the duty of a juror.

Persons who  
shall not serve  
as jurors except  
with their own  
consent.

196. The following persons shall not serve as jurors except with their own consent:—

- (a) persons serving in the Sri Lanka Army, Navy or Air Force on full pay or active employment;
- (b) persons registered under the Medical Ordinance and in actual practice;
- (c) persons duly qualified as dispensers of drugs and actually employed as such;
- (d) Registrars and Deputy Registrars of Births and Deaths ;
- (e) persons over the age of sixty years.



197. (1) Any person who has been summoned to serve on a jury shall be entitled to be exempted from service if he has served as a juror within twelve months from the date for which he is summoned:

Exemption and  
excuse from ser-  
vice on jury.

Provided—

(a) that the claim for exemption is made by letter addressed to the Registrar immediately after such person has been summoned to attend; and

(b) the court is of opinion that the exemption can be allowed without unduly reducing the panel.

(2) Any person whose name is included in any list may apply in writing to the Registrar asking to be excused from attendance as a juror for a particular period and stating the grounds on which the application is made, and the Judge may make such order thereon as he may think fit.

(3) The Judge may for reasonable cause excuse any juror from attendance on any particular day or days or time of the day and either unconditionally or on condition of his serving on some other day or time to be fixed by the Judge.

198. (1) Every Government Agent shall, with respect to each judicial zone within his jurisdiction, prepare and maintain lists of the persons who are qualified and liable to act as jurors, setting forth their names in full, occupations and places of residence. Any person refusing or neglecting to give any information when called upon to do so by the Government Agent for the purpose of preparing or maintaining such lists, or wilfully gives false information, shall be liable on conviction by a Magistrate to a fine not exceeding one hundred rupees.

Preparation of  
lists of persons  
liable to serve  
as jurors.

(2) It shall be competent for the Minister to direct the consolidation of the lists of two or more judicial zones.

(3) The Government Agent shall, in the month of July in every year, forward the list to the Registrar of the appropriate High Court.



Panels of jurors  
to be prepared  
from each list.

199. (1) Panels of jurors shall, from time to time, be prepared by each High Court Judge in accordance with such procedure as shall be prescribed by rules of court.

(2) Unless it be unavoidable not more than one person belonging to or employed in any Government Department, Public Corporation, mercantile or business establishment or on any plantation or estate shall be included in the same panel.

Summons on  
jurors.

200. (1) Every summons to a juror shall be served on such person at least ten days before the day on which his attendance is required.

(2) The summons may state that such juror need not attend on a particular day, but that he must hold himself in readiness to attend on any day of which he may receive special notice.

Juror not  
bound to serve  
more than a  
fortnight.

201. No juror shall be compellable to serve more than a fortnight unless at the expiration of the fortnight a trial in which he is engaged as a juror is pending and then only until the end of such trial.

Juror  
absenting  
himself  
without  
leave  
liable to  
fine.

202. (1) Any person summoned to attend as a juror who without lawful excuse fails to attend, or who having attended departs without having obtained the permission of the court or fails to attend after an adjournment of the court after being ordered to attend, shall be liable by order of the Judge to such fine as he thinks fit and in default of payment of such fine to imprisonment until the fine is paid:

Provided that it shall be lawful for the Judge if he thinks fit to remit any fine so imposed.

(2) When any person is so fined in his absence the Registrar shall forthwith send him a written notice requiring him to pay the fine or to show cause before the court within seven days for not paying the same.



**203.** No judgment, sentence, order, verdict, or other proceeding by, of, at, or before the High Court and nothing done in pursuance of the same shall be held invalid or illegal or be in any way called in question by reason of any defect or error in or about the qualification of any juror.

No proceeding to be invalid by reason of defect or error in jury list or panel.

**204.** (1) When the court is ready to commence the trial the accused shall appear or be brought before it and the indictment shall be read and explained to him and he shall be asked whether he is guilty or not guilty of the offence charged.

Arraignment of accused.

(2) If the accused pleads guilty the plea shall be recorded on the indictment and he may be convicted thereon:

Provided that when the offence so pleaded to is one which is punishable with death, the Judge may refuse to receive the plea and cause the trial to proceed in like manner as if the accused person had pleaded not guilty.

(3) If the accused does not plead or if he pleads not guilty jurors shall be chosen to try the case as hereinafter provided.

(4) If the accused pleads not guilty but states that he is willing to plead guilty to a lesser offence for which he might have been convicted on that indictment and the prosecutor is willing to accept such plea, the Judge may if he thinks that the interests of justice will be satisfied by so doing order such plea of guilty to be recorded and may pass judgment thereon accordingly. Thereupon the accused shall be discharged of the offence laid in the indictment and such discharge shall amount to an acquittal.

**205.** (1) The prosecutor or the accused may apply to the Chief Justice for an order requiring a special jury to be summoned to try the case; and the Chief Justice shall if he considers such application just and reasonable make an order accordingly.

Special jury may be summoned.



(2) Such application except when made by or on behalf of the Attorney-General shall be supported by affidavit.

Number of  
jury and  
quorum for  
verdict.

206. (1) The jury shall consist of seven persons.

(2) The verdict returned shall be unanimous or by a majority of not less than five to two.

Empanelling  
of jury.

207. (1) The jury shall be taken from the panel elected by the accused unless the court otherwise directs.

(2) The jury shall be chosen by lot from the panel.

(3) As each juror is chosen his name shall be called and upon his appearance the accused shall be asked by the Registrar if he objects to be tried by such juror.

(4) Objections without grounds stated shall be allowed to the number of two on behalf of the person or all the persons charged.

(5) On the suggestion of the prosecutor without grounds of objection stated any number of jurors called may be ordered by the Judge to stand by until the names of all the jurors summoned and then available for service on the jury have been gone through.

(6) If such names have been gone through without a jury having been made up the names of each of those so ordered to stand by shall be called again and the prosecutor shall be called upon to state the grounds of objection (if any) under the next following section.

(7) If there shall not be a sufficient number of jurors present unchallenged the jury may be made up from such of the bystanders as are not by law disqualified from serving as jurors. Any such bystander shall if called upon be legally bound to serve as a juror.



208. (1) Any objection taken to a juror on any of the following grounds if made out to the satisfaction of the court shall be allowed:—

Grounds of objection.

- (a) some presumed or actual partiality in the juror;
- (b) some personal ground such as deficiency in the qualification required by any law or rule having the force of law for the time being in force;
- (c) his executing any duties of police or being entrusted with police duties;
- (d) his having been convicted of any offence which in the opinion of the Judge renders him unfit to serve on the jury;
- (e) his inability to understand the language in which the proceedings in court are being conducted;
- (f) any other circumstance which in the opinion of the Judge renders him improper as a juror.

(2) Every objection taken to a juror shall be decided by the Judge and such decision shall be recorded and be final.

(3) If the objection is allowed, such juror shall be replaced by another juror.

209. (1) When the jurors have been chosen the Registrar shall address them in the following words: "Gentlemen of the jury, choose your foreman", and they shall thereupon proceed to do so.

Foreman of jury.

(2) If a majority of the jury do not within such time as the Judge thinks reasonable agree in the appointment of a foreman he shall be appointed by the Judge.

(3) When the foreman has been appointed the jurors shall be sworn or affirmed.

(4) The foreman shall preside in the debates of the jury, ask any information from the Judge that is required by the jury or any of the jurors, and deliver the verdict of the jury.

210. (1) If in the course of a trial at any time before the return of the verdict any juror for any sufficient cause is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance or if it

Discharge of jury or juror.



appears that any juror is unable to understand the language in which the evidence is given or when such evidence is interpreted the language in which it is interpreted, the Judge may either order a new juror to be added or discharge the jury and order a new jury to be chosen.

(2) The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar and whenever in the opinion of the Judge the interests of justice so require.

Registrar  
to read  
indictment  
to jury.

211. As soon as the jury have been sworn the Registrar shall in the hearing of the accused read the indictment to the jury and the Judge shall inform them that it is their duty to listen to the evidence and upon that evidence to find by their verdict whether or not the accused is guilty of the charge, or any of the charges if more than one, laid against him, in the indictment, and may also direct them briefly on the presumption of innocence, the burden of proof and such other principles of law as may be relevant to the case.

Case for  
the prosecution.

212. (1) The prosecutor shall then open his case by stating shortly the nature of the offence charged and the evidence by which he proposes to prove the guilt of the accused and shall then examine his witnesses.

(2) When the case for the prosecution is closed, if the Judge considers that there is no evidence that the accused committed the offence he shall direct the jury to return a verdict of "not guilty".

Defence.

213. (1) If the Judge calls upon the accused for his defence, the Judge shall, before any evidence is called by the accused, inform him that he is entitled to give evidence in his own defence and shall tell him in ordinary language what the effect in law will be if he does not give evidence.

(2) If upon the Judge calling for the defence, the accused does not give evidence, it shall be open to the prosecution to comment upon the failure of the accused to give evidence and the jury, in determining whether the accused is guilty of the offence charged, may draw such inferences from such failure as appear proper.



(3) Nothing in this section shall be taken to render the accused compellable to give evidence on his own behalf.

(4) The accused may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution. He may then call his witnesses and after they have given evidence may sum up his case.

(5) If the accused announces his intention not to adduce evidence the prosecutor may address the jury a second time in support of his case for the purpose of summing up the evidence against the accused.

(6) The accused shall be allowed to examine any witness not previously named by him if such witness is in attendance.

214. (1) The prosecutor may by leave of the Judge call witnesses in rebuttal.

Witnesses  
in rebuttal  
and right  
of reply.

(2) The prosecutor shall be entitled to reply on any evidence given by or on behalf of the accused.

(3) When the evidence for the defence consists only of the evidence of the accused or of documentary evidence, the prosecuting counsel shall not be entitled to reply.

(4) In this section, the expression "documentary evidence" includes a statement which is used in evidence to prove that a witness on a former occasion made a statement inconsistent with his present testimony.

215. Whenever the Judge thinks that the jury should view the place in which the offence is alleged to have been committed or any other place in which any other transaction material to the trial is alleged to have occurred the Judge shall make an order to that effect, and the jury shall be conducted in a body under the care of an officer of the court to such place which shall be shown to them by a person appointed by the Judge. Such officer shall not except with the permission of the Judge permit any other person to speak to or hold any communication with any member of the jury, and unless the court otherwise directs they shall when the view is finished be immediately conducted back into court.

View by  
jury of  
place where  
offence  
committed.



Judge to  
take notes  
of evidence.

216. Notwithstanding the provisions of section 143, the Judges shall take in writing notes of the evidence.

Provisions  
relating to jury.

217. (1) If a juror is personally acquainted with any relevant fact it is his duty to inform the court that such is the case whereupon he may be sworn and examined in the same manner as any other witness.

(2) If a trial is adjourned the jury shall attend at the adjourned sittings and every subsequent sitting until the conclusion of the trial.

(3) It shall not be necessary in any case to keep the jury together during an adjournment previous to the close of the Judge's summing up, but it shall be lawful for the Judge if it should appear to him to be advisable in the interests of justice in any trial to require the jury to be kept together during any adjournment.

(4) Where the jury is allowed to separate during the course of any trial the jurors may be first sworn not to hold communication with any person other than a fellow juror upon the subject of the trial during such separation. If any juror shall hold any such communication with any person other than a fellow juror or if any person other than a fellow juror shall hold any such communication with any juror, such juror or person as the case may be shall be deemed to be guilty of a contempt of court and shall be punishable accordingly.

(5) The Judge may if he thinks fit order reasonable refreshment to be procured for the jury by the Registrar at State expense at any time during which they may be kept together either before or after the Judge has summed up.

Charge to  
jury.

218. When the case for the defence and the prosecuting counsel's reply (if any) are concluded the Judge shall charge the jury summing up the evidence and laying down the law by which the jury are to be guided. The Judge's charge to the jury, if the accused so requests, shall be interpreted to him in a language understood by him.

Duty of  
Judge.

219. (1) It is the duty of the Judge—

(a) to decide on all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked



by or on behalf of the parties, and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties;

- (b) to decide upon the meaning and construction of all documents given in evidence at the trial;
- (c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;
- (d) to decide whether any question which arises is for himself or for the jury.

(2) The Judge may if he thinks proper in the course of his summing up express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceeding.

**220.** It is the duty of the jury—

**Duty of jury.**

- (a) to decide which view of the facts is true and then to return the verdict which under such view ought according to the direction of the Judge to be returned;
- (b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not;
- (c) to decide all questions which according to law are to be deemed questions of fact;
- (d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

**221.** (1) After the summing up the jury may retire to consider their verdict.

**Jury may retire to consider verdict.**

(2) If the jury retire they shall be committed to the charge of an officer of the court who shall first take an oath in the prescribed form.

(3) Except with the leave of the Judge no person other than a member of the jury shall speak to or hold any communication with any member of such jury.

**222.** (1) When the jury are ready to give their verdict and are all present the Registrar shall ask the foreman if they are unanimous.

**When jury ready to give verdict.**



(2) If the jury are not unanimous the Judge may require them to retire for further consideration.

(3) After such further consideration for such time as the Judge considers reasonable or if either in the first instance the foreman says that they are unanimous or the Judge has not required them to retire, the Registrar shall say (the jurors being all present): "Do you find the accused person (naming him) guilty or not guilty of the offence (naming it) with which he is charged?"

(4) On this the foreman shall state what is the verdict of the jury.

Verdict to be given on each charge.

223. (1) Unless otherwise ordered by the Judge the jury shall return a verdict on all the charges on which the accused is tried and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

(2) If the Judge does not approve of the verdict returned by the jury he may direct them to reconsider their verdict, and the verdict given after such reconsideration shall be deemed to be the true verdict.

Entry and signing of verdict.

224. (1) The Registrar shall make an entry of the verdict on the indictment and shall then say to the jury the words following or words to the like effect:

"Gentlemen of the jury: attend while your foreman signs your verdict. The finding of you (or of so many of you as the case may be) is that the prisoner A.B. is guilty (or not guilty)".

(2) The foreman shall sign the verdict so entered and the verdict when so entered and signed, but not before, shall be final.

(3) When by accident or mistake a wrong verdict is delivered the jury may before it is signed or immediately thereafter amend the verdict.

Discharge of jury when they cannot agree.

225. If the jury or the required majority of them cannot agree the Judge shall after the lapse of such time as he thinks reasonable discharge them.



226. If the accused is convicted the Judge shall forthwith pass judgment on him according to law:

Judgment in case of convictions.

Provided that if it appears to the Judge expedient he may instead of pronouncing judgment proceed to deal with the accused in the manner provided in subsection (1) of section 258.

227. Whenever the jury is discharged the accused shall be detained in custody or released on bail, as the Judge may think fit, and tried by another jury.

Re-trial of accused.

228. Where the accused is reported by the Registrar of Fingerprints to have previously committed an offence—

Proof of previous convictions.

(a) if the accused pleads guilty to or is convicted of the offence with which he is charged, he shall then be asked whether he admits the previous conviction; and

(b) if he admits the previous conviction, the Judge may proceed to pass judgment on him accordingly;

but if he denies that he has been so previously convicted or refuses to or does not answer such question, the Judge shall proceed to take evidence in proof of such of the convictions as the accused does not admit in the manner provided in subsection (2) of section 170.

229. (1) At any stage of a trial before the return of the verdict, the Attorney-General may, if he thinks fit, inform the court that he will not further prosecute the accused upon the indictment or any charge therein, and thereupon all proceedings on such indictment or charge as the case may be against the accused shall be stayed and he shall be discharged of and from the same.

Discontinuance of prosecutions

(2) The information under this section may either be oral or in writing under the hand of the Director of Public Prosecutions.

(3) The prosecutor may with the consent of the Judge at any stage of the trial before the return of the verdict withdraw the indictment or any charge therein and thereupon all proceedings on such indictment or charge as the case may be against the accused shall be stayed and he shall be discharged of and from the same.



Three Judges of the High Court at Bar may try without jury in certain cases.

**230.** (1) Notwithstanding the preceding provisions of this Law—

- (a) the trial of any person for any offence punishable under Chapter VI of the Penal Code shall be held before the High Court at Bar by three Judges without a jury; and
- (b) the Minister may by Order under his hand direct that the trial of any person for any offence which, by reason of civil commotion, disturbance of public feeling or any other similar cause, the Minister may consider to be appropriately triable in the manner in this section provided, be held before the High Court at Bar by three Judges without a jury.

(2) A trial before the High Court under this section shall proceed as nearly as possible in the manner provided for other trials before the High Court, subject to such modifications as may be ordered by the court or as may be prescribed by rules of court.

(3) A person being tried under this section shall not be admitted to bail by the court except with the consent of the Attorney-General.

#### THE JUDGMENT

mode of delivering judgment.

**231.** The judgment in every trial shall be pronounced in open court either immediately after the verdict is recorded or at some subsequent time of which due notice shall be given to the parties or their attorneys-at-law and the accused shall if in custody be brought up or if not in custody shall be required to attend to hear judgment delivered except when his personal attendance during the trial has been dispensed with and the sentence is one of fine only.

Judgments of courts other than High Court.

**232.** The following provisions shall apply to the judgments of courts other than the High Court upon the verdict of the jury:—

- (1) The judgment shall be written by the Judge who heard the case and shall be dated and signed by him in open court at the time of pronouncing it, and in cases where an appeal lies shall contain the point or points for determination, the decision thereon, and the reasons for the decision.



(2) It shall specify the offence if any of which and the section of the law under which the accused is convicted and the punishment to which he is sentenced, and where it is doubtful under which of two sections or under which of two parts of the same section the offence falls the court shall distinctly express the same and pass judgment in the alternative.

(3) If it be a judgment of acquittal it shall state the offence of which the accused is acquitted.

(4) When a judgment has been so signed it shall not be altered or reviewed by the court which gives such judgment:

Provided that a clerical error may be rectified at any time and any other error may be rectified at any time before the court rises for the day.

(5) The judgment shall be explained to the accused affected thereby and a copy thereof shall be given to him without delay if he applies for it.

(6) The original shall be filed with the record of proceedings.

**233.** (1) When a person is convicted at one trial of any two or more distinct offences, the court may sentence him to the several punishments prescribed therefor which such court is competent to impose, such punishments when consisting of imprisonment, to commence, unless the court orders them or any of them to run concurrently, the one after the expiration of the other in such order as the court may direct:

Sentence in case of conviction for several offences at one trial.

Provided that if the case is tried by a District Court or a Magistrate's Court, the aggregate punishment shall not exceed twice the amount of punishment which such court in the exercise of its ordinary jurisdiction is competent to impose.

(2) For the purposes of appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

**234.** Where an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished in respect of more than one such offence, unless it be so expressly provided. Where anything is an offence falling within two or more separate definitions of any law, or where several acts, of which one would by itself constitute an offence, constitute when combined a different offence, the offender shall not be

Limit of punishment of offence which is made up of several offences.



punished with a more severe punishment than the court which tries him can award for any one of such offences.

Punishment of a person found guilty of one of several offences, where it is doubtful of which of the offences he is guilty.

235. Where judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided, if the same punishment is not provided for all.

Considerations relevant on the nature of punishment.

236. Where any person accused of an offence assists the prosecution by—

- (a) making a confession of his guilt or otherwise making a full and true disclosure of the whole of the circumstances within his knowledge relating to such offence, thereby leading to the conviction of the offenders; or
- (b) pleading guilty to the commission of such offence, and the court is satisfied that such person is sincerely and truly repentant;

then that fact shall be taken into consideration by the court in determining the amount of punishment to be awarded.

#### DEATH

Sentence of death.

237. (1) Before sentence of death is pronounced the accused shall be asked whether he has anything to say why such sentence should not be pronounced against him.

(2) When a person is sentenced to death the sentence shall direct that he be hanged by the neck till he is dead at a place specified in the sentence and on a date to be appointed in that behalf by the President of the Republic.

(3) Where any person convicted of an offence punishable with death, appears to the court to be under the age of sixteen years, the court shall, in lieu of the sentence of death, sentence such person to be detained during the pleasure of the President of the Republic.

(4) Where a woman convicted of an offence punishable with death alleges that she is pregnant, or where the court before whom a woman is so convicted thinks it expedient that the question whether or not the woman is pregnant should be determined, such



question shall be determined by the Judge on such evidence as may be laid before him either by the woman or by the prosecution, and the Judge shall find that the woman is not pregnant unless it is proved affirmatively to his satisfaction that she is pregnant. If the finding is that the woman is pregnant, the court shall pronounce on her, in lieu of the sentence of death, a sentence of imprisonment for life.

### IMPRISONMENT

**238.** (1) No court shall sentence any person to imprisonment for a term which is less than seven days.

Sentence of imprisonment.

(2) Any court may, in any circumstances in which it is empowered by any law to sentence an offender to imprisonment, in lieu of imposing such sentence, order that the offender be detained in the precincts of the court until such hour on the day on which the order is made, not being later than 8 p.m., as the court may specify in the order.

(3) When an offender is liable to be sentenced to imprisonment, the court may direct that such imprisonment shall be either rigorous or simple or that any part of such imprisonment shall be rigorous and the rest simple.

**239.** (1) A court which imposes a sentence of imprisonment on an offender for a term not exceeding two years for an offence may order that the sentence shall not take effect unless, during a period specified in the order, being not less than five years from the date of the order (hereinafter referred to as the "operational period"), such offender commits another offence punishable with imprisonment (hereinafter referred to as "subsequent offence").

Suspended sentences of imprisonment.

(2) A court which imposes a sentence of imprisonment for a term not exceeding six months in respect of one offence on an offender who has had no previous experience of imprisonment shall make an order under subsection (1) unless—

(a) the offence involved the use or threat of violence, or the use or possession of a firearm, an explosive or an offensive weapon;

(b) the offence is one in respect of which a probation order or order for conditional discharge was originally made;



(c) the offender was subject to a suspended sentence at the time the offence was committed; or

(d) the court is of opinion that, for reasons to be stated in writing, it would be inappropriate in the circumstances of the case, to deal with the offender in terms of this subsection.

(3) A court which imposes a suspended sentence on any person in respect of one offence shall not impose a sentence of imprisonment in respect of a different offence, in the same proceeding.

(4) On imposing a suspended sentence the court shall explain to the offender in ordinary language his liability under section 240 if during the operational period he commits a subsequent offence.

(5) If the offender does not commit a subsequent offence during the operational period, the suspended sentence imposed on the offender shall be deemed, for all purposes, never to have been imposed.

(6) Before a suspended sentence is imposed by any court, the court shall make an order for the identification and finger printing of the offender.

When offender  
subject to sus-  
pended senten-  
ce is con-  
victed of sub-  
sequent offence.

240. (1) Where an offender is convicted of a subsequent offence committed during the operational period, the court which so convicts him shall order that the suspended sentence shall take effect either immediately, or upon the expiration of a term of imprisonment which may have been imposed on the offender by such court in respect of the subsequent offence:

Provided that the court may, in an appropriate case, having regard to the extenuating circumstances under which the subsequent offence was committed or to the trivial nature of such offence—

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

(b) vary the original order under the preceding section by substituting for the operational period specified therein an operational period expiring not later than five years from the date of the variation; or

(c) make no order with respect to the suspended sentence;

and in every case where the court acts under this proviso, it shall state its reasons therefor.



(2) Where a court deals with an offender in respect of a suspended sentence passed by another court, the court dealing with the offender shall notify the court which passed the sentence of the manner in which the offender was dealt with.

(3) An order made by a court under this section in respect of a suspended sentence shall, for the purpose of preferring any appeal, be deemed to be a sentence passed on the offender by such court for the offence for which the suspended sentence was originally passed.

241. (1) Where during the operational period of a suspended sentence any offender is convicted by a court of a subsequent offence but such court not being aware of the suspended sentence does not deal with the offender in respect of such sentence, any court may, on receipt of information relating to such suspended sentence and the conviction for the subsequent offence, issue a summons requiring such offender to appear at the place and time specified therein or may issue a warrant for his arrest.

Discovery of further offences

(2) A summons or warrant issued under subsection (1) shall direct the offender to appear or to be brought before the court by which he was convicted in respect of the subsequent offence and upon such offender appearing or being so brought, the court shall proceed to deal with him under subsection (1) of section 240 in respect of the suspended sentence.

#### WHIPPING

242. (1) Subject to the provisions of the Children and Young Persons Ordinance, when a person is convicted of any offence punishable by whipping, or of any two or more distinct offences, any two at least of which are punishable by whipping, the sentence or the combined sentences, as the case may be, shall not exceed twenty-four strokes with a rattan.

Sentence of whipping.

(2) No female shall in any case be punished with whipping. Nor shall any person sentenced to death or imprisonment for more than five years be punished with whipping.

#### FINE

243. (1) Whenever a court imposes a sentence of fine, it shall—

Sentence of fine.

(a) consider, *inter alia*, the means of the offender so far as they appear or are known to the court, in order to fix the amount of the fine,



- (b) unless for good and reasonable grounds it prescribes a longer limit, require the fine to be paid within two months of the date of the order,
  - (c) specify the appropriate bank to which the fine shall be paid, and
  - (d) furnish the accused with such number of payment forms as he may require, each containing three detachable perforated parts on which shall be written, printed or otherwise recorded the number of the case, the name of the accused and the amount of the fine.
- (2) The fine may be paid in instalments so however that the amount of each instalment so paid on any one occasion shall not be less than ten rupees.

Payment of fine.

**244.** The following provisions shall apply in respect of the payment of fines to the appropriate bank—

- (a) every payment shall be made in cash and shall be accompanied by a payment form;
- (b) a payment may be made by the accused in person or by another person for and on behalf of such accused;
- (c) the manager or other officer of the bank to whom the payment is made shall sign or frank the three detachable perforated parts of the payment form in token of payment and shall deliver one part to the payer and retain the other two parts;
- (d) on or before the first and fifteenth days of each month, the bank shall transmit to the court a statement of all payments made to the credit of its account during the immediately preceding fifteen days together with one part of each payment form.

Default of payment of fine.

**245.** (1) If at the end of the prescribed period any part of the fine remains unpaid, the court shall forthwith secure the attendance before it of the accused and shall, after such inquiry as it considers fit, make all or any of the following orders—

- (a) issue a warrant for the recovery of the amount due by the seizure and sale of any property, movable or immovable wherever situated, belonging to the accused;



- (b) make an order (hereinafter referred to as an "attachment of salary order") requiring the person to whom the order is directed, being a person appearing to be the accused's employer, to deduct, for such period as may be specified in the order, such amount from the accused's salary as may be specified and forthwith to remit that amount to court;
- (c) require the accused to perform unpaid work for the community (hereinafter referred to as "community service") for a period computed on the basis of one month for every one hundred rupees due;
- (d) sentence the accused to imprisonment for a period computed on the basis of one month for every one hundred rupees.

(2) Notwithstanding the preceding provisions of this section, the court may at any time, upon application made to it and on being satisfied that good and reasonable grounds exist, extend the period prescribed for the payment of the fine.

**246.** (1) Before an attachment of salary order is made, the Judge shall notice the person on whom he proposes to serve the order to show cause, if any, why such order should not be made and to require him to furnish to the court, within such period as may be specified in such order, the salary particulars of the accused.

Attachment of  
salary order.

(2) The Judge may also by an order served on the accused require him to furnish to the court, within such period as may be prescribed, a statement specifying—

- (i) the name and address of his employer, or of his employers, if he has more than one employer;
- (ii) such particulars as to his salary as may be within his knowledge; and
- (iii) such other particulars as are required or necessary to enable his employer or employers to identify him.

(3) A document purporting to be such a statement as is mentioned in subsection (2) shall, in any proceedings in any court, be received in evidence and be deemed to be such a statement without further proof unless the contrary is shown.



(4) In determining the amount to be deducted from the salary, the Judge shall have regard to the resources and needs of the accused and the needs of any of his dependants.

(5) An attachment of salary order shall not come into force until the expiration of fourteen days from the date on which a copy of the order is served on the person to whom the order is directed.

(6) A person to whom an attachment of salary order is directed shall, subject to the provisions of this section, comply with the order or, if the order is subsequently varied by court, with the order as so varied.

(7) For the purposes of this section—

(a) where the accused is a State officer, the head of the department to which he is for the time being attached shall be deemed to be his employer ; and

(b) where the accused is employed in any local authority, the Commissioner, if it be a Municipal Council, or the Secretary, if it be an Urban Council or a Town Council, or the Chairman, if it be a Village Council, as the case may be, shall be deemed to be his employer.

(8) Where on any occasion on which any deductions have to be made from the salary of an accused in pursuance of an attachment of salary order, there are in force two or more attachment of salary orders relating to such salary, then, for the purpose of complying with this section the employer shall—

(a) deal with such orders according to the respective dates on which they came into force, disregarding any subsequent order until any earlier order has been dealt with; and

(b) deal with any subsequent order as if the salary to which such order relates was the residue of the accused's salary after making any payments in pursuance of an earlier order.

(9) An employer who, in pursuance of an attachment of salary order, makes any payment to court under this section shall forthwith give to the accused a statement in writing specifying the amount deducted from his salary in pursuance of such order.



(10) Any employer who fails or neglects to comply with an attachment of salary order shall be liable on conviction by a Magistrate's Court to a fine:

Provided that it shall be a defence for an employer charged with failing or neglecting to comply with an attachment of salary order to prove that he took all reasonable steps to comply with such order.

(11) For the purposes of this section, the expression "salary" includes all allowances and wages.

247. (1) A court shall not make an order in respect of an offender requiring him to perform community service (hereinafter referred to as the "community service order") unless the offender consents and the court has been notified by the Minister that arrangements exist for persons who reside within the jurisdiction of such court to perform work under such orders.

Community  
service  
order.

(2) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the periods of service shall be concurrent with or additional to those specified in any other of those orders.

(3) The performance of community service shall be in accordance with regulations made from time to time by the Minister.

248. (1) A community service order shall be in the prescribed form and shall be delivered to the relevant officer who shall, upon receipt of the said order, require the offender named therein to execute a bond for his appearance at such place on such date and time and for such period as may be specified therein.

Obligations of  
persons subject  
to community  
service order.

(2) An offender in respect of whom a community service order is in force shall—

(a) report to the relevant officer and subsequently from time to time notify him of any change of address; and

(b) perform for the period specified in the order such work at such times as he may be instructed by the relevant officer.



Revocation of  
community  
service order.

249. If at any time while a community service order is in force in respect of an offender—

- (a) it is proved to the satisfaction of the court that such offender has failed without reasonable excuse to comply with any of the requirements of such order, the court may revoke the order and deal with the offender in any manner in which he could have been dealt with had the order not been made;
- (b) it appears to the court, on the application of the offender or the relevant officer, that it would be in the interests of justice to do so having regard to circumstances which may have arisen since the order was made, the court may revoke the order or revoke it and deal with the offender in any manner in which he could have been dealt with had the order not been made.

#### CONDITIONAL RELEASE

Release of  
offenders after  
admonition or  
conditionally.

250. (1) Where any court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to discharge the offender conditionally as hereinafter provided, the court may, without proceeding to conviction, either—

- (a) order such offender to be discharged after such admonition as to the court shall seem fit; or
- (b) discharge the offender conditionally on his executing a bond, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order of the court.

(2) Where any person has been convicted on indictment of any offence punishable with imprisonment, and the court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circum-



tances under which the offence was committed, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient to discharge the offender conditionally as hereinafter provided, the court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his executing a bond, with or without sureties, to be of good behaviour, and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(3) An order under subsection (1) shall, for the purpose of re-vesting or restoring stolen property, or in respect of matters relating to the restitution or delivery of property to the owner, have the like effect as a conviction.

(4) A bond executed under this section may contain such conditions as the court may, having regard to the particular circumstance of the case, order to be inserted therein with respect to all or any of the following matters:—

- (a) for prohibiting the offender from associating with undesirable persons, or from frequenting undesirable places;
- (b) as to abstention from intoxicating liquor, where the offence was drunkenness or an offence committed under the influence of drink;
- (c) generally for securing that the offender should lead an honest and industrious life;
- (d) providing that the offender, with his surety or sureties, if any, shall appear in chambers before the Judge of the court, at such intervals as may be specified in the order.

(5) The court before which any person is bound under this section to appear for conviction or sentence may, after notice to the offender, vary the conditions of the bond, and may, on being satisfied that the conduct of that person has been such that the bond should be discharged, discharge the bond.

(6) If the court before which an offender is bound under this section to appear for conviction or sentence, or any other court, is satisfied by information on oath that the offender has failed to observe any of the conditions of his bond, it may secure the attendance before it of such offender in order that he may be dealt with according to law.



(7) A court before which a person is bound by his bond to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his bond, may forthwith, without further proof of his guilt, convict and sentence him for the original offence; or, if the case was one in which the court in the first instance might, under the Children and Young Persons Ordinance, have ordered the offender to be sent to an approved or certified school and the offender is still apparently under the age of sixteen years, make such an order.

### PROBATION

Power to make  
probation  
order.

251. (1) Where any person is convicted of any offence, and it appears to the court, having regard to all the circumstances of the case, including the nature of the offence and the character of the offender, that it is expedient so to do, the court may make a probation order in respect of the offender instead of sentencing him to any other punishment which the court may have power to impose.

(2) Certified copies of the probation order and of any revised order, shall be delivered by court to the offender and to the probation officer named therein.

(3) The court may require the offender to execute a bond, with or without sureties, to observe the conditions of the order and to appear before the court whenever required so to do under the provisions of this Law.

Circumstances  
in which  
probation order  
may be made.

252. (1) Before making a probation order in respect of any offender, the court shall consider all such information relating to the character, antecedents, environment and mental or physical condition of the offender as may, at the instance of the court, be furnished orally or in writing by a probation officer of the probation unit for the judicial zone, district or division in which the offence was committed, or such other probation officer as may be authorized by the Commissioner of Probation Services.

(2) No probation order shall be made by a court unless—

(a) the court has briefly and in simple language communicated to the offender the effect of the proposed order and of the conditions to be included therein, and explained that if he



fails to observe any such condition or commits another offence, he will be liable to be sentenced for the original offence ; and

- (b) the offender has given his written consent to the making of the order and agreed to observe the conditions thereof :

Provided that this subsection shall not apply if the offender has not attained the age of fourteen years.

(3) For the purpose of enabling any information or report to be furnished under this section, the court may postpone the determination of the case, and may make order remanding the offender or releasing him on bail for a period not exceeding twenty-one days in the first instance. Where the offender is remanded, he shall be detained in a remand home or in such other place as may be appointed in that behalf by the Minister and notified in the *Gazette*. Where the offender is released on bail, it shall be a condition of the bond that the offender shall report in person to a probation officer named therein within twenty-four hours of the release and at such other times as such officer may require.

(4) Where a report is made to court by a probation officer and where a probation order is not considered suitable, such probation officer shall, if so required, assist the court in determining the most suitable methods of dealing with the offender.

(5) The court may, in any case where a written report is made by a probation officer under subsection (1) in respect of any offender, direct that a copy of such report be given to the offender and hear any such evidence as may be tendered by the offender or the probation officer in relation to any matter referred to in such report.

**253.** (1) Every probation order shall contain conditions requiring that the offender—

Conditions in  
probation order.

- (a) shall, within twenty-four hours of making of the order, present himself before the probation officer appointed to undertake the supervision of the offender, at such place as may be specified in the order ;

- (b) shall present himself before such probation officer at such place and at such times (not being less than once in such month) as may



from time to time be specified by that officer, or shall, if required so to do by that officer in relation to any particular occasion, make a report in writing to that officer in lieu of presenting himself before him on that occasion;

(c) shall reside at premises approved by such probation officer, and shall not change his place of residence or undertake employment or change his employment, if any, except with the prior written approval of such officer;

(d) shall be of good behaviour and obey all such written or oral orders or directions as may be issued to him by such probation officer for the purpose of securing the good conduct and welfare of the offender.

(2) Without prejudice to the provisions of subsection (1), the court may insert in any probation order such conditions as the court may consider necessary, including a condition that the offender shall reside, during a specified period, in a household, home or institution approved by the Commissioner of Probation Services for the purpose. The period so specified shall not exceed six months, except in a case where the court considers residence for a longer period to be necessary for any purpose.

(3) Where a condition of residence in any household, home or institution approved by the Commissioner is made in any probation order, the court may order the offender, or if the offender is below the age of sixteen years, his parent, guardian or surety, if any, to contribute towards the maintenance of the offender in such household, home or institution.

(4) Where an order in terms of subsection (3) is made, the Commissioner shall have power to determine the amount payable from time to time, having regard to the circumstances in each case.

**254.** (1) A probation order shall be in force for such period as may be specified by the court in the order, not being less than one year or more than three years from the date on which the order is made.

(2) Where any probation order has been expressed to be in force for any period less than three years, the court by which the order was made may, if it considers it expedient so to do, whether on application

Duration of  
probation  
order.



made to the court for the purpose by the Commissioner of Probation Services or a probation officer or otherwise, summon the offender and his surety, if any, and extend the period specified in the order, so, however, that the duration of the order shall not in any case be extended beyond a period of three years from the date on which the order was made.

255. Upon written application made for the purpose by the offender or by or on behalf of the Commissioner of Probation Services, and after consideration of such representations as may be made by the offender and by or on behalf of the Commissioner, the court by which a probation order was made or the Magistrate's Court having jurisdiction in the place where the offender resides—

Modification or  
cancellation of  
probation  
order.

- (a) may, at any time while such probation order is in force, make an order amending the probation order by the deletion or modification of any condition specified in that order or by the insertion of a new condition therein; and
- (b) may, after the expiry of a period which is not less than one-half of the period for which the probation order is expressed to be in force, make an order cancelling such probation order or reducing the period of the duration of such order.

256. (1) If the court by which a probation order was made, or the Magistrate's Court having jurisdiction in the place in which the offender resides, is satisfied, by information on oath or on the written report of the Commissioner of Probation Services or of a probation officer, that the offender has been convicted of any offence committed while the order was in force or has failed to observe any condition inserted in the order, the court may secure the attendance before it of the offender and the surety, if any.

Non-compliance  
with probation  
order.

(2) If it is proved to the satisfaction of the court that the offender has been convicted of any offence committed while the order was in force, the court may cancel the probation order and impose or make any such sentence or order which it could impose or make if the offender had just been convicted before the court of the original offence.



(3) If it is proved to the satisfaction of the court that the offender has failed to observe any condition of the order, the court may—

(a) without prejudice to the continuance in force of the probation order—

(i) impose on the offender a fine not exceeding one hundred and fifty rupees:

Provided that if the offender is below the age of fourteen years such fine may be imposed on the parent or guardian of the offender;

(ii) if the offender is below the age of sixteen years, remand such offender for a period not exceeding twenty-one days to a Juvenile Detention Centre, Remand Home (within the meaning of the Children and Young Persons Ordinance), or to such other place as may be appointed by the Minister and notified in the *Gazette*; or

(b) cancel the probation order and impose or make any such sentence or order which it could impose or make if the offender had just been convicted before that court of the original offence.

(4) The powers conferred by subsection (2) or subsection (3) on the Magistrate's Court having jurisdiction in the place in which the offender resides shall not be exercised by that court unless—

(a) the probation order in respect of that offender had originally been made by that Magistrate's Court; or

(b) the court by which the probation order had originally been made, by writing under the hand of any Judge or Magistrate thereof, consents to the exercise of such powers by that Magistrate's Court.

(5) In any case where any sentence or order is imposed or made in respect of any offender under subsection (2) or subsection (3), the court may, instead of requiring his surety, if any, to pay the sum for which he is bound, require him to pay a part only of such sum or discharge him from the liability to make any such payment.



(6) Where a Magistrate is satisfied, after due inquiry following information in writing or on oath that any person has knowingly interfered with, assisted, or induced any offender to commit a breach of any of the conditions of a probation order or to commit a further offence, such person shall be guilty of an offence and shall be liable to a fine or imprisonment or both.

257. Where a probation order is made in respect of any person upon his conviction of any offence, such conviction shall be disregarded for any purpose whatsoever other than for the purpose of the proceedings in which the probation order is made or for any subsequent proceedings which may be taken against the offender in respect of such probation order:

Effect of probation order.

Provided that if the offender is subsequently sentenced for the original offence, this section shall cease to apply, and he shall be deemed for the purpose of any written law to have been convicted on the date of the sentence, and be liable to any disqualification or disability imposed upon convicted persons in respect of an offence committed after previous conviction.

### SECURITY FOR KEEPING THE PEACE

258. (1) Whenever any person is convicted of any offence which involves a breach of the peace or of committing criminal intimidation by threatening injury to person or property, or of being a member of an unlawful assembly, and the court before which such person is convicted is of opinion that it is proper to require such person to execute a bond for keeping the peace, such court may at the time of passing sentence on such person order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding five years as it thinks fit to fix.

Security for keeping the peace on conviction.

(2) If the conviction is set aside on appeal or otherwise the bond so executed shall become void.

259. (1) If at the conclusion of any trial the court is of opinion that it is expedient so to do, for the purpose of preventing a breach of the peace, the court may require the accused, notwithstanding that he is not convicted, to execute a bond in a sum proportionate

Security for keeping the peace on acquittal.



to his means, with or without sureties, for keeping the peace during such period not exceeding one year at it thinks fit to fix. The court shall record the reasons for making such order.

(2) An appeal shall lie against any order made under this section:

Provided, however, that no such appeal shall be entertained unless the bond has at the time of the filing of the appeal been executed in accordance with the order, and such bond shall continue in full force and effect while such appeal is pending.

#### PAYMENT OF COSTS AND COMPENSATION

Payment of  
costs and  
compensation  
upon  
acquittal.

260. (1) Whenever a Judge acquits or discharges the accused and declares that the complaint was frivolous or vexatious, it shall be lawful for such Judge to order the complainant to pay State costs in a sum determined by the Judge. He may, in addition, at the same time, order the complainant to pay to the accused, or to each of the accused when there are more than one, such compensation as he shall think fit, which sum if paid or recovered shall be taken into account in any subsequent civil suit relating to the same matter.

(2) Whenever any person causes a police officer to arrest another person, if it appears to the Judge who takes cognizance of the case that there was no sufficient ground for causing such arrest, he may award such compensation to be paid by the person so causing the arrest to the person so arrested for his loss of time and income and expenses in the matter as the Judge thinks fit. If more persons than one are arrested, the Judge may in like manner award to each of them such compensation as he shall think fit. The payment of such compensation shall be no bar to an action for false imprisonment.

(3) Before making any order under this section the Judge shall record and consider any objection which the complainant may urge against the making of the order, and if he makes such order, he shall record his reasons for making the same.

(4) Any sum awarded under this section shall be recoverable as if it were a fine imposed by the court.



261. (1) Whenever any person is convicted of any offence or where the court holds the charge to be proved but proceeds to deal with the offender without convicting him, the court may order the person convicted to pay within such time or in such instalments as the court may direct, such sum by way of compensation to any person affected by the offence as to the court shall seem fit. Any sum awarded under this subsection shall be recoverable as if it were a fine imposed by the court:

Payment of costs and compensation upon conviction.

Provided that if the offender is under the age of sixteen years and it appears to the court that the parent or guardian of the offender has condoned to the commission of the offence, the court may order the payment to be made by the parent or guardian.

(2) Whenever a court imposes a fine or passes a sentence of which fine forms a part, the court may order the whole or any part of the fine recovered to be applied—

- (a) in defraying the expenses properly incurred in the prosecution; or
- (b) in compensation for the injury caused by the offence committed.

(3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

#### DISPOSAL OF PROPERTY

262. (1) When a trial is concluded the court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence.

Disposal of property regarding which offence committed.

(2) When an order is made under this section in a case in which an appeal lies such order shall not (except when the property is livestock or is subject to speedy and natural decay) be carried out until the period allowed for lodging an appeal has elapsed, or when an appeal is lodged, until such appeal has been disposed of.



(3) In this section the term "property" includes in the case of property regarding which an offence appears to have been committed not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

Destruction of  
certain  
matter,

**263.** (1) On a conviction in respect of any obscene or defamatory publication, the court may order the destruction of all the copies of the thing in respect of which the conviction was had and which are in the custody of the court or remain in the possession or power of the person convicted.

(2) The court may in like manner on a conviction in respect of any noxious or adulterated food, drink, drug or medical preparation, order the thing in respect of which the conviction was had to be destroyed.

Power to restore  
possession of  
immovable  
property.

**264.** (1) Whenever a person is convicted of an offence attended by criminal force and it appears to the court that by such force any person has been dispossessed of any immovable property, the court may if it thinks fit order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

#### MISCELLANEOUS

Non-compliance  
with provisions  
of Law.

**265.** If any court before which a deposition of a witness or a statement of an accused recorded under the provisions of this Law is tendered in evidence finds that the provisions of this Law have not been fully complied with by the Judge recording the evidence or statement or the officer attesting the same, it may take evidence that such witness or accused duly gave the evidence or made the statement recorded; and notwithstanding section 91 of the Evidence Ordinance such evidence or statement shall be admitted if the error has not prejudiced the accused in regard to his defence on the merits.



266. If any person affected by or interested in a judgment of a criminal court desires to have a copy of the record or any part thereof he shall on applying for such copy be furnished therewith by the court upon payment therefor of such reasonable sum not exceeding twelve cents for a folio of one hundred and twenty words as the court may direct, unless the court for some special reason thinks fit to furnish it free of cost.

Copies of  
record.

### EXECUTION OF JUDGMENT

267. Every warrant for the execution of any sentence may be issued either by the Judge who passed the sentence or by his colleague or successor in office.

Who may issue  
warrant.

268. (1) Every warrant of commitment shall be delivered to the superintendent of the prison who shall forthwith take custody of the person named therein, and the said warrant shall be full authority for so doing, and for detaining the said person for the purpose, and for carrying into execution any sentence specified in the warrant.

Procedure on  
issue of warrant  
of commit-  
ment.

(2) The superintendent shall, upon delivery to him of the person named in the warrant, detain him and keep him safely in custody until the sentence has been carried into execution and shall otherwise comply with the terms of the warrant and with any order lawfully issued to him by any court with respect to such person.

(3) When any person has been sentenced to be detained during the pleasure of the President of the Republic, he shall be liable to be detained in such place and under such conditions as the President may from time to time direct, and while so detained shall be deemed to be in legal custody.



Execution of  
sentence of  
death.

269. (1) After sentence of death has been pronounced, a warrant shall be made out and signed by the Judge for the committment of the person sentenced to the custody of the superintendent of the prison at which the sentence is required to be carried out.

(2) Within fourteen days after sentence of death has been pronounced and notwithstanding that any appeal to the Supreme Court may have been made, the Judge who presided at the trial or in case of his absence or inability another Judge shall forward to the President of the Republic a copy of the notes of evidence taken on the trial with a report in writing signed by him setting out his opinion whether there are any and what reasons why the sentence of death should not be carried out.

(3) If the President determines that the sentence should be carried out, he shall appoint a date and time for the execution of the sentence.

Execution of  
sentence of  
imprisonment.

270. (1) Where the accused is sentenced to imprisonment the court passing the sentence shall forthwith make out a warrant signed by the Judge who passed sentence and dated of the day when the sentence was passed. Every such warrant shall be in the prescribed form and shall be addressed to the superintendent of any prison in that zone, district or division:

Provided that such warrant may be signed by the colleague or successor in office of such Judge.

(2) When a person actually undergoing imprisonment is sentenced to imprisonment, such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced.

Execution of  
sentence of  
whipping.

271. (1) Subject to the provisions of the Children and Young Persons Ordinance, a sentence of whipping shall be executed at such time and place as the Minister shall direct.

(2) A sentence of whipping shall not be carried out until after the expiration of ten days from the date of pronouncement thereof, or if an appeal is presented, until the order of the Supreme Court shall have been notified to the accused.



(3) The punishment of whipping shall not be inflicted unless a medical officer certifies that the offender is in a fit state of health to undergo the punishment. If during the execution of a sentence of whipping the medical officer present certifies that the offender is not in a fit state of health to undergo the remainder of the punishment, the whipping shall be finally stopped.

(4) In any case in which a sentence of whipping is wholly or partially prevented from being carried into execution the offender shall be kept in custody till the court which passed the sentence can revise it; and the said court may at its discretion either order the discharge of such offender or sentence him in lieu of whipping or in lieu of so much of the sentence of whipping as was not carried out to imprisonment for any term not exceeding that which the court is competent to impose, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

272. Any money (other than a fine) payable by virtue of any order made under this Law shall be recoverable as if it were a fine.

Money ordered  
to be paid as  
fines

273. (1) No prisoner shall by reason of his escape from prison avoid any unexpired term of imprisonment or any other punishment to which he was liable under any sentence passed on him prior to his escape.

Sentence of  
escaped prisoners  
or absconding accused

(2) When a sentence is passed on an accused who was absent at his trial or was evading arrest or absconding, such sentence shall take effect immediately upon his arrest.

274. When a sentence has been fully executed the officer executing it shall return the warrant to the court from which it issued with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of  
warrant on  
execution  
of sentence



## INTERPRETATION

## Interpretation

275. In this Chapter, unless the context otherwise requires—

(1) “discharge” means the discontinuance of criminal proceedings against an accused, but does not include an acquittal.

“offence” means any act or omission made punishable by any written law in Sri Lanka.

“officer in charge of a police station” includes, when the officer in charge of the police station is absent therefrom or unable owing to illness to perform his duties, a police officer present at the station who is next in rank of such officer.

“Information Book” includes a crime pad maintained by the Criminal Investigation Department for the purpose of recording statements.

“police officer” means a member of the police force established by law and includes police reservists and grama sevakas empowered in writing by Government Agents to perform police duties.

“police station” includes a police post, the Criminal Investigation Department and the provincial bureaux of investigation.

“prescribed” means prescribed by the Minister by Order published in the *Gazette*.

“writing” and “written” include printing lithography, photography and engraving and every other mode in which words or figures can be expressed on paper or on any substance.

“Government medical officer” includes any officer of the Department of Forensic Medicine of any faculty of medicine of the University of Sri Lanka.



- (2) Words which refer to acts done extend to illegal omissions.
- (3) All words and expressions used herein and defined in the Penal Code and not herein before defined shall be deemed to have the meanings respectively attributed to them by that Code.
- (4) Whenever any person is directed or required to sign a document, the signature must be written with a pen or other like instrument and must not be affixed or impressed by a stamp or other like means.
- (5) Where a power, jurisdiction or right is conferred, or a duty is imposed, on the Attorney-General, Solicitor-General, Director of Public Prosecutions, State Counsel, Inspector-General of Police, Government Agent, Government Analyst, Government Examiner of Questioned Documents, Registrar of Fingerprints, or the Registrar of a Court, then, such power, jurisdiction or right may be exercised and the the duty performed by the holder for the time being of the office or his Deputy or Assistant or any person appointed to act in such office.



## CHAPTER III

## TESTAMENTARY PROCEDURE

Public Trustee  
to be sole com-  
petent authori-  
ty in testamen-  
tary matters.

276. It is hereby declared that the Public Trustee of Sri Lanka shall be the sole competent authority—

- (1) for the purpose of the grant of probate and all letters of administration in respect of the property of deceased persons;
- (2) for the recognition and resealing of foreign probates in Sri Lanka; and
- (3) for dealing with all other matters relating to or connected with the grant of probate and letters of administration.

Duty to report  
death.

277. When any person shall die leaving property in Sri Lanka amounting to or exceeding in value twenty thousand rupees, it shall be the duty of the widow, widower, or next of kin of such person, within three months of the date of death to report such death to the Public Trustee, stating the date and place of such death.

Duty to pro-  
duce will.

278. (1) When any person shall die leaving a will in Sri Lanka, it shall be the duty of the person in whose keeping or custody such will shall have been deposited, or who shall find such will after the testator's death, to forward the same to the Public Trustee.

(2) The original or a copy of the will may be so forwarded, and shall be accompanied by a declaration in the prescribed form stating the date and place of the death and the nature and value of the property of the testator.

No action  
maintainable to  
recover proper-  
ty of testator or  
intestate of  
over twenty  
thousand rupees  
unless probate  
or administra-  
tion has been  
granted.

279. No action shall be maintainable for the recovery of any property, movable or immovable, in Sri Lanka belonging to or included in the estate or effects of any person dying testate or intestate in or out of Sri Lanka, within twenty years prior to the date of the institution of the said action, where such estate or effects amount to or exceed in value the sum of twenty thousand rupees unless grant of probate or letters of administration shall first have been issued. In the event of any such property being transferred in any manner other than under the provisions of paragraph (c) of section 296 or under section 28 of the



Estate Duty Ordinance without such probate or administration being so first taken out, every transferor and transferee of such property shall be guilty of an offence, and in addition to any penalty imposed under this Law, it shall be lawful for the State to recover from such transferor and transferee or either of them, such sum as would have been payable to defray estate duty. The amounts so recoverable shall be a first charge on the estate or effects of such testator or intestate in Sri Lanka, or any part of such estate or effects, and may be recovered by action accordingly.

#### INTERIM ORDER

280. (1) When any person shall die leaving a will under or by virtue of which any property in Sri Lanka is in any way affected, the person appointed executor therein or any other person interested, either by virtue of the will or otherwise, in having the property of the testator administered, may apply to have the will proved and to have probate thereof or to obtain grant of administration of the estate with copy of the will annexed, as the case may be, issued to him.

Application for  
probate or ad-  
ministration.

(2) If the executor or any other person who would be entitled to administration is absent from Sri Lanka, a grant of letters of administration with or without the will annexed, as the case may require, may be made to the duly constituted attorney of such person.

(3) Every application under this section shall be made to the Public Trustee, in the prescribed form within six months of the date of the deceased and shall contain the following particulars:—

- (a) the relevant fact of the making of the will;
- (b) the date and place of the death of the testator;
- (c) the intestate heirs of the deceased to the best of the applicant's knowledge, and if any of such heirs are minors, the name of a suitable adult person whose interest is not adverse to that of the minor, who may be appointed guardian;
- (d) where the testator at the date of his death was not domiciled in Sri Lanka, the country or place in which according to the applicant's information and belief he died domiciled;



- (e) the capacity in which the applicant seeks to prove the will;
- (f) the relevant facts entitling the Public Trustee to hold the will declared proved.

(4) Where any person appointed executor of the estate of a deceased person is not willing or is not competent to act as such, he shall notify that fact forthwith or in any event before the expiry of six months from the date of death of the deceased, to the Public Trustee in writing and every such notification shall be accompanied by a statement in the prescribed form containing the particulars referred to in paragraphs (a), (b), (c) and (d) of subsection (3).

Application for  
administration  
in case of  
intestacy.

281. (1) When any person shall die leaving property in Sri Lanka but without making a will or where the will cannot be found, the widow, widower, next of kin of such person or any other person interested in having the estate of such intestate administered, may apply for a grant to himself of letters of administration.

(2) Every application under this section shall be made to the Public Trustee in the prescribed form within six months of the date of death of the deceased and shall contain the following particulars:—

- (a) absence of any will and such facts, if any, as are relevant thereto;
- (b) date and place of the death of the deceased;
- (c) the heirs of the deceased, to the best of the applicant's knowledge, and if any of such heirs are minors, the name of a suitable adult person whose interest is not adverse to that of the minor, who may be appointed guardian;
- (d) where the deceased at the date of his death was not domiciled in Sri Lanka, the country or place in which according to the applicant's information and belief he died domiciled; and
- (e) the capacity in which the applicant claims letters of administration and the facts which justify his doing so.



282. (1) Every application under section 280 or section 281 shall be accompanied by a declaration in the prescribed form of the total estate of the deceased. Such declaration shall—

Declaration  
of assets,  
assessments  
of estate  
duty, &c.

(a) be in triplicate;

(b) contain a full and true statement of particulars relating to such total estate including the value thereof; and

(c) be accompanied by two certified copies of the will, if any, of the deceased.

(2) The Public Trustee shall, upon receipt of the documents referred to in subsection (1), forthwith forward to the Commissioner of Inland Revenue the two copies of the declaration and one copy of the will.

(3) An Assessor shall, within one year after the receipt by him of such particulars as may be necessary to assess the estate duty payable in respect of the estate of the deceased and to determine the person or persons by whom the whole or a part of such duty is payable, assess the estate duty payable in respect of the estate.

(4) On payment of the estate duty assessed under subsection (3) or on such security as the Commissioner may deem sufficient being furnished for the payment of such estate duty, the Commissioner shall issue a certificate to that effect.

(5) Whenever it appears to an Assessor that the amount which any person is liable to pay as estate duty has been assessed under subsection (3) at less than the proper amount, the Assessor may make an additional assessment of the amount which such person is, in the opinion of the Assessor, liable to pay:

Provided that no such additional assessment shall be made after the expiry of two years from the date of the grant of probate or letters of administration.



(6) Nothing in this section shall prevent an Assessor from acting under any such provision of the Estate Duty Ordinance as is not inconsistent with the provisions of this section.

Interim order.

283. (1) If the Public Trustee is satisfied that the material averments of an application made under section 280 or section 281 are *prima facie* proved, he shall make an interim order declaring the applicant's status accordingly, appointing a guardian if necessary and making the grant prayed for.

(2) Every interim order made under this section shall be served on the applicant, on the heirs of the deceased and on such other persons as the Public Trustee shall consider necessary. The interim order shall state that, unless cause is shown to the contrary on or before the date specified therein, such order shall be made final.

(3) Every interim order made under this section shall be advertised by the applicant once in each of two daily newspapers selected by the Public Trustee. Proof of such advertisement shall be furnished by the applicant by the delivery of a copy of each of the relevant newspapers to the Public Trustee before such date as may be specified by him in the interim order.

#### FINAL ORDER

Objections to  
interim order.

284. (1) If within the specified period any person upon whom the interim order has been served, or any other person appearing to be interested in the administration of the estate of the deceased, objects by affidavit for reasons stated therein to the interim order being made final, the Public Trustee shall refer the matter in dispute for adjudication to the appropriate District Court.



(2) Every reference under this section shall be in writing and shall set out concisely the issues that require adjudication by the court. The Public Trustee shall also transmit to such court all documents relevant to the proper adjudication of the matter under reference.

(3) A copy of every reference under this section shall be served on the parties concerned in the dispute.

**285.** (1) Upon a reference being made to it, the District Court shall proceed to hear and determine the issues referred in accordance with such procedure as may be prescribed by rules of court, and shall at the conclusion of its hearing communicate its order to the Public Trustee and to the parties before court.

Adjudication by  
court.

(2) A party aggrieved by an order of the District Court under this section may prefer an appeal to the Supreme Court against such order for any error in law within a period of fourteen days from the date of such order. Such appeal shall be lodged, dealt with and disposed of as if it were an appeal from an interlocutory order in a civil case.

(3) The order of the Supreme Court or, where no appeal has been preferred, the order of the District Court, shall be final and conclusive and shall bind the Public Trustee.

**286.** (1) If within the specified period, the persons on whom an interim order has been served notify the Public Trustee that they consent to the grant as prayed for, or if any persons having objected and the objections having been referred for adjudication to court and the order of the court having been taken into consideration the Public Trustee is satisfied that the *prima facie* proof of the material averments in the application has not been rebutted, the Public Trustee shall make the interim order final.

Interim order  
to be made  
final or revoked.

(2) In the event of an objector establishing his right to have grant of probate or letters of administration of the deceased's estate issued to him instead of to the applicant, then the Public Trustee shall make final order accordingly.

(3) If, on the other hand, the Public Trustee is satisfied that the *prima facie* proof of any material averments in the application has been rebutted, the Public Trustee shall revoke the interim order.



(4) Every order made under this section by the Public Trustee shall be served upon such person as the Public Trustee shall consider necessary.

Grant not to be made until payment of estate duty.

287. Every grant of probate or of letters of administration shall be issued by the Public Trustee only after the certificate or the provisional certificate of the Commissioner of Inland Revenue certifying that the payment of the appropriate estate duty has been received by him, or, in a case where no estate duty is payable thereon, on receipt of a certificate stating that no estate duty is payable.

Oath, inventory and valuation of property.

288. (1) In every case where a final order has been made by the Public Trustee declaring any person entitled to have issued to him probate or grant of administration, it shall be the duty of the executor or administrator in whose favour such order is made—

- (a) to take the oath of an executor or administrator in the prescribed form;
- (b) if so required by the Public Trustee, to enter into a bond with or without sureties for the due administration of the deceased person's property; and
- (c) to submit to the Public Trustee an inventory and valuation of the property belonging to the deceased valued as at the date of death, and a statement of liabilities, if any, of the deceased person as at the same date.

(2) Where a banking, insurance or other corporation approved by the Public Trustee stands surety, no other surety shall be necessary nor shall a hypothecation of property be required.

(3) The bond entered into under this section shall render the executor or administrator and the surety responsible for all deficiencies, depreciation or loss of the property of the estate attributable to the default of the principal. The surety, if any, shall be liable to make good the same to the same extent and in like manner as if such default were his own. The amount secured by the bond shall be limited to the value of the movable property which appears to the Public Trustee likely to come into the hands of the executor or administrator and to two years' income from the immovable property to be administered. Where the amount of administration is limited, the amount secured by the bond may be reduced.



(4) The Public Trustee may, in his discretion, dispense with the security required to be furnished by bond under this section in all cases of the issue of probate or grant of administration to the sole beneficiary under a will, or to the sole heir in the case of intestacy, or where all the heirs and the guardians of minors consent thereto, or in the case of a limited grant or where, in his opinion, such security is not considered to be absolutely necessary for the protection of that estate.

(5) The valuation of the property under this section shall be the same as that which has been finally accepted for the purpose of the assessment of estate duty.

289. (1) The estate of a deceased person shall be deemed to be insolvent—

Insolvent  
testamentary  
estates.

(i) if upon the basis of a valuation of his assets and liabilities as at the date of his death or at any time subsequent thereto it appears that the assets are or will be insufficient to pay in full the funeral, testamentary and administration expenses relating to the estate, and the claims of creditors; or

(ii) if owing to execution proceedings being taken against the deceased or his estate or the difficulty of realizing any of the assets of the estate, or because of disputed claims, or for any other sufficient reason, the estate should be administered as an insolvent estate, for the benefit of all parties interested in the estate.

(2) Where an estate is deemed to be insolvent on the date an application for probate or letters of administration is made, the applicant shall, in addition to the other averments required to be stated in the application for probate or letters, set out the material facts upon which adjudication that the estate should be deemed to be insolvent is claimed, and shall contain detailed lists showing—

(a) the names of all persons who to the best of the applicant's knowledge and belief have claims against the estate;

(b) the last known place of abode or business of such persons;



(c) the sums claimed by each of such persons and whether or not the sums claimed are liquidated or unliquidated amounts; and

(d) whether or not the sums claimed or any part thereof are admitted by the applicant.

(3) Where after grant of probate or letters an estate is deemed to be insolvent, the executor or administrator shall apply for an adjudication that the estate should be deemed to be insolvent, and such application shall set out the material facts and the lists as are required to be filed under the preceding subsection.

(4) It shall be competent for a creditor, heir, beneficiary, or other person interested in the estate, similarly to make application for adjudication that the estate should be deemed to be insolvent, and the provisions of subsection (2) of this section shall *mutatis mutandis* apply to such application.

(5) As from the date on which the interim order declaring the estate insolvent is made, all actions in respect of admitted claims and all execution proceedings against the estate of the deceased shall be stayed, subject, however, to the right of any secured creditor who has taken out execution proceedings, to proceed to realize his security upon such conditions as a court, having regard to the provisions of the Insolvency Ordinance, shall order.

(6) Where the executor named in the will or the widow or widower is unwilling to proceed with the due administration of an insolvent estate, or where the executor or administrator to whom probate or letters have been issued fails to administer the estate within a reasonable time, the Public Trustee may, having regard to the proper conservation of the estate and the interest of all parties concerned, appoint any fit person to administer the estate.

(7) When a final order is made, the estate shall be administered in accordance with the provisions following:—

(a) The funeral, testamentary and administration expenses shall first be paid out of the assets available;



(b) Subject as aforesaid, the provisions for the time being in force under the law of insolvency with respect to the estate of a person adjudged insolvent shall apply and be observed in regard to the respective rights of secured and unsecured creditors as to the debts and liabilities provable, the valuation of annuities and future and contingent liabilities, and the priorities of debts and liabilities.

(8) An executor or administrator of an insolvent estate shall have the same powers and be subject to the same obligations as the assignee of an insolvent appointed under the Insolvency Ordinance.

**290.** Subject to any limitation expressed in the grant, the power of administration authenticated by the grant of probate or letters of administration extends to all the property of the deceased person, movable and immovable, situate within or without Sri Lanka, or was so situate, at the time of his death, or so much thereof as has not already been administered, and endures for the life of the executor or administrator, or until such time as the grant shall have been revoked or until the administration shall be completed, and the executor or administrator discharged.

Administration extends to all property of deceased wherever situate.

**291.** Where a grant of probate or letters of administration has been made, the Public Trustee may, subject to the provisions of section 285 (3), at any time at the instance of any person interested revoke and recall such grant upon being satisfied that the will ought not to have been held proved, or that the grant of probate or administration ought not to have been made, or that events have occurred which render the administration thereunder impracticable or useless.

Recall of probate or letters.

#### DIRECTIONS TO THE PUBLIC TRUSTEE

**292.** If there is no executor resident in Sri Lanka competent and willing to act, the Public Trustee shall issue letters of administration with or without the will annexed, as the case may require, to some person who is competent to apply for the same, or to some other person who, in the opinion of the Public Trustee, by reason of consanguinity, amount of interest, safety

Where no executor applies.



of the estate and probability that it will be properly administered, is a proper person to be appointed administrator.

Where estate  
is not  
completely  
administered.

293. When a sole executor or a sole surviving executor to whom probate has been granted or a sole administrator or a sole surviving administrator to whom a grant of administration has been made, dies leaving a part of the deceased's property unadministered, a fresh grant of administration may be made in respect of the property left unadministered.

Power to grant  
probate to a  
corporation.

294. (1) Where a corporation is appointed executor in a will, either alone or jointly with another person, the Public Trustee may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.

(2) Letters of administration may be granted to any trust corporation either solely or jointly with another person and the corporation may act as administrator accordingly.

(3) Any officer authorized for the purpose by such corporation or the directors or governing body thereof, may swear affidavits, give security, and do any other act or thing which the Public Trustee may require on behalf of the corporation with a view to the grant of representation, and the acts of such officer shall be binding on the corporation.

Conflict of  
claims.

295. (1) In the case of a conflict of claims to have the will proved and grant of administration issued, the claim of an attorney of an executor shall be preferred to that of all others, and the claim of a creditor shall be postponed to the claim of an intestate heir where the residuary estate is not wholly disposed of, or of a residuary legatee or devisee under the will.

(2) In the case of a conflict of claims for grant of administration upon intestacy, the claim of the widow or widower shall be preferred to all others and the claim of an heir to that of a creditor:

Provided, however, that the Public Trustee may for good cause supersede the claim of the widow or widower.



296. It shall be lawful for the Public Trustee to make a grant of probate or letters of administration limited in respect of its duration, or in respect to any particular property, or in respect of the power of dealing with any property of the estate, or in respect to any particular purpose, in any case where he considers that at the stage at which he makes the grant that a larger grant is unnecessary; and in particular :—

Limited and special grants.

- (a) where any legal proceeding touching the validity of the will of a deceased person or relating to the grant of probate or letters of administration is pending, the Public Trustee may, either on the ground of undue delay or otherwise, grant letters of administration to the estate of the deceased to an administrator limited for the duration of such proceeding, and such administrator shall not have the right of distributing the estate;
- (b) where a person is appointed executor of a will for a particular purpose only of the will, and not executor of the will generally, probate may be granted to him limited for that purpose only;
- (c) where for the purpose of paying estate duty or for any other sufficient cause it becomes necessary to sell any property of the estate of a deceased person prior to the issue of probate or letters of administration, the Public Trustee may grant letters limited for the purpose of selling such property;
- (d) when the original will of the deceased person has been lost since the testator's death, but a copy has been preserved, probate of that copy may be granted, limited until the original be produced before the Public Trustee;
- (e) when the original will is in the hands of some person residing out of Sri Lanka, who cannot be compelled to give it up to the executor, and if the executor produces a copy, probate of that copy may be granted, limited until the original be produced before the Public Trustee;



- (f) in either of the cases set out in the last two preceding paragraphs, if no copy has been preserved or is available, probate of a draft will may be granted, or if no draft be available, probate of the contents or of the substance and effect of the will, so far as they can be established by evidence, may be granted;
- (g) if the document admitted to proof under the preceding paragraph be a copy of or substitute for the original, on account of the original itself not being forthcoming by reason of one of the causes mentioned in paragraph (d) or paragraph (e) of this section, the grant shall further be limited until the original is produced before the Public Trustee;
- (h) if the sole executor of a will resides, or if there are more executors than one and all the executors reside, out of Sri Lanka, or such of the executors as reside in Sri Lanka decline to act, the Public Trustee may grant administration with copy of the will annexed to any person within Sri Lanka, as attorney of the executor or of the executors, who shall be appointed for that purpose by power of attorney, the grant so made being limited for the use and benefit of the principal until the executor or one of the executors comes in and obtains probate for himself. If, however, the person applying for the grant is not the attorney of all the executors, where there are more than one, the grant of administration shall not be made to him until the remaining executors have declined to act;
- (i) in the case of a will, if there be within Sri Lanka no executor willing to act, and if all other persons interested in having the property of the testator administered are out of Sri Lanka, grant of administration may be made to the attorney of a person so interested limited until the principal shall come in and obtain administration for himself;



- (j) where the executor appointed under a will or the person interested in having the property of the testator administered, or where in the case of intestacy the heir entitled to letters of administration is a minor or a lunatic or a mentally defective person resident within Sri Lanka, the grant of administration with copy of the will annexed, or grant of administration only, as the case may be, may be made to the curator or manager of such minor, lunatic, or mentally defective person limited for the duration of such minority, lunacy, or mental defectiveness, as the case may be.

297. (1) Compensation shall be allowed to executors and administrators by way of commission as well on property not sold but retained by the heirs as on property sold by such executors and administrators at such rate not exceeding three *per centum* and on cash found in the estate and on property specially bequeathed, at such rate not exceeding one and a half *per centum*, as the Public Trustee may, after taking into consideration the circumstances of each particular case with reference to the trouble incurred by such executors or administrators, determine; but in no case shall a larger sum than five thousand rupees be allowed to a sole executor or a sole administrator as such compensation unless it shall be made apparent to the Public Trustee that such unusual trouble has fallen upon him as to entitle him, in the opinion of the Public Trustee, to receive further remuneration.

Compensation  
of executors  
and  
administrators.

(2) Where there shall be more than one executor or administrator, the compensation payable to them shall be calculated on the basis that each executor or administrator is entitled to the full compensation allowed by law to a sole executor or administrator, and shall be apportioned among them according to the services rendered by them respectively. Where, however, there are more than three executors or administrators, the total compensation payable shall not exceed the amount payable if there were only three executors or administrators.



(3) Notwithstanding anything contained in the two preceding subsections of this section, where the will provides a specific compensation for an executor or an administrator, he shall not be entitled to any allowance other than that so provided, unless he renounces the specific compensation.

**Rectification  
of errors  
in grant.**

298. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Public Trustee and the grant of probate or letters of administration may be altered or amended accordingly.

**Reference to  
court.**

299. It shall be lawful for the Public Trustee to refer any question or matter arising from, or relating to, the performance of his duties under this Law for adjudication to the appropriate District Court. Every such reference shall be made, heard and determined in the manner provided in sections 284 and 285.

#### SETTLEMENT OF ACCOUNTS

**Filing of  
accounts.**

300. Every executor and every administrator shall transmit to the Public Trustee within a specified period from the date on which probate or grant of administration was issued to him, an accurate account of his executorship or administration, as the case may be, with all relevant receipts and vouchers attached, and may at the same time pay to the credit of the Public Trustee any money which may have come into his hands in the course of his administration to which any minor is entitled.

**Liability of  
interest.**

301. Where any executor or administrator fails to pay over to the creditors, heirs, legatees, or other persons the sums of money to which they are respectively entitled, within one year after probate or administration was granted, such executor or administrator shall be liable to pay interest out of his own funds for all sums which he has retained in his own hands after that period, unless he shows to the satisfaction of the Public Trustee sufficient cause for such retention:

Provided that the Public Trustee may extend the aforesaid period of one year at his discretion.



302. (1) An executor or administrator may by affidavit inform the Public Trustee that money or other movable property which ought to be delivered to him, or which ought to be included in his inventory and valuation, is in the possession, under the control, or within the knowledge or information of a person who withholds the sum from him, or who refuses to impart any knowledge or information he may have concerning the same or to disclose any other fact which will in any way aid such executor or administrator in making discovery of such property, so that it cannot be inventoried and valued.

Discovery of property.

(2) A creditor or any person interested in the estate may by affidavit inform the Public Trustee that an executor or administrator has failed to file an inventory and valuation, and account (or a sufficient inventory and valuation, or sufficient accounts) required by law within the prescribed time.

(3) A creditor, legatee or other person entitled to any pecuniary provision from the estate of a deceased person may, at any time after twelve months have elapsed since the grant of probate or administration, by affidavit request the Public Trustee to direct the executor or administrator to pay such person's claim.

(4) The Public Trustee may upon receipt of any affidavit under this section hold an inquiry and make such order thereon as he thinks just in the circumstances of the case.

303. (1) The executor or administrator of an estate may, at any time, voluntarily file with the Public Trustee an intermediate account in respect of the estate together with the relevant receipts and vouchers in support of the same.

Intermediate account.

(2) The Public Trustee may either upon application of a creditor or a party interested or of his own motion order an executor or administrator to render an intermediate account in respect of the estate.



Final  
account.

**304.** (1) The Public Trustee may of his own motion or on the application of an interested party require the final account in respect of the estate to be rendered by an executor or administrator:—

- (a) where one year has elapsed after the grant of probate or administration;
- (b) where such grant has been revoked or for any other reason his powers have ceased; or
- (c) where he has sold or otherwise disposed of any immovable property of the testator, or devisable interest thereon, or the rents, profits, or proceeds thereof pursuant to power in the will.

(2) At any time after the expiration of one year after the grant of probate or administration, an executor or administrator may request the Public Trustee to make a final settlement of his account.

(3) An executor or administrator whose grant has been revoked by the Public Trustee or who desires to resign his office may request the Public Trustee that his account be finally settled.

(4) Upon the final account being rendered, the Public Trustee shall, after due inquiry, make an order with regard to the claims of the different parties, or in the event of any dispute arising shall refer such dispute for adjudication to the appropriate District Court.

(5) The Public Trustee shall give written notice of the date of inquiry to all parties concerned and may permit any other person who is interested in the settlement to be present or to participate at such inquiry.

(6) At the final settlement of the account, an executor or administrator may prove any debt owing to him by his testator or intestate.

(7) To each account filed by an executor or administrator shall be appended an affidavit of the accounting party, to the effect that the account contains, according to the best of his knowledge and belief, a full and true statement of all his receipts and disbursements on account of the estate of the testator or intestate, and of all money and other property belonging to the estate which has come to his hands, or



which has been received by any other person by his order or authority for his use, and that he does not know of any error or omission in the account to the prejudice of any creditor of, or person interested in, the estate.

(8) In the case of any final settlement of the account of an executor or administrator, the Public Trustee may allow the accounting party for property of the testator or intestate, which has perished or which is lost without the fault of the accounting party.

**305.** A final settlement of account by the Public Trustee shall be conclusive evidence against all parties who were present at the settlement and all persons deriving title from any of them at any time, of the following facts:—

Final settle-  
ment to be  
conclusive  
in certain  
cases.

- (a) that the items allowed to the accounting party for money paid to creditors, legatees, heirs, and next of kin, for necessary expenses, and for his services are correct;
- (b) that the accounting party has been charged with all the interest for money received by him and included in the account, for which he was legally accountable;
- (c) that the money charged to the accounting party, as collected, is all that was collectible at the time of the settlement on the debts stated in the account;
- (d) that the allowances made to the accounting party for the decrease, and the charges against him for the increase, in the value of property were correctly made.

**306.** (1) When an account is finally settled and any part of the estate remains and is ready to be distributed to the creditors, legatees, heirs, next of kin, husband or wife of the testator or intestate, or their assigns, the Public Trustee shall direct the payment and distribution of the same to the persons so entitled, according to their respective rights.

Order of  
Public Trustee  
for distribu-  
tion of estate.

(2) Where a legacy or a share of the estate is payable to a person of unsound mind or a minor, the Public Trustee may, in his discretion, direct the same to be paid to the duly appointed manager or curator of the estate of such person of unsound mind or minor,



and where an amount of less than five hundred rupees is so payable to a minor, the Public Trustee may direct the same to be applied for the maintenance and education of the minor.

**Prescription.**

**307.** From the death of the testator or intestate until the final settlement of an account by his executor or administrator, the running of the law relating to the prescription of actions against a debt due from the deceased to the accounting party, or any other cause of action in favour of the latter against the deceased, is suspended, unless the accounting party was appointed upon the revocation of a former grant to another person; in which case the running of such law is so suspended from the grant to him until the first final settlement of his account. After the first final settlement of the account, the law begins again to run against a debt due to him from the deceased, or any other cause of action in his favour against the deceased.

**ADMINISTRATION OF ESTATES BY THE PUBLIC TRUSTEE**

**Administration  
of estates  
by Public  
Trustee.**

**308.** (1) If any person shall die leaving property within Sri Lanka and no grant of probate or of letters of administration is made, or no application has been made for letters of administration by any person, the Public Trustee may, within a reasonable time after he has had notice of the death of such person, appoint a fit and proper person to administer the estate or take such action as may be necessary to administer the estate himself in his capacity as Public Trustee.

(2) If any person shall die leaving property within Sri Lanka, and the Public Trustee is satisfied, upon representations made to him in that behalf or of his own motion, that there is not resident within Sri Lanka some next of kin or other person entitled to administration of the estate of the person so dying or that pending administration or otherwise the assets of the estate of the person so dying are in jeopardy of being lost to the heirs or other persons law-



fully entitled to the same, the Public Trustee may issue letters *ad colligenda* in the prescribed form to one or more responsible persons—

(a) to take charge of such property until the same shall be claimed by some executor or administrator lawfully entitled to administer the same or, where the estate requires no administration, by the persons entitled to the same; or

(b) to take an inventory of such property and to permit any person in possession of such property subject to his giving security or otherwise to continue in possession:

Provided that in the absence of the issue of such letters *ad colligenda*, the Public Trustee may take necessary action to proceed with the administration of the estate himself in his capacity as Public Trustee.

(3) Where probate or letters of administration have been issued to any person other than an executor named in the will, and most of the persons interested in the estate as beneficiaries or as heirs apply to the Public Trustee that the estate can be more economically or satisfactorily administered by the Public Trustee, then the Public Trustee may in his discretion take such action as may be necessary to proceed with the administration of the estate himself in his capacity as Public Trustee.

(4) Any executor who has obtained probate, or any administrator who has obtained letters or administration, notwithstanding that he has acted in the administration of the deceased's estate and notwithstanding the existence of any other executor or administrator, may apply to the Public Trustee for an order transferring such estate to the Public Trustee for administration, and the Public Trustee may take such action as may be necessary to administer the estate himself in his capacity as Public Trustee. Thereupon, the estate of the deceased left unadministered and all rights and obligations in respect thereof shall become and be conveyed, assigned, and transferred to the Public Trustee as executor or administrator, as the case may be, so that the same shall thereupon become and be legally and effectually vested in him, and, subject to the provisions of this Chapter, he shall have all the powers of such executor or administrator



and such executor or administrator shall not be in any way liable in respect of any act or default in reference to such estate subsequent to the date on which the administration was transferred to the Public Trustee, other than the act or default of himself, or of persons other than himself for whose conduct he is in law responsible.

(5) Where any person dies leaving property amounting to or exceeding twenty thousand rupees in value and the Public Trustee, upon representations or information received in that behalf, is of opinion that the estate is likely to be interfered or intermeddled with and that the assets of the estate are likely to be in jeopardy of being lost to the heirs or to other persons lawfully entitled to or having any interest in the same, the Public Trustee may in his absolute discretion—

- (a) take charge of such estate until the same shall be claimed by some executor or administrator lawfully entitled to administer the same; or
- (b) take an inventory of such estate and authorize any person in possession of such estate or any other fit and proper person, subject to his giving security or otherwise, to continue in possession or to take possession, as the case may be; or
- (c) take such other steps for the protection of the estate as may be necessary or expedient in the particular circumstances of the case.

(6) Whenever the Public Trustee undertakes the administration of an estate in terms of this section, or where he has been appointed executor under the will of a deceased person he shall as far as practicable comply with the provisions of this Chapter relating to the administration of estates:

Provided that the Public Trustee shall not be required—

- (a) to take any oath as an executor or administrator;
- (b) to furnish any bond or security, but shall be subject to the same liability and duties as if he had given such bond or security ;



- (c) to make payment or secure the payment of assessed estate duty prior to his undertaking the administration of the estate, but shall eventually make such payment as is required by the Estate Duty Ordinance;
- (d) to affix stamps on any document at or about the time of the making of such document, but shall eventually make such payment as is required by the Stamp Ordinance ;
- (e) to tender a final account.

### FOREIGN PROBATES

309. (1) Where a court of probate or other authority in a foreign country has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced before the Public Trustee, be sealed with the seal of the Public Trustee and thereupon shall be of like force and effect and have the same operation in Sri Lanka as if granted by the Public Trustee.

Resealing in  
Sri Lanka of  
probates and  
letters of  
administration  
granted outside  
Sri Lanka.

(2) The Public Trustee shall, before sealing a probate or letters of administration under this Law, be satisfied—

- (a) that estate duty has been paid or secured in respect of so much, if any, of the estate as is liable under the Estate Duty Ordinance; and
- (b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Sri Lanka to which the letters of administration relate,

and may require such evidence, if any, as to the nationality of the deceased person.

(3) The Public Trustee may, in his discretion, on the application of any creditor, require, before sealing, that adequate security shall be given for the payment of debts due from the estate to creditors residing in Sri Lanka.



(4) A duplicate of any probate or letters of administration sealed with the seal of the Public Trustee granting the same, or a copy thereof certified as correct by the Public Trustee shall have the same effect as the original.

(5) The sealing of a probate or letters of administration under this section shall not affect the liability of an executor or administrator to perform the duties required of such executor or administrator under this Chapter.

#### GENERAL AND TRANSITIONAL PROVISIONS AND INTERPRETATION

Payment of  
stamp  
duty.

310. The provisions of the Stamp Ordinance shall apply to and in relation to every application, order or other document under this Chapter, which is liable to stamp duty under that Ordinance and the executor or administrator, as the case may be, shall be personally liable for the payment of such stamp duty. The amount so paid by way of stamp duty shall be recoverable by the executor or administrator as a first charge on the estate of the deceased after the grant of probate or letters of administration.

Offences and  
penalties.

311. Any person who wilfully omits to comply with any of the provisions of this Chapter or fails or neglects to comply with any order or direction made by the Public Trustee under this Chapter shall be guilty of an offence and shall on conviction by a Magistrate's Court be liable to imprisonment or fine, or both imprisonment and fine.

Transitional  
provisions.

312. (1) Where any person has, prior to the appointed date, died in Sri Lanka leaving an estate, and testamentary proceedings have not been instituted in any court in respect of such estate before the appointed date, such proceedings may be taken before the Public Trustee under this Chapter.

(2) Where any court of probate or other authority in any foreign country has granted probate or letters of administration in respect of the estate of a deceased person and such probate or letters of administration have, prior to the appointed date, not been produced before a court in Sri Lanka, such probate or letters of administration may be produced before the Public Trustee under this Chapter.



313. (1) All references in other written law to any court as being the court by which the grant of probate or of letters of administration are issued shall be read and construed as a reference to the Public Trustee.

Construction of  
other written  
law.

(2) All references in other written law to the grant of probate or letters of administration shall be deemed to include a reference to the sealing of probate or letters of administration under this Chapter.

314. In this Chapter, unless the context otherwise requires—

Interpretation.

(1) “ appropriate District Court ” means the District Court nominated by the Public Trustee, being the District Court of the district within which the applicant resides, or within which the testator resided at the time of his death, or within which any land belonging to the testator’s estate is situate;

“ Public Trustee ” means the Public Trustee of Sri Lanka appointed under the Public Trustee Ordinance and includes an additional Public Trustee, a deputy Public Trustee, or any other State officer generally or specially authorized by the Public Trustee to act on his behalf for the purposes of this Law;

(2) Where a form is required to be prescribed, the Minister shall do so by Order published in *Gazette*;

(3) Where an order or notice is required to be served by the Public Trustee, such service shall be effected in the manner prescribed for the service of summons;

(4) “ Assessor ” and “ total estate ”, have the same meaning, as in the Estate Duty Ordinance.







**CHAPTER IV**  
**APPEALS PROCEDURE**

**315.** The provisions hereinafter contained shall regulate the right of, and procedure for, appeals to the Supreme Court of Sri Lanka from judgments, and orders of all original courts.

Appellate proceedings.

**RIGHT OF APPEAL**

**316.** Any person who shall be dissatisfied with any judgment pronounced by any original court in any criminal case or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in law or in fact:

Appeals in criminal cases.

Provided that—

- (a) no appeal shall lie against a conviction where such conviction is based on an unqualified admission of guilt made by an accused person;
- (b) no appeal shall lie against a sentence where such sentence is one fixed by law;
- (c) no appeal shall lie from an acquittal except at the instance or with the written sanction of the Attorney-General:

Provided further that no appeal shall lie under any circumstances from an acquittal recorded by a High Court.

**317.** (1) Any person who shall be dissatisfied with any judgment pronounced by any original court in any civil action, proceeding or matter to which he is a party may prefer an appeal to the Supreme Court against such judgment for any error in law or in fact.

Appeals in civil cases.

(2) Any person who shall be dissatisfied with any order made by any original court in the course of any civil action, proceeding or matter to which he is or seeks to be a party, may prefer an appeal to the Supreme Court against such order for any error in law, with the leave of the Supreme Court first had and obtained.



## LODGING OF APPEALS

Notice of  
appeal.

**318.** An appeal against any judgement may be lodged by giving notice of appeal to the original court within such time and in the form and manner prescribed herein.

When one of  
several plaintiffs  
or defendants  
may appeal  
against judg-  
ment.

**319.** Where there are more plaintiffs or more defendants than one in an action, proceeding or matter, and the judgment proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or the defendants may lodge an appeal against the judgment, and thereupon the Supreme Court may reverse or modify the judgment in favour of all the plaintiffs or defendants, as the case may be.

Computation  
of time.

**320.** (1) The notice of appeal shall be given to the original court by the appellant in person or by his registered attorney within a period of fourteen days from the date on which the judgment was pronounced, exclusive of that date itself and of the date when the notice is presented and of Sundays and public holidays:

Provided that it shall be competent to the court to admit and entertain a notice of appeal notwithstanding lapse of time if the court is satisfied that the appellant was prevented by causes not within his control from complying with the provisions of this section:

Provided further that if the time for lodging an appeal expires on a day on which the office of the court is closed, the appeal shall be deemed in time if it is lodged on the first day next thereafter on which such office is open.

(2) In a criminal case or matter, if sentence is imposed on a date subsequent to the date of conviction, such later date shall be deemed to be "the date on which the judgment was pronounced".

(3) A notice of appeal by or with the written sanction of the Attorney-General may be given within a period of twenty-eight days.



**321.** The notice of appeal in a civil action, proceeding or matter shall be accompanied by—

**Additional steps.**

- (a) except as provided herein, security for the respondent's costs of appeal in such amount and nature as is prescribed by rules of court, or acknowledgment of waiver of security signed by the respondent or his registered attorney; and
- (b) proof of service on the respondent or on his registered attorney of a copy of the notice of appeal in the form of a written acknowledgment of the receipt of such notice or the registered receipt in proof of such service.

**322.** (1) The security required to be deposited by an appellant shall be by bond in the form prescribed by rules of court or shall be by way of mortgage of immovable property, or by the deposit of the prescribed sum of money to the credit of the court in a bank.

**Deposit of security.**

(2) Security shall be dispensed with where the appellant is—

- (a) the Attorney-General;
- (b) the wife in a matrimonial action;
- (c) an insolvent in respect of insolvency proceedings;
- (d) exempted from depositing security by any other written law.

**323.** (1) Every notice of appeal shall contain the particulars prescribed by rules of court, shall be signed by the appellant or his registered attorney, and shall bear a stamp of the prescribed denomination:

**Form of notice of appeal.**

Provided that no such stamp shall be necessary if the appeal is lodged by or with the written sanction of the Attorney-General, or if the court so directs in the case of an appellant who in the opinion of the court is unable to furnish the required stamp.

(2) If judgment be given in whole or in part in favour of the appellant, the amount of stamp fee shall be returned to him.



Notice of  
appeal may  
be amended  
or rejected.

324. If the notice of appeal is not given in the manner prescribed herein, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court, or be amended then and there. When the court rejects any notice of appeal, it shall record the reasons for such rejection. When any notice of appeal is amended, the Judge or such officer as he shall appoint in that behalf shall attest the amendment by his signature.

Stay of further  
proceedings  
upon accept-  
ance of notice  
of appeal.

325. (1) Upon the notice of appeal being accepted by court, all further proceedings in such action shall be stayed and the said notice together with all the papers and proceedings in the case relevant to the judgment appealed against (including the notes of evidence taken by a Judge in terms of section 216) shall, as speedily as possible, be forwarded to the Supreme Court.

(2) When an appeal against an acquittal is lodged, the court may issue a warrant directing that the accused be arrested and brought before it and may commit him to prison pending the determination of the appeal or admit him to bail.

(3) When an appeal against a conviction is lodged, the court may admit the appellant to bail pending the determination of his appeal.

Application for  
leave to  
appeal.

326. (1) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter, shall be made by the party aggrieved or his registered attorney, shall be supported by an affidavit, shall be in the form, shall contain the particulars, prescribed by rules of court, shall bear a stamp of the prescribed denomination and shall be filed in the Supreme Court.

(2) Upon an application for leave to appeal being filed in the Supreme Court, the Registrar shall number such application and shall, as speedily as possible, submit such application to a Judge in chambers.

Disposal of  
application  
for leave.

327. A Judge to whom an application for leave to appeal has been submitted as aforesaid may—

- (a) grant such leave; or
- (b) reject the application; or



- (c) require the application to be supported in open court by the petitioner or an attorney-at-law on his behalf, and having heard such petitioner or his attorney-at-law grant such leave or reject such application:

Provided that whenever an application is rejected under this section, the Judge shall record the reasons for such rejection.

328. Upon leave to appeal being granted, the Registrar shall so inform the original court. Thereupon, unless the Judge has otherwise directed, all proceedings in the original court shall be stayed and the said court shall, as speedily as possible, forward to the Supreme Court all the papers and proceedings in the case relevant to the matter in issue.

Stay of further proceedings upon leave being granted.

#### PRE-HEARING PROCEEDINGS

329. (1) On receipt of the notice of appeal, or on leave to appeal being granted, the Registrar shall forthwith number the notice or the application, as the case may be, enter such number on the Register of Appeals and notify the parties concerned in the form prescribed by rules of court.

Appeal to be numbered and entered on Register of Appeals.

(2) In every appeal in a criminal case or to which the State or a State officer is a party the Attorney-General shall be deemed to be a party concerned.

330. (1) Upon receiving notice under section 329, the appellant shall, within such period as is prescribed by rules of court, lodge in the Supreme Court submissions in writing in support of his appeal together with proof of service of a copy of such written submissions on each respondent or registered attorney:

Appellant to file written submissions.

Provided that in every appeal in a civil case to which the State or a State officer is a party, a copy of such written submissions shall also be served on the Attorney-General:

Provided further that in every appeal in a criminal case, a copy of such written submissions shall be served on the Attorney-General and not on the respondent.



(2) Where leave to appeal has been granted, the application for such leave shall be deemed to be the written submissions of the appellant and a copy thereof shall be forthwith served by the Registrar on each respondent or registered attorney.

(3) If the appellant fails or neglects without reasonable cause to lodge his written submissions within the prescribed period and in the prescribed manner, the appeal shall be deemed to have abated.

Form of  
written sub-  
missions.

**331.** (1) The written submissions shall be typewritten, printed or lithographed and shall be in the form of paragraphs numbered consecutively and shall contain as concisely as possible—

- (a) the relevant facts with reference to the pages of the record on which the evidence referred to appears;
- (b) the matter in issue;
- (c) the errors alleged to have been committed by the court, with reference to the judgment or order of court;
- (d) the statutes, rules or regulations and the authorities relied upon, with reference to the relevant sections or portions thereof;
- (e) the relief claimed in appeal.

(2) Submissions not in conformity with this section may be struck out by the Supreme Court.

(3) The Supreme Court in fixing costs of appeal may take into account any prolixity in the submissions and reduce the costs accordingly.

Respondent  
may file  
counter  
submissions.

**332.** Upon receipt of the written submissions of the appellant, the respondent may, within such period as is prescribed by rules of court, lodge counter submissions in writing with proof of service of a copy of such counter submissions on the appellant or his registered attorney.

Appellant may  
file addendum.

**333.** Upon receipt of the counter submissions as aforesaid, the appellant may, within such period as is prescribed by rules of court, lodge an addendum to his submissions already filed in the manner provided in section 330 (1):



Provided that no submissions may be included in the addendum save and except counter to any matter of law or fact raised in the submissions of the respondent.

**334.** The Supreme Court may, by rules of court from time to time, direct that the provisions of sections 332 and 333 shall not apply to such classes or categories of appeals in criminal cases as may be specified.

Respondent to be exempted from filing counter submissions in certain cases.

**335.** All submissions in writing shall be lodged in triplicate.

Submissions to be filed in triplicate.

**336.** (1) An appeal shall be set down for hearing and accordingly its number entered on the appropriate Roll of Pending Appeals on the expiry of the period granted to the appellant to file an addendum to his submissions; or where sections 332 and 333 do not apply to such appeal, on the filing of submissions by the appellant.

Roll of Pending Appeals.

(2) A list of appeals on the Roll of Pending Appeals shall be exhibited outside the Registry of the Supreme Court.

**337.** (1) An appeal entered on the appropriate Roll of Pending Appeals shall come on for hearing in the order of its position on the roll without further notice to the parties concerned:

Appeal to be listed for hearing.

Provided that no appeal shall be listed for hearing until seven days at least shall have expired after such appeal was entered on the roll and exhibited in the manner required in the preceding section.

(2) The court may, of its own motion or on the application of a party concerned, accelerate or postpone the hearing of an appeal upon such terms as it may think fit.

**338.** Where there are two or more appeals or applications for leave to appeal arising out of the same matter and the Supreme Court is of opinion that it would be convenient for the court and for all the parties concerned if they are consolidated, the court may so direct and such consolidated appeals or applications shall for all purposes thereafter be deemed to be a single appeal or application.

Consolidation of appeals.



## HEARING OF THE APPEAL

Procedure at  
the hearing.

**339.** (1) At the hearing of the appeal, the court may call upon the appellant or the respondent or their attorneys-at-law, if any, appearing on their behalf to elucidate any matter, whether or not arising from their written submissions. Any oral submissions so made shall be restricted to such duration as may be prescribed by rules of court.

(2) Subject to the provisions of subsection (1), the appellant shall first be heard in support of the appeal. The court shall then, if it does not at once dismiss the appeal or affirm the judgment or decree appealed from, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

(3) If the appellant does not appear to support his appeal, the court shall consider the appeal and may make such order thereon as it may deem fit.

Appellant in  
custody entitled  
to be present.

**340.** An appellant who is in custody shall be entitled to be present, if he so desires, at the hearing of his appeal.

Supplementary  
powers of court.

**341.** In dealing with an appeal, the Supreme Court may, if it thinks it necessary or expedient in the interests of justice—

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case:
- (b) take additional evidence itself or direct it to be taken by any Judge of an original court or other person appointed by the Supreme Court for that purpose:

Provided that when additional evidence is taken other than before the Supreme Court, the officer taking the same shall transmit the evidence so taken duly certified to the Supreme Court together with his opinion on such evidence.

Delivery of  
judgment.

**342.** On the termination of the hearing of the appeal, the Supreme Court shall, either at once or on some future date which shall then be appointed for the purpose or of which notice shall subsequently be given to the parties or their registered attorneys, pronounce judgment in open court.



**343.** The judgment of the Supreme Court shall be taken down in writing, shall be signed and dated by the Judges, and where the judgment or order appealed from is affirmed or varied shall state—

Form of  
judgment.

- (a) the points for determination;
- (b) the decision of the Judges thereon;
- (c) the reasons which have led to the decisions; and
- (d) the relief, if any, to which the appellant is entitled on the appeal in consequence of the decision.

**344.** (1) The decree of the Supreme Court shall be entered in accordance with the judgment of the majority of the Judges constituting the Bench hearing the appeal. It shall bear the date on which the judgment was pronounced, and shall be in the form prescribed by rules of court.

Decree to  
be entered.

(2) The decree shall also state by what parties, and in what proportions, the costs of the action are to be paid.

(3) The decree shall be sealed with the seal of the court.

(4) As soon as the decree is sealed all the proceedings in the case sent up to the Supreme Court on appeal (together with the notice of appeal, written submissions, a copy of the judgment or judgments pronounced on appeal, and the decree of the Supreme Court) shall be forthwith returned to the appropriate original court which shall conform to and execute such decree in all particulars, as if it were a decree entered by such original court.

**345.** The Supreme Court may at any time, in accordance with rules of court, assign to an appellant in any criminal case or matter an attorney-at-law if, in the opinion of the court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Legal  
assistance to  
appellant.

**346.** (1) The Supreme Court shall have power in all proceedings under this Chapter to award such costs to be paid by or to the parties thereto as the said court shall think fit.

Costs.

(2) The expenses of any attorney-at-law assigned to an appellant under this Chapter, and the expenses of any witnesses attending on the order of the court or



examined in any proceedings incidental to the appeal and all expenses of and incidental to any examination of witnesses conducted by any person appointed by the court for the purpose, shall be defrayed, up to an amount allowed by the court, but subject to such rates and scales of payment as may be prescribed by rules of court, in the same manner as the expenses of a prosecution before the High Court.

State  
representation.

347. (1) The Attorney-General shall appear for the State in every appeal to the Supreme Court under this Law to which the State or a State officer is a party, and provision shall be made by rules of court for the transmission to the Attorney-General of all such documents, exhibits, and other things connected with the proceedings as he may require for the purpose of his duties under this section.

(2) The Solicitor-General, Director of Public Prosecutions or a State Counsel, or an attorney-at-law specially or generally authorized by the Attorney-General in that behalf shall be entitled to appear for the Attorney-General in any such appeal.

#### POWERS OF SUPREME COURT IN APPEAL

Powers of  
court.

348. Subject to the provisions of the next succeeding sections the Supreme Court may upon the hearing of an appeal exercise any of the powers conferred upon it by section 11.

Appeal from  
judgment of  
District or  
Magistrates'  
Courts in  
criminal cases.

349. Upon the hearing of an appeal from a judgment of a District Court or a Magistrate's Court in a criminal case or matter, the Supreme Court may dismiss the appeal if it considers that there is no sufficient ground for interfering, or may—

(1) in an appeal from an order of acquittal, reverse such order and direct that the accused be re-tried or find him guilty and pass sentence on him according to law;

(2) in an appeal from a conviction,—

(a) reverse the verdict and sentence and acquit or discharge the accused or order him to be re-tried by a court of competent jurisdiction; or



(b) alter the verdict maintaining the sentence, or with or without altering the verdict increase or reduce the amount of the sentence or the nature thereof;

(3) in an appeal from any other order, alter or reverse such order:

Provided always that the sentence awarded on an appeal shall not exceed the sentence which might have been awarded by the court of first instance.

**350.** Any one or more of the following orders may be made by the Supreme Court upon the hearing of an appeal from a judgment of a High Court in a criminal case or matter:—

Appeal from judgment of High Courts in criminal cases.

(1) In an appeal from a conviction, the Supreme Court may allow the appeal if it thinks that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

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

(2) If the Supreme Court allows an appeal against a conviction, it shall quash the conviction and direct a judgment of acquittal to be entered:

Provided that the court may order a new trial if it is of opinion that there was evidence before the jury or the Judges, as the case may be, upon which the accused might reasonably have been convicted but for the irregularity upon which the appeal was allowed.



- (3) In an appeal against sentence the Supreme Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.
- (4) If it appears to the Supreme Court that an appellant, though not properly convicted on some charge or part of the indictment, has been properly convicted on some other charge or part of the indictment, the court may either affirm the sentence passed on the appellant at the trial or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the charge or part of the indictment on which the court considers that the appellant has been properly convicted.
- (5) Where an appellant has been convicted of an offence and the jury could on the indictment have found him guilty of some other offence, and on the verdict of the jury it appears to the Supreme Court that the jury must have been satisfied of facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the jury a verdict of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.
- (6) Where on the conviction of the appellant the jury have found a special verdict, and the Supreme Court considers that a wrong conclusion has been arrived at by the court before which the appellant has been convicted on the effect of that verdict, the Supreme Court may, instead of allowing the appeal, order such conclusion to be recorded as appears to be in law required by the verdict, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law.



- (7) If on any appeal it appears to the Supreme Court that, although the appellant was guilty of the act or omission charged against him, he was, at the time the act was done or omission made incapable by reason of unsoundness of mind of knowing the nature of the act or that it was wrong or contrary to law, the court may quash the sentence passed at the trial and order that the appellant be kept in safe custody in such place and manner as the court thinks fit, and shall report the case for the orders of the Minister. Upon such report, the appellant shall, for the purposes of Chapter II of this Law, be deemed to be an accused whose case has been reported for the orders of the Minister, under that Chapter.

351. An appellant may at any time apply to the Supreme Court to withdraw his appeal, and the court may after such inquiry as it considers necessary, permit the withdrawal of such appeal on such terms as to costs or otherwise as to the court shall seem fit.

Withdrawal of  
appeals.

352. Where at any time after the lodging of an appeal in any civil action, proceeding or matter the record becomes defective by reason of the death or change of status of a party to the appeal, the Supreme Court may in the manner provided by rules of court, determine who in the opinion of the court is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be substituted or entered on record as aforesaid.

Death or  
change of  
status of  
party to appeal.

353. (1) Where there is any error, omission or default in complying with the provisions of this Law relating to the lodging of an appeal, the original court shall, notwithstanding such provisions, forward to the Supreme Court the notice of appeal together with all the papers and proceedings of the case relevant to the judgment appealed against.

Effect of error,  
omission or  
default in  
complying with  
the provisions  
of this Law.



(2) Subject to the provisions of section 330, the Supreme Court shall not exercise the powers vested in such court by this Law to reject or dismiss an appeal on the ground only of any error, omission or default on the part of the appellant in complying with the provisions of this Law, unless material prejudice has been caused thereby to the respondent to such appeal.

(3) The Supreme Court shall, in the case of any appeal referred to in subsection (2) which is not rejected or dismissed by such court, direct the appellant to comply with such directions as the court may deem necessary for the purpose of rectifying, supplying or making good any error, omission or default so referred to within such time and upon such conditions as may be specified in such directions, and shall reject or dismiss that appeal if the appellant fails to comply with such directions.

Powers of  
revision.

**354.** (1) The Supreme Court may call for and examine the record of any case, whether already tried or pending trial in any court, for the purpose of satisfying itself as to the legality or propriety of any judgment or order passed therein, or as to the regularity of the proceedings of such court, and may, having adopted such procedure as it may consider fit, upon revision of the case so brought before it pass any judgment or make any order which it might have made had the case been brought before it in due course of appeal:

Provided that no order under this section shall be made to the prejudice of a party unless such party has had an opportunity of being heard on his own behalf;

Provided further that nothing in this section shall be deemed to authorize the Supreme Court to convert a finding of acquittal into one of conviction.

(2) The jurisdiction of the Supreme Court under this section may be invoked by any aggrieved person with the leave of the Supreme Court first had and obtained in the manner prescribed in this Chapter.



## TRANSITIONAL PROVISIONS AND

## INTERPRETATION

**355.** The following provisions shall apply in respect of any appeal pending before the Supreme Court on the appointed date:—

Appeals pending before the Supreme Court.

- (1) The court may proceed to hear and dispose of any such appeal in such manner as may be prescribed by rules of court; or
- (2) The court may require the parties to file written submissions in accordance with the provisions of this Chapter within the prescribed period, and shall then proceed to hear and dispose of any such appeal in the manner provided by this Law.

**356.** In this Chapter, unless the context otherwise requires—

Interpretation.

“ judgment ” means an order which finally decides the matter in issue, and includes verdict, conviction, acquittal or sentence;

“ order ” means the formal expression of any decision in any civil action, proceeding or matter which is not a judgment;

“ original court ” means a High Court, District Court or Magistrate’s Court.







## CHAPTER V

## DESTRUCTION OF COURT RECORDS

**357.** The record or part of the record maintained by any court of any case shall be destroyed on the expiry of such period as may be prescribed by the Minister by regulation.

Destruction of  
court records.

**358.** Before the record of any case is destroyed:—

Notice prior to  
destruction.

- (a) the court shall give notice to the parties to the case, either orally or in the manner prescribed by law for the service of summons, of the intended destruction:

Provided that no such notice need be given of the intended destruction of the record of a case finally determined not less than one year prior to the appointed date;

- (b) any party to, or any person interested in, such case shall, on application made to the court, be entitled to receive on payment of the prescribed fee a certified copy of the record of such case or any part thereof;
- (c) subject to the provisions of paragraph (d), any party to such case or any heir or attorney of such party shall, on application made to the court, be entitled to receive any original deed, certificate, survey plan or other document produced by such party during the course of the proceedings in such case;
- (d) it shall be lawful for the Director of National Archives or any officer authorized by him in that behalf to inspect the record of such case and remove therefrom, with the permission of the court, for preservation in the National Archives any document, which, in the opinion of such Director or officer, is of historical value;
- (e) the court shall cause the judgment and decree, if any, entered in such case and, subject to the provisions of paragraphs (c) and (d), all original deeds, certificates and survey plans produced in the case to be extracted therefrom, and it shall be the duty of the court to preserve every such document.



Action consequent to destruction.

**359.** Upon the destruction of the record of any case in terms of this Chapter:—

- (a) the court shall cause an entry to be made to that effect in the Institution Register maintained by such court;
- (b) any certified copy issued by the court under section 358 shall, notwithstanding anything to the contrary in the Evidence Ordinance, be deemed to be primary evidence of the contents of the original.

Interpretation

**360.** In this Chapter, unless the context otherwise requires—

- (a) no case shall be deemed to be finally determined as long as an application may, in the opinion of the court, be lawfully and reasonably made to enforce, discharge, modify or otherwise alter, any final judgment, decree, order or sentence made in such case;
- (b) “ court ” means the Supreme Court, a High Court, a District Court or a Magistrate’s Court;
- (c) “ prescribed ” means prescribed by the Minister by Order published in the *Gazette*.



**SCHEDULE**

**SECTION 6**

**Judicial Zones**

1. Colombo
2. Kalutara
3. Galle
4. Matara
5. Batticaloa
6. Jaffna
7. Chilaw
8. Negombo
9. Gampaha
10. Kegalle
11. Kurunegala
12. Kandy
13. Avissawella
14. Ratnapura
15. Badulla
16. Anuradhapura



**SECTIONS 8, 18, 24 AND 29****Oath or Affirmation of Office**

I, ..... do solemnly affirm/swear that I will be faithful and bear true allegiance to the Republic of Sri Lanka and that I will well and truly serve the Republic of Sri Lanka and duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office as—

Chief Justice of the Supreme Court  
Judge of the Supreme Court  
High Court Judge  
District Judge  
Magistrate

}

in accordance with the Constitution and with the law and that I will do all right to all manner of people after the laws and usages of the Republic of Sri Lanka, without fear or favour, affection or ill-will.



**SECTIONS 8, 18, 24 AND 29**

**Salaries of Judges**

Chief Justice	.. Rs. 45,000 per annum
Judge of the Supreme Court	.. Rs. 36,000 per annum
Judge of the High Court	.. Rs. 27,000 per annum
District Judge—Grade 1	.. Rs. 22,440—900—24,240 per annum
District Judge—Grade 2	.. Rs. 18,240—600—20,640 per annum
Magistrate	.. Rs. 13,440—480/600—20,640 per annum



### SECTION 37

#### Justices of the Peace for Sri Lanka

The Judges of the Supreme Court  
 The Members of the National State Assembly  
 The Secretaries and Assistant Secretaries to the various Ministries, and the Secretary to the Cabinet  
 The Attorney-General  
 The Solicitor-General  
 The Director of Public Prosecutions  
 The Deputy Solicitors-General, and Deputy Directors of Public Prosecutions  
 All State Counsel  
 The Inspector-General of Police  
 The Deputy Inspectors-General of Police  
 All Superintendents of Police and Assistant Superintendents of Police other than Probationary Assistant Superintendents of Police  
 The Clerk and Clerk-Assistant to the National State Assembly  
 The Registrar and Deputy Registrars of the Supreme Court  
 The Registrar-General.

#### Justices of the Peace for portions of Sri Lanka

The High Court Judges The District Judges The Magistrates	}	For the different zones, districts and divisions over which the courts of which they are Judges have jurisdiction.
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The Quazis functioning in areas of jurisdiction of District Courts, for such districts.  
 Members of the Board of Quazis residing in areas of jurisdiction of District Courts, for such districts in which they reside.  
 The Registrars of High Courts, District Courts and Magistrates' Courts, for the respective areas of jurisdiction of those Courts.  
 The Government Agents of the Administrative Districts, for their respective Administrative Districts.  
 The Assistant Government Agents functioning in Administrative Districts, for the respective Administrative Districts in which they function.  
 The Office Assistants to Government Agents of Administrative Districts, for the respective Administrative Districts of those Government Agents.  
 The Divisional Revenue Officers, for their respective areas of jurisdiction.



**SECTION 85 (7)**

**Offences in respect of which a Police Officer may arrest without warrant**

**A.—Offences under the Penal Code**

All offences under Chapter VI

All offences under Chapter VII

All offences under Chapter VIII except offences under sections 151, 152 and 153

In Chapter IX, offences under sections 166, 167, 168 and 169.

In Chapter XI, offences under sections 209, 213, 219, 220, 220A and 221.

All offences under Chapter XII

All offences under Chapter XIV except offences under sections 265, 266, 267, 268, 269, 271, 277, 283 and 289

All offences under Chapter XV except offences under Sections 291A and 291B

All offences under Chapter XVI except offences under sections 203, 304, 305, 306, 307, 325, 349, 362A, 362B, 362C and 362D

All offences under Chapter XVII except offences under sections 386, 387 to 392B, (both inclusive) 400 to 410 (both inclusive) and 417

In Chapter XVIII, offences under sections 478A, 478B, 478C and 478D

In Chapter XX, an offence under section 488

**B.—Offences against other laws**

If the offence is punishable with death or imprisonment for three years or more.

**C.—**The offence of abetment, conspiracy, or attempt to commit an offence, or the offence of concealing a design to commit an offence, whether under the Penal Code or against any other law, if the offence abetted, attempted, or concealed, which is the object of the conspiracy, is an offence in respect of which a Police Officer may arrest without a warrant.











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