Ghana
School of Law
Board of Legal
Education

STUDY MANUAL

CRIMINAL PROCEDURE

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Board of Legal Examination
Ghana Law School
Professional Law Course

Criminal Procedure

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Overview

This manual is divided into 18 chapters. Each chapter provides a general overview of the topic. The various areas to be considered under each topic are clearly set out together with the objectives, pointing out the knowledge the student is expected to acquire by the end of the topic. Relevant legislation and case law have been provided to help the student in his or her understanding of the topic.

This manual only serves as a guide to the student in his or her understanding of the course and should be used together with the relevant legislation, textbooks and case law. The main pieces of legislation for the Criminal Procedure Course are the **1992 Constitution of Ghana; Criminal and Other Offences (Procedure) Act, 1960 (Act 30); Criminal Offences Act, 1960 (Act 29); Courts Act, 1993 (Act 459); and Juvenile Justice Act, 2003 (653).** The relevant textbooks for the course are **A.N.E Amissah, Criminal Procedure in Ghana and S.A Brobbey, Practice & Procedure in the Trial Courts & Tribunals of Ghana (2nd edn.).** Students are encouraged to acquire these materials to assist them in their understanding of the course.

Course Outline

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    c. Right Human Dignity – Article 15
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(Act 30)

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Chapter 1

INTRODUCTION TO CRIMINAL PROCEDURE

Criminal procedure is the process by which criminal matters are dealt with in accordance with the law. The essence of having laws to regulate our criminal procedure is to ensure that justice is done to all manner of persons; the victim/complainant, the accused person and the Republic in general. The main sources of our Criminal Procedure are identified as the **1992 Constitution of Ghana, the Criminal Offences Act, 1960, (Act 29), the Criminal and Other Offences (Procedure) Act 1960, (Act 30), and the Courts Act,1993 (Act 459).**

The topic looks at a general introduction of what Criminal Procedure entails. Students will be introduced to the various laws and materials that would be useful for the course.

Objectives

By the end of the topic the student is expected to have a general understanding of what Criminal Procedure entails and be introduced to all the relevant materials needed for the understanding of the course.

Chapter 2

CONSTITUTIONAL AND INDIVIDUAL RIGHTS

The topic generally provides students with an insight into the various rights enshrined under Chapter five of the 1992 Constitution and specifically looks at the following:

1. Right to Life
2. Right to Personal Liberty
3. Right to Human Dignity
4. Fair Trial

The constitutional rights enshrined under Chapter Five of the 1992 Constitution are fundamental to the human rights of all persons in Ghana. The process of dealing with criminal matters in Ghana cannot be embarked upon without regard to the protection of these rights. The Supreme Court has in a number of cases stated that the **Criminal and Other Offences (Procedure) Act, 1960 (Act 30)** continues to be valid only in so far as it is consistent with the 1992 Constitution. The Constitution is the supreme law of the land and all other laws are subject to the provisions of the constitution. Chapter Five of the 1992 Constitution generally deals with the fundamental Human rights and freedoms and all arms of government, organs of government, agencies of government and indeed all persons are mandated to respect and uphold these rights and freedoms. Generally, every person in Ghana is entitled to enjoy these rights whether or not the person is a citizen. Article 33(1) of the 1992 Constitution gives the High Court the power to enforce these rights. The relevant articles to be considered under the subject are articles 13,14,15,18, and 19.

Right to life – Article 13: Generally, all persons have a right to life and nothing must be done to deprive a person of this right. There are, however, exceptions to this general principle and these exceptions are set out in clauses 1 and 2 of Article 13 as follows:

1. Where a person is sentenced to death, after having been convicted of a criminal offence.
2. Where a person loses her or her life as a result of a lawful act of war.
3. Where a person loses his or her life as a result of a reasonable application of force justifiable under the circumstances set out in sub-clauses (a) – (d).

Article 14 – protection of personal liberty: Generally, everybody is entitled to his/her personal liberty without any inhibition or restriction. There are, however, exceptions to this rule as set in sub-clauses (a) – (g). The exceptions related to our purposes are (a), (b), (c), (f), and (g).

Article 14(2) – the right of an arrested person: A person who is arrested, restricted or detained has a right to know the reasons for his arrest, restriction or detention and also of his right to a lawyer of his choice. This must be communicated to the person in a language he understands. See: Republic v Akosah [1975] 2 GLR 406; Okorie alias Ozuzu [1974] 2 GLR 272.

Article 14 (3) – 48-hour rule: A person who is arrested, restricted or detained shall not be kept for more than 48 hours without bringing him/her before the Court. Such a person is entitled to be released either unconditionally or upon reasonable conditions if he/she is not brought before a court within 48 hours.

Article 14(4) – the right of accused to be released unconditionally or upon reasonable conditions if not tried within a reasonable time: What constitutes reasonable time has been held to depend on the circumstances of each case. See: **Gorman v. The Republic [2003 – 2004] 2 SCGLR 784; Brefo v The Republic**

[1980] GLR 679; Dogbe v The Republic [1976] 2 GLR 82; Martin Kpebu v. The Attorney-General, unreported, Suit No. J1/13/2015, 5th May 2016

Article 14 (5) – right to compensation for unlawful arrest, restriction and detention: This is a right to be enforced in the civil courts. See: Dr Solomon Sarfo v IGP & Attorney-General

Article 14(6) – The period of lawful incarceration in respect of an offence is to be taken into consideration after a person is convicted of an offence and is being sentenced: The courts have held that this provision does not allow the court to impose a sentence less than the minimum set by statute. Neither does it permit the court to give the sentence a retroactive effect. The Supreme Court has held in the case of **Gabriel Bosso v. The Republic [2009] SCGLR 420** that it should be made clear expressly or impliedly on the face of the judgement that the court has taken into consideration any period of time spent in custody by the accused before the sentence. See, **Ojo & Anor v. The Republic [1999-2000] 1 GLR 169.**

Article 14(7) – Right to compensation after an acquittal on appeal: This constitutional provision sets out the procedure to be followed in seeking compensation where the accused person is acquitted on appeal. The Supreme Court has set out the conditions under which such compensation shall be granted by the court in the case of **Dodzie Sabbah v The Republic, Supreme Court judgment dated 11TH June 2015 Suit No. J3/3/2012.**

Article 15 – Right to human dignity/ Respect for human dignity: The article frowns on all forms of torture, cruel, inhuman and degrading treatment or punishment. It also makes provision for remand prisoners to be kept separately from convicted persons; right of the juvenile offender to be kept separately from the adult offender.

Article 19 – Fair Trial, right to fair hearing within a reasonable time: Every accused person is entitled to a fair hearing within a reasonable time. This refers to both the accused who is on bail and the accused who is on remand. The article mandates a jury trial for offences which are punishable by death or by imprisonment for life. In such cases, the verdict of the jury ought to be unanimous. There is however an exception in respect of the trial of the offence of treason which is tried by 3 justices in the High Court whose decision shall be unanimous. The articles states that every person who is accused of an offence is entitled to be presumed innocent until proven guilty. See, **Martin Kpebu v. The Attorney-General, unreported, Suit No. J1/13/2015, 5th May 2016; Gorman v. The Republic [2003 – 2004] 2 SCGLR 784.**

The accused person to be afforded all the necessary facilities for the conduct of case and he has the right of accused persons to have proceedings interpreted to him in a language if he does not understand the language being used at the trial. The general rule is for all proceedings to be conducted in the presence of the accused person and the courts would normally adjourn proceedings if an accused is absent from court. There are however exceptions to this rule set out in sub-clauses (a) and (b) of Article 19(3).

(a) Where the accused refuses to appear in court after being duly notified. See **Bonsu alias Benjilo v The Republic [1999 – 2000] GLR 199, [2000] SCGLR**

(b) Where the accused conducts himself in a manner as to make the continuation of the proceedings in his presence impracticable and the court orders him to be removed to enable the trial to proceed.

Under this provision, the accused is entitled to a copy of the record of proceedings and he is to be furnished with this within a reasonable time not exceeding 6 months. Article 19 also guarantees the right of a person shall not be charged with or held to be guilty of a criminal offence founded on an act or omission that did not constitute an offence at the time the act or omission took place. Additionally, **Article 107(b) of the Constitution** does not permit Parliament to pass an Act that has a retrospective effect limiting the rights and liberties of a person.

Article 19 prohibits the court from imposing on an accused person a penalty which is severer in degree or description than the maximum penalty prescribed for the offence.

Article 19(7) – the principle of autrefois acquit/ convict: This is a plea by a person that he has already been tried and convicted or acquitted by a court of competent jurisdiction of the same offence or for any other offence that he could have been convicted of at the trial of the offence. There are however exceptions to this principle which are:

1. Where the subsequent trial is on the orders of a superior court in the course of an appeal or review proceedings in relation to the conviction or acquittal.

2. Where the original trial is in respect of an acquittal for the offence of high treason or treason.
3. Where a member of the disciplined force is being tried for a criminal offence after having been convicted or acquitted under the disciplinary law of the Force. See (article 19(8) and 19(16) (b).

Article 19(10) – Right of an accused to remain silent at his trial. The accused shall not be compelled to give evidence at the trial. He may testify on his own volition. See, **Okyere v Republic 1972 1 GLR 99.**

Article 19(11) – No person is to be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed in a written law. An exception to this rule is set out in article 19(12) in respect of contempt of a superior court. See, **British Airways v AG 1997-98 1 GLR 55; 1996-97 GLR 547; Tsatsu Tsikata v The Republic 2003-2004 2 SCGLR 1068; Ali Yusif Issa v The Republic No. 2. [2003 – 2004] 1 SCGLR 174.**

Article 19(13) - This bothers on the principle of natural justice. An adjudicating authority shall be independent, impartial and any case brought before it shall be given a fair hearing within a reasonable time. See, Aboagye v Ghana Commercial Bank Ltd. 2001-2002 SCGLR 797.

Article19(14) - Proceedings before an adjudicating authority to be generally held in public. The only exception is when in the interest of public morality, public safety or public order the adjudicating authority orders that the hearing would not be in public.

Article 19(15) - This article allows for proceedings before a court to be held in camera if the adjudicating authority considers it expedient to do so and in circumstances where publicity would prejudice the interest of justice. The court may also exclude members of the public where the welfare of a minor is concerned and for the protection of private lives.

In spite of the presumption of innocence under article 19(2)(c), provision is made for an enactment to place the burden of proving certain facts on the accused and this shall not be held to be inconsistent with the constitution.

Article 19(16) (b) - This article allows for the trial of a member of the disciplined force for a criminal offence notwithstanding any trial, acquittal or conviction under the disciplinary law of the force. The court is however bound in the case of any such trial to take into consideration any punishment suffered by the accused under the disciplinary law before passing sentence on him.

Articles 13,14,15,18,19 of the 1992 Constitution; Tsatsu Tsikata v. Republic;

Gorman v. The Republic [2003 – 2004] 2 SCGLR 784; Ali Yussif Issa No.1 & 2 v. The Republic; British Airways v. The Attorney-General; Dr Solomon Sarfo v. The IGP & The Attorney-General, unreported, Martin Kpebu v. The Attorney-General, unreported, Suit No. J1/13/2015, 5th May 2016.

Objectives

By the end of the topic the student is expected to know:

1. The importance of all the rights enshrined under Chapter Five of the 1992 Constitution.
2. The exceptions to these rights.
3. The right to personal liberty and how the right can be lawfully curtailed.
4. All the provisions under article 19 of the 1992 and what constitutes fair trial under the article.

Chapter 3

THE POWERS OF THE POLICE

The topic looks at the following:

1. The general powers of the Police in effecting arrest under sections 3 – 15 of Act 30.
2. The various circumstances under which the Police can arrest with or without a warrant under section 10 of Act 30.
3. The powers of the private person to effect an arrest under section 12 of Act 30.
4. The rights of the arrested person under articles 14 and 15 of the 1992 Constitution.

The Ghana Police Service is an important institution in Ghana in the administration of criminal justice which has the mandate to maintain law and order. In the exercise of this mandate, the Police, who have a duty to prevent and detect crime, have been given wide powers of arrest under the **Criminal and Other Offences (Procedure) Act, 1960 (Act 30).** The Police have also been given powers to conduct searches on persons, places and things. In the exercise of these powers, the Police are required to be mindful of the provisions on fundamental human rights under the 1992 Constitution and adhere to same.

A. Arrest

The powers of the police to effect arrest are guided by the **Criminal and Other Offences (Procedure) Act, 1960 (Act 30)** and provisions on fundamental human rights of the 1992 Constitution. The Police can arrest a person with or without a warrant. Private persons can also effect arrest under limited circumstances. In effecting an arrest, the police or person effecting the arrest

must actually touch or confine the body of the person to be arrested. The person can also submit to the arrest willingly by word or action. Where the person to be arrested takes refuge in a house or any place, the police officer or person acting under a warrant ought to be allowed free entry to the place and offered reasonable facilities and assistance to search and arrest the person.

The police can in order to gain entry or access to a place break any outer or inner door or window provided the police produced the notice of authority and purpose and were refused entrance. The Police officer may also break out of any place to liberate himself. The law does not allow the police or person effecting the arrest to subject the arrested person to more restraint than what is necessary to prevent his escape. The arrested person has the right to be informed in a language he understands of the reason for his arrest.

The police have powers to arrest with or without a warrant. The police may arrest a person without a warrant under the following circumstances if the person:

a. commits an offence in the presence of the police officer.

b. obstructs a police officer in the performance of his duties

c. escapes or attempts to escape from lawful custody

d. has in his possession without reasonable explanation, an implement adapted for the purposes of unlawfully entering a building.

e. has in his possession a thing which is reasonably suspected to have been stolen.

f. is reasonably suspected by the police officer to have committed an offence or being about to commit an offence.

g. has a warrant already issued against him by a Court.

h. is a deserter from the Armed Forces.

i. is a fugitive.

A private person may also arrest without a warrant under the following circumstances:

> a person who in the presence of the private person commits an offence involving the use of force or violence, bodily harm, offence in the nature of stealing or fraud, injury to public property, property owned by or in the lawful custody of that private person.

NB: A private person's power to arrest without a warrant under these circumstances is restricted to where any of the offences listed above has actually been committed.

See: **Articles 14, 15 of the 1992 Constitution; Sections 3 – 16 of Act 30; Asante v The Republic [1972] 2 GLR 177; Adekura v The Republic [1984-86] 2 GLR 345.**

Objectives

By the end of the topic, the student is expected know:

1. The powers of the police to effect arrest under Act 30.
2. The various circumstances under which the police can arrest a person with or without a warrant.
3. The powers of the private person to effect an arrest and its limitations.
4. The rights of the arrested person under article 14 of the 1992 Constitution.

B. Searches

The topic looks at the following:

1. The power of the Police to conduct a search of a place entered by person sought to be arrested.
2. The power of the police to search an arrested person.
3. Search warrants and the procedure for issuing same.
4. Form and content of a search warrant.
5. Execution of a search warrant.
6. Detention of articles seized under a search warrant.
7. The power of the police to conduct a search without a warrant.

   The Police also have powers to conduct searches on persons, places and things.

These powers are guided by provisions of the **Criminal and Other Offences (Procedure) Act, 1960 (Act 30),** and the fundamental human rights under the 1992 Constitution. **Sections 4, 8, 73(1) (3), 75, 76, 78, 79, 80, 83, 88 – 95 of Act 30; Articles 15 and 18 of the 1992 Constitution.**

A search warrant is an order in writing issued by a judge or magistrate in the name of the Republic and directed to a police officer or any other person commanding him to search a specified house, premises, or place for some property reasonably suspected to be connected with the commission of an offence for which the offender may be arrested, and to bring the property, when found, before the judge/magistrate to be dealt with in accordance with the law. A search warrant is issued based on information received by magistrate or judge on oath. This is normally in the form of an affidavit. The magistrate issues the warrant after the magistrate is satisfied that reasonable grounds exist to do so.

The warrant will specify the place or person to be searched as well as the item sought for where applicable. A search warrant may normally be executed on any day including Sundays between 6am and 6pm. The court may however in its discretion authorise the execution of a warrant at any time of the day.

The police may also search without a warrant if they believe or have reasonable suspicion that articles illegally obtained are in the process of being carried from one place to another, or there is reasonable suspicion that the items might be used to commit an offence or have been used to commit an offence and are about to be conveyed to another place or concealed. The police may also search without a warrant upon reasonable belief that an item which has been stolen, and is in a premises, is likely to be concealed or conveyed to another place.

Objectives

By the end of the topic the student is expected to know:

1. The general powers of the police to conduct searches.
2. The need for the police to conduct searches in a manner that does not infringe on a person's fundamental human rights protected under the 1992 constitution.
3. The circumstances under which the police may search with or without a warrant.
4. The procedure for obtaining a search warrant.
5. The form and content of a search warrant.
6. The execution of a search warrant.

Chapter 4

INSTITUTION OF PROCEEDINGS

There are three main ways of instituting criminal proceedings

i. Complaint to the magistrate
i. Summons/Warrant of Arrest
ii. Charge sheet

The topic looks at the following:

1. The issuance of a criminal summons.
2. Form and content of a summons.
3. The service of a summons.
4. The issuance of a warrant of arrest.
5. Form, content and duration of a warrant of arrest.
6. Execution of a warrant of arrest.

Under article 88 of the 1992 Constitution, the Attorney-General is responsible for instituting criminal proceedings. Criminal proceedings may be instituted by arraigning an arrested person before court on a charge sheet, indicating the name of the person charged, the offence for which the person is being charged and the time and place the offence was committed. Criminal proceedings may also be instituted by bringing a person before a court by a summons or warrant. Since the charge sheet is treated as a main topic on its own, this topic is restricted to summons and warrants of arrest as a means of bringing a person before a court. See: **Sections 60 – 87 of Act 30.**

Summons

A summons is a document in duplicate signed by a Magistrate or such other officer of the Court as the Chief Justice may direct. The document requests the person named therein to appear before the court at a specified date and time. It must be directed to the person to be summoned requesting him to appear at a time and date. It must also indicate the offence the person is alleged to have committed.

Warrants

A warrant is issued on a suspect when he has refused to attend court on a summons. It could also be issued without first having recourse to a summons if a complaint is made on oath to the Magistrate. It must state the offence that has been committed, the person to be arrested, and it is directed to a police to execute same. A warrant remains in force until it is executed or cancelled by the court which issued it. It can be issued at any time including Sundays. It can also be executed outside the Republic.

Objectives

By the end of the topic the student is expected to know:

1. The form and content of a criminal summons.
2. How a summons is served under the various circumstances.
3. The consequences of disobeying a summons.
4. Circumstances under which a warrant of arrest would be obtained or issued.
5. The form and content of a warrant of arrest.
6. Executing a warrant of arrest in Ghana and outside of the Republic.

Chapter 5

THE ATTORNEY-GENERAL

i. Nolle Prosequi ii. Withdrawal

The topic looks at the following:

1. The Attorney-General's power of entering a nolle prosequi.
2. The effect of entering a nolle prosequi.
3. The mode of entering a nolle prosequi.
4. The procedure for entering a nolle prosequi.
5. The Attorney-General's power to withdraw from prosecution.
6. The effect of a withdrawal from prosecution.
7. The difference between a nolle prosequi and a withdrawal.

As the initiator of all criminal proceedings in Ghana, the Attorney-General has wide prosecutorial discretion under the Criminal and Other Offences **(Procedure) Act, 1960 (Act 30)** in controlling the prosecution of criminal cases. The Attorney-General has the power to discontinue the prosecution of a case or withdraw from the prosecution of a case.

The Attorney-General has power under section 54 of Act 30 to enter a Nolle Prosequi at any stage of proceedings before judgment or verdict. The effect of the Attorney-General's entry of a Nolle Prosequi is to immediately bring the case to an end and discharge the accused person. This means that if the accused person is on remand, he shall be released; if the accused person is on bail, the recognisance shall be discharged. The Attorney-General is not required to give reasons and the discretion is not subject to judicial review. The entry

of the Nolle Prosequi, however, shall not operate as a bar to any subsequent proceedings against the accused person in respect of the same offence.

The Attorney-General may also withdraw from prosecution with the consent of the court in the course of a trial or preliminary proceedings before a District Court. This may be done at any time before judgment or verdict. The effect of a withdrawal from prosecution by the Attorney-General unlike the entry of a Nolle Prosequi depends on the stage of the trial or proceedings. Where the withdrawal is made in the course of a trial but before the close of the case of the prosecution, the accused person shall be discharged in respect of the offence. Such a discharge of an accused person shall not operate as a bar to the institution of proceedings against the accused person in relation to the same offence. On the other hand,

where the withdrawal is made after the close of the case for the prosecution, the accused person shall be acquitted and discharged.

See: **Sections 54 – 55, 59 of Act 30; Article 296 of 1992 Constitution; Republic vrs Adu Kwabena [1971] 2 GLR 323; Yeboah & Ors v. Boateng VII [1963] 1 GLR 182; Republic v. Abrokwah [1989 – 90] 1 GLR 385; Republic v. Adu Tutu Gyamfi (unreported).**

Objectives

By the end of the topic the student is expected to know:

1. What a nolle prosequi is.
2. At what stage in a trial or preliminary proceedings a nolle prosequi can be entered.
3. How a nolle prosequi can be entered.
4. The fact that a nolle prosequi is not subject to judicial review.
5. The effect of a nolle prosequi on the prosecution of a case.
6. How the Attorney-General may withdraw from the prosecution of a case.
7. At what stage in a trial or preliminary proceedings a withdrawal from prosecution could be made.
8. The effect of a withdrawal prior to the close of the prosecution's case and after the close of the prosecution's case.
9. The difference between the entry of a nolle prosequi and that of a withdrawal.

Chapter 6

CRIMINAL JURISDICTION OF THE COURTS

The topic looks at the following:

1. The general rule on the territorial jurisdiction of the courts in Ghana in criminal matters.
2. The various exceptions to the general rule.

A. Territorial Jurisdiction of the courts in Ghana

The general rule is that the territorial jurisdiction of the courts in Ghana in criminal matters are limited to offences committed within Ghana's territory.

This includes Ghana's territorial waters, air space, offences committed on a ship or aircraft registered or licensed in Ghana. There are however a number of exceptions to this general rule set out in section 56 (2) (3) and (4) of the Courts Act, 1993 (Act 459). See section 56 of the Courts Act 1993, (Act 459); Appiah v. The Republic.

Objectives

By the end of the topic the student is expected to know:

1. What constitutes the general rule on the territorial jurisdiction of the Ghanaian courts in criminal matters.
2. There are a number of exceptions to the general rule.
3. Exceptions pertaining to an offence partly committed in Ghana and partly committed outside Ghana.

4. Exceptions pertaining to categories of citizens who commit certain types of offences.
5. Exceptions pertaining to offences committed in Ghana's diplomatic missions.
6. Exceptions pertaining to certain types of offences committed by persons whether or not they be citizens.
7. Exceptions pertaining to the commission of some international crimes.

B. The Criminal Jurisdiction of the various Courts in Ghana

a. District Court
b. Juvenile Court
c. Circuit Court
d. High Court
e. Regional Tribunal
f. Court of Appeal
g. Supreme Court

Sections 1 – 49 of the Courts Act, 1993 (Act 459)

This section of the topic looks at the following:

1. The criminal jurisdiction of the lower courts.
2. The original, appellate and supervisory jurisdictions of the High Court in criminal matters.
3. The appellate jurisdiction of the Court of Appeal in criminal matters.
4. The original, appellate, supervisory and review jurisdictions of the Supreme Court in criminal matters.

Objectives

By the end of the topic the student is expected to know:

1. That the criminal jurisdiction of the lower courts is determined by the type of offences that can be prosecuted before the courts – District, Juvenile and Circuit courts.

2. The type of cases that can be prosecuted before the various courts.
3. The extent of the original, appellate and supervisory jurisdiction of the High Court in criminal matters.
4. The appellate jurisdiction of the Court of Appeal in criminal matters.
5. The original, appellate, supervisory and review jurisdiction of the Supreme Court.

Chapter 7

BAIL

The topic looks at the following:

1. The three different types of bail – Police enquiry bail, bail pending trial and bail pending appeal.
2. Factors considered by the courts in granting bail pending trial.
3. Article 14(3) and 14(4) of the 1992 constitution.
4. Conditions under which the courts would grant bail pending appeal.
5. Drafting of applications in support of and in opposition to bail pending trial and bail pending appeal.
6. Variation of recognizance.
7. Forfeiture of recognisance.

a. Police Enquiry bail.

b. Bail pending Trial.

c. Bail pending Appeal.

d. Forfeiture of recognisance.

Bail is the process of procuring the release from legal custody of a person by an undertaking or guarantee that such a person will appear or be available at such place and time specified in the bail bond. The person who gives the undertaking is referred to as the surety whereas the person for whom the undertaking is given is the principal party.

The undertaking is referred to as the bail bond and the bail bond is signed by the surety and the principal party. The bond consists of a number of terms

and conditions that must be obeyed and the person who gives the undertaking is normally bound by an amount of money which is used as security for the bail bond. The bond may be with or without sureties. If it is without a surety then it would be a self-recognisance bail, that is, on the principal party's own recognisance.

There are three main types of bail:

Police Enquiry Bail.

Bail pending trial.

Bail pending appeal.

Bail granted by the police in the course of investigations is referred to as police enquiry bail. Any person who is arrested by the police without a warrant may be granted bail by the police in the course of their investigations. Under Article 14(3) of the Constitution, and section 15 of Act 30, if police investigations are not completed within 48 hours, the police are mandated to either grant the person bail or present him before a court. In granting bail, the police may ask the principal party to enter into a bond with or without sureties for a reasonable amount to appear before the police or court as stated in the bond. The police are required to fix the bail taking into consideration the contemplated charge or offence committed. It should not be excessive. If the conditions set out in the bail bond are too excessive such that the principal party cannot get anybody to stand as surety for him, he may apply to the High Court or Circuit Court for the conditions to be reviewed. The Bond executed by the police may be enforced as if it were a bond executed by the court. A person who fails to appear on the bond, may be arrested by a warrant obtained by the police for his arrest and subsequently remanded in custody by the court.

Bail granted by the courts before or in the course of a trial is known as bail pending trial. Under section 96 of Act 30, a court may grant bail to a person who appears or is brought before it on a process or after being arrested without a warrant if the person is prepared to give bail. Bail pending trial may be granted by the court suo motu or on an application made to the court by the suspect/ accused or by his counsel on his behalf. The application may be oral or written.

A written application is made by a motion supported by an affidavit stating the facts leading to the arrest, the nature of the offence for which the person has

been arrested, reasons why the person should be granted bail by the court and the willingness and preparedness of the person to give bail. The Republic or prosecution may or may not oppose the application depending on the nature of the offence and the circumstances of the case. The Republic or prosecution may oppose the application either on points of law or by filing an affidavit in opposition. Such an affidavit must contain the facts leading to the arrest, the nature of the offence and the reason why the court should not grant the application.

The discretion to grant bail generally lies with the court and in exercising this discretion, the court is guided by sections 96(5) and (6) which set out factors which are to be considered by the courts in deciding whether or not to grant bail. The courts are also guided by the provisions of article 14(4) of the 1992 Constitution which mandates the court to grant bail to a person who is not tried for the offence for which he has been arrested, restricted or detained within a reasonable time.

Section 96 of Act 30 also allows the court to grant bail to a convicted person whilst an appeal against his conviction is pending. This is referred to as bail pending appeal. Bail pending appeal has been held by the courts to be an unusual procedure and thus the courts are normally cautious in granting same having regard to the fact that the applicant would have been convicted by a court of competent jurisdiction. The conditions under which bail pending appeal would be granted by the courts are set out in the case of **Fynn & Ors v. The Republic [1971] 2 GLR 433.** The application for bail pending appeal is also by a motion supported by an affidavit and the Republic may oppose the application on points of law or by filing an affidavit in opposition.

Breach of the conditions of bail would result in the forfeiture of the recognizance. The procedure for the forfeiture of recognisance is set out under section 104 of

Act 30. Students must take not that section 104(4) has been struck out by the Supreme Court as unconstitutional. See: **Sections 96 – 104 of Act 30; Martin Kpebu v. Attorney-General unreported, Suit No. J1/7/2015, Supreme Court**

Judgment dated 1st December 2015; Martin Kpebu v. Attorney-General Suit No. J1/13/2015, Supreme Court Judgment dated 5th May 2016; Dogbe v The Republic [1976] 2 GLR 82; Okoe v The Republic [1976] 1 GLR 80; Republic v. Arthur [1982 – 83] GLR 249; Prah & Ors v. The Republic

[1976] 2 GLR 278; Seidu v. The Republic, Fynn & Ors v. The Republic [1971] 2 GLR 433; Owusu v. The Republic; Baiden v. The Republic [1972] 2 GLR 174.

Objectives

By the end of the topic the student is expected to know:

1. The procedure for making an application for bail pending trial and bail pending appeal.
2. How to draft an application for bail pending trial and bail pending appeal.
3. How to draft an affidavit in opposition to an application for bail pending trial and bail pending appeal.
4. The factors that would guide the court in determining whether or not to grant bail pending trial as set out in section 96(5), (6) of Act 30 and articles 14(3) and 14(4) of the 1992 Constitution.
5. The role of sureties in the grant of bail.
6. Conditions under which the courts would grant bail pending appeal.
7. Conditions under which a recognizance shall be forfeited.
8. Procedure for forfeiting a recognizance.

Chapter 8

SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR

The topic shall look at the following:

1. Circumstances under which the court would order a person to execute a bond to keep the peace.
2. Circumstances under which the court would order a person to execute a bond to be of good behaviour.
3. Procedure before the District magistrate to show cause why a person should not be made to execute a bond for keeping the peace or for good behaviour.
4. Enquiry as to truth of information before the magistrate
5. Execution of the bond for keeping the peace or to be of good behaviour.
6. Order to provide security
7. Discharging of a person informed against

The courts have power under Act 30 to order a person to execute a bond either to keep the peace or be of good behaviour within a specified period. Circumstances under which these orders may be made are set out under sections 22 – 38 of Act 30. The execution of a bond to keep the peace or to be of good behaviour under these provisions does not constitute a conviction. This ought to be distinguished from the execution of a bond to keep the peace or to be of good behaviour under section 299 of Act 30 in respect of a convicted person. See: **Sections 22 – 38 of Act 30. Zuta II &ORS V. The Republic [1976]1 GLR 136, Republic v. District Magistrate Grade 1, Tarkwa; Ex parte Panyin III [1982-83] GLR 552.**

Objectives

By the end of the topic the student is expected to know:

1. The difference between the execution of a bond for keeping the peace and a bond to be good behaviour.
2. That the court would conduct an enquiry into the veracity of the information received by giving the person, against whom a complaint has been made, an opportunity to show cause why he/she should not be made to execute a bond for keeping the peace or for good behaviour.
3. Conditions under which a magistrate will order a person to execute a bond for keeping the peace and for good behaviour.
4. Procedure for execution of the bond for keeping the peace and for good behaviour.
5. Circumstances under which a person may be discharged by the court.

Chapter 9

DRAFTING OF CHARGES

The topic looks at the following:

1. Drafting a charge sheet.
2. Joinder of several charges under different counts in a charge sheet.
3. Joinder of several accused persons tried together on a charge sheet.
4. Drafting the statement of offence and particulars of offence in a charge sheet.

Charge sheet

The charge sheet is the main method of instituting criminal proceedings against a person. An accused person is arraigned before a court on charges preferred against him in a charge sheet.

The charge sheet or bill of indictment is a statement that informs the court and the accused person of the charges against the accused person which the court is called upon to try. The charge sheet is used for summary trials while the bill of indictment is used for trials on indictment. The charge sheet is governed by section 109 – 112 whilst the bill of indictment is governed by section 201 – 202. The charge sheet is the foundation of the trial and must be properly drafted. The prosecutor must take care in drafting the charges to ensure that the charge against the accused person is borne out of the facts founding the charges. The charge sheet may contain separate counts or charges against the accused person.

Each count is made up of the statement of offence and the particulars of offence. The statement of offence should state the charge arising out of the particular legislation that criminalises and sanctions the conduct the accused

person has engaged in. The statement of offence must be short, clear and precise. The particular section creating the offence must always be quoted. The particulars of offence must give reasonable information about the nature of the offence the accused is alleged to have committed. The particulars of offence are drafted from the facts as well as the ingredients of the offence charged. See, **Sections 109 – 112 of Act 30.**

Objectives

By the end of the topic the student is expected to know:

1. How to draft a charge sheet involving several accused persons for various offences under different counts.
2. How to determine the offence an accused person(s) has committed from a given set of facts.
3. How to draft a statement of offence for all major offences.
4. How to draft particulars of offence for all major offences.
5. That the charges must not be duplicitous.

Chapter 10

DEFENCES

1. Alibi
2. Previous acquittal or conviction (Autre fois convict\acquit)
3. Lunacy of Accused and Defence of Lunacy.

The topic looks at the following:

A. Alibi

1. The defence of alibi.
2. Notice of alibi in a summary trial.
3. Notice of alibi in a trial on indictment.
4. Particulars of alibi.
5. Failure to give notice of alibi and to provide particulars of alibi.

The plea of alibi is a defence open to the accused. The defence is to the effect that the accused person was not present at the scene of the crime but was at another place. The accused person who intends to plead alibi is required to give notice of the alibi and provide the prosecution with particulars as to the time and place, and of witnesses by whom he proposes to prove his alibi.

In the case of a summary trial, the notice and particulars of alibi are to be provided before the prosecution call their first witness to testify in court. In the case of a trial on indictment the notice and particulars of alibi must be provided at the stage of committal proceedings and before the sitting of the trial court. The prosecution is then given the opportunity to investigate the alibi and this investigation is conducted by the police. It is important to note that the failure of an alibi does not mean an automatic conviction of the

accused. It does not in any way shift the burden of the prosecution to prove its case beyond a reasonable doubt.

The procedure before the court when the defence of alibi is raised is as follows:

a. When the notice of alibi is given, the court may grant a reasonable adjournment to enable the prosecution through the investigator to investigate the alibi – s. 131(2)

b. The investigator may prepare a report for the prosecution to enable them take a decision on the case.

c. If the accused puts forward the defence of alibi in the course of the trial without having given notice, the court is to call on the accused to give notice to the prosecution of the particulars of the alibi and adjourn if the prosecution so desires when the notice is given to enable the prosecution investigate the alibi – s. 131(3)

d. If the accused fails to provide particulars of the alibi as required the case shall proceed but any evidence sought to be led by the accused in support of the alibi shall not be admissible – s. 131(4)

B. Previous acquittal or conviction

1. The principle of double jeopardy.
2. The defence of autre fois acquit and autre fois convict
3. The general rule for the defence of autre fois convict /acquit.
4. Exceptions to the general rule

A person who has been tried by a court of competent jurisdiction for an offence, and convicted or acquitted of the offence shall not be liable to be tried again on the same facts for the same offence or any other offence of which he could have been convicted at the first trial unless a retrial is ordered by a court having power to do so. This constitutes the defence of previous acquittal or conviction or what is normally referred to as autre fois acquit and autre fois convict.

The defence flows from the principle of double jeopardy which does not allow a person to be punished twice for the same crime by a court of competent jurisdiction. The accused person who intends to put up this defence is required to show that he has been tried by a court of competent jurisdiction and that

he was either acquitted or convicted on the same facts. Section 117 of Act 30 provides the requirement of proof of previous conviction or acquittal.

There are however a number of exceptions to the rule set out under sections 115

– 116 of Act 30, in respect of supervening consequences not known at the time of the former trial and in a situation where the original court was not competent to try the subsequent charge. Articles 19(8) **in respect of an acquittal for the offence of high treason or treason,** and 19(16)(b) of the 1992 Constitution in a situation where **a member of a disciplined force is tried for a criminal offence having been tried under the disciplinary law of the force.**

C. Lunacy of accused and the defence of lunacy

1. The defence of lunacy
2. Enquiry into the mental state of the accused
3. Procedure when certified as incapable of making a defence.
4. Procedure when certified as capable of making a defence.
5. Defence of lunacy at the time of the commission of an offence.

In the course of a trial or preliminary proceedings, if the court has reason to believe that an accused is of unsound mind and incapable of making a defence, the court is under a duty to conduct an enquiry into the unsoundness of his mind in accordance with the procedure set out under section 133 – 135 of Act 30. This procedure is referred to as a lunacy enquiry. The procedure ought to be distinguished from the situation under sections 136 & 137 of Act 30.

Under section 136, where in a preliminary proceeding before the court, an accused person appears to be of sound mind, the court is obliged to proceed with the hearing of the case, notwithstanding a defence of insanity raised by him or on his behalf. The court shall proceed to commit the accused to stand trial if it is of the opinion that he ought to be committed having regard to the indictment and summary of evidence. The accused shall then have the opportunity at the trial to raise the defence of insanity.

Under section 137, if there is evidence at the trial of the accused person to show that he was insane at the time he committed the act for which he has been charged, so as not to be responsible for his actions, the court or jury if it accepts the defence of insanity shall then return a special verdict to the effect that the accused is guilty of the offence but was insane at the time the offence was committed. The court shall then forward a certified copy of the record of the court to the Minister of Justice and the accused shall be ordered by the court to be kept in custody as a criminal lunatic in a place and manner directed by the court. Such an accused person shall only be released at the pleasure of the President.

The procedure for a lunacy enquiry as set out in s.133-135 of Act 30 is as follows:

a. The Judge shall issue an order for the accused to be medically examined.

b. After the examination the judge shall take medical evidence and any other evidence available regarding the state of mind of the accused. It must be noted that the medical examination alone is not enough. Medical evidence on oath is necessary for the determination of the state of mind of the accused by the judge. (Agyemang v. The Republic, supra)

c. After the evidence, if the judge is of the opinion that the accused is of unsound mind and incapable of making a defence, the judge shall record his/her findings and postpone the proceedings by adjourning the case.

d. Before adjourning the case, the judge shall determine whether or not to grant the accused bail. If the judge decides to grant the accused bail, the bail must be granted on sufficient security that proper care shall be taken of the accused to ensure that he does not cause any injury to himself or any person.

e. If the judge decides not to grant him bail, he shall give an order for the accused to be detained in safe custody and a copy of the record transmitted to the Minister of Justice through the Judicial secretary.

f. Based on the record from the court, the Minister shall prepare a warrant directing the accused to be kept in a lunatic asylum or other suitable place and the Judge shall give the necessary directions for the execution of the warrant.

g. After the postponement of the case, the court shall resume the trial of the case if the accused appears before him at the adjourned date and the judge considers him capable of making a defence.

h. However, if the judge considers him still incapable of making a defence, the judge shall order for another medical examination and conduct an enquiry in the same manner as was done the first time.

See: **Sections 27, 28 of Act 29; Sections 113 – 117, 131 of Act 30; Bediako v. The Republic [1976] 1 GLR 39; Ahwireng v. The Republic [1972] 1 GLR 270; Yirenkyi v. The State [1963] 1 GLR 66.**

Objectives

By the end of the topic the student is expected to know:

1. When the various defences can be raised in a trial.
2. Procedure for raising the various defences.
3. Procedure to be adopted by the court after the defences are raised.

Chapter 11

EVIDENCE ON COMMISSION

The topic looks at the following:

1. Circumstances under which the courts would issue a commission for evidence to be taken.
2. Application by the District Court to the High Court or Circuit court for issuance of a commission.
3. Procedure for examination of witnesses.
4. Sending of interrogatories by parties who are absent.
5. Return of commission to the Court which issued it.

The law allows the High Court or Circuit Court to issue a commission for the examination of a witness whose attendance in court cannot be procured without going through reasonable delay, expense and inconvenience. The witness must be a witness whose evidence is necessary in the delivery of justice and the commission ought to be issued in the course of a trial, proceedings or an enquiry. The District Court may also apply to the High Court or Circuit Court for a commission to be issued for the examination of such a witness and the High court may issue the commission or reject the application. The procedure for taking evidence on commission is set out under sections 124 – 128 of Act 30.

See: **Sections 124 – 128 of Act 30; Commodore alias Kayaa v. The Republic [1976] 2 GLR 471; Appiah v The Republic [1987 – 88] 2 GLR 377.**

Objectives

By the end of the topic the student is expected to know:

1. Circumstances under which the High Court or Circuit Court would issue a commission for evidence to be taken.
2. Circumstances under which the District Court would apply to the High Court or Circuit court for a commission to be issued for evidence to be taken.
3. Procedure for taking evidence on the issuance of a commission by the Court.
4. How and when the evidence is used in a trial, enquiry or proceedings.

Chapter 12

PRESERVATION OF TESTIMONY IN CERTAIN CASES

The topic looks at the following:

1. Depositions taken from persons who are dangerously sick.
2. Notices to parties.
3. Transmission of statements to trial court and to the Attorney-General.
4. Use of statements/depositions in evidence.

The law allows the court to take evidence from a dangerously sick person ahead of a trial or proceedings and preserve same to be used as evidence later in the trial or proceedings if the witness is unable to recover and give evidence at the trial. In a situation where the evidence relates or is expected to relate to an offence for which a person has been charged or in respect of whom there has been a committal for trial, reasonable notice of the intention to take the statement shall be served on the prosecution and the accused.

The statement which is taken shall then be transmitted to the Court in which the person is to be tried and a copy sent to the Attorney-General. The statement would be used at the trial of the person or of the offence in respect of which such statement was taken once it is established that the person who made the statement is dead or that there is reasonable probability that the person would

not be able to give evidence. The statement would then be read in evidence either for or against the person without further proof if the statement is signed by the judge or magistrate before whom the statement is taken, and it is established to the satisfaction of the court that reasonable notice of the

intention to take the statement was given to both the prosecution and accused and that they had full opportunity to cross-examine the person.

See: **Sections 194 – 197 of Act 30**

Objectives

By the end the topic the student is expected to know:

1. The circumstances under which the courts would take statements from a witness ahead of a trial and preserve same for the trial.
2. The procedure for taking such statements.
3. How the statement can be used in a trial.

Chapter 13

DISCLOSURE IN CRIMINAL PROCEEDINGS

The topic looks at the following:

a. What is disclosure
b. Why is disclosure required
c. What is to be disclosed
d. How is disclosure done
e. When is disclosure done
f. Case Management Conference
g. Witness Statement

The Supreme Court on 7th June 2018 delivered a landmark decision in the case of the Republic v. Eugene Baffoe-Bonnie & 4 Ors. Reference Number J1/06/2018 on disclosure of relevant material in the possession of the prosecution in accordance with the accused person's right to a fair trial under Article 19(2) (e) and (g) of the 1992 Constitution.

Following the decision of the Supreme Court, the Chief Justice issued a Practice Direction in line with disclosures and case management in criminal matters. The Practice Direction did not just provide for disclosures but also introduced the use of Witness Statements and Case Management Conference (CMC) in criminal proceedings. The Practice Direction(Disclosures and Case Management in Criminal Proceedings) 2018 which took effect from 1st November 2018 is therefore a direction to provide for disclosures and

witness statements in criminal proceedings and to provide for the efficient management of criminal cases and for related matters.

The main objective of the Practice Direction is "to ensure that criminal cases are resolved fairly, justly, efficiently and expeditiously." In the absence of specific legislation on the subject, disclosure in criminal proceedings is therefore guided by the Supreme Court decision in the **Eugene Baffoe Bonnie case, supra,** and the Practice Direction(Disclosures and Case Management in Criminal Proceedings) 2018

What is disclosure

Disclosure refers to the revelation of information in the custody of the prosecution to the accused person. It is given to the accused person because it is a constitutional right to know the evidence that will be used against him. See Republic vrs Eugene Baffoe Bonnie &4Ors, supra.

Why is disclosure required

- To meet/fulfill the requirements of fair trial under Article 19 (1).
- To meet the requirements of Article 19(2)(e) & (g) as interpreted by the Supreme Court in the Eugene Baffoe Bonnie case.
- To avoid unfair advantage in favour of the prosecution against the accused
- To prevent a situation where the accused would be impeded in his defence
- To prevent miscarriage of justice

What is to be disclosed

- Charge Sheet/Bill of Indictment
- Facts of the case
- Statements of accused persons
- Statements of persons to be used as witnesses
- Statement of persons not used as witnesses
- Copies of documents / materials the prosecution intends to use at trial
- Copies of relevant documents / materials which may not even be used at trial

- Photographs of any real evidence(objects) in possession of the Prosecution which are relevant to the case and which the Prosecution may or may not tender at the trial, such as guns, cutlasses, knifes etc
- Exculpatory Evidence
- Witness Statements

How is disclosure done

The documents and materials to be disclosed may be filed in the registry of the relevant court and served on the defence. Access to documents/materials may also be granted to the defence in situations where the items or matter to be disclosed are bulky or cannot be physically filed in the registry of the court.

Examples of circumstances where access could be granted the defence are;

- Where Bulky documents are to be disclosed
- Crime scene
- Weapons in an armoury
- Where documents or materials cannot be filed in the registry of the court for security reasons

The disclosure of material / documents / statements is however subject to relevance, privilege, national / public interest and this is a matter that is to be determined by the court where there is disagreement between the parties.

When is disclosure done

After the plea is taken and at least two clear days before the Case Management Conference(CMC). Even though the Supreme court in the Eugene Baffoe Bonnie case stated that disclosure is a continuous process, the Chief Justice's Practice Direction appears to restrict the prosecution to fulfilling their disclosure obligation at least two clear days before the CMC.

Case Management Conference(CMC)

- The prosecution and the defence are the only parties allowed at CMC which is held in camera and must not be held in open court

Procedure at the CMC

- The Court shall decide whether the offence is amenable to amicable settlement under section 73 of Courts Act, 1993 (Act 459). The Judge may refer the case to ADR where amenable to amicable settlement

- The Judge shall ascertain from the accused whether all the disclosures required of the prosecution have been made.
- The Judge will ascertain whether there are any further disclosures that the accused requires prosecution to make. If accused requires further disclosure, he shall provide particulars of such matters and satisfy the court of their relevance.
- The prosecution may apply for leave to amend witness statement. However, under the Practice Direction, leave to amend witness statement or make further disclosure of material intended to be relied on by the prosecution will not be granted unless the prosecution satisfies the court that the document did not exist or could not be traced at the time of disclosure after diligent search. This position in the Practice Direction is in conflict with the position of the Supreme Court in the Eugene Baffoe Bonnie case, where the Supreme Court held that disclosure is a continuous process and that failure to disclose does not affect admissibility of the document but only leads to an adjournment to enable the defence some time to study the document. See the Eugene Baffoe Bonnie case, supra.
- The court shall adjourn CMC and allow the prosecution to amend witness statement or make further disclosures at least 2 clear days before the next date for the CMC.
- The court shall determine issues of admissibility at the CMC.
- The court must enquire whether parties agree to the use of any witness statements as Evidence in Chief.
- The court may determine any applications or matters that may be raised by parties.
- Without prejudice to his constitutional right of presumption of innocence, the accused shall disclose the names and addresses of witnesses he expects to call, should he be called upon to open his defence at the close of the prosecution's case.
- The accused is required to indicate if there are any witnesses he expects to call by use of witness summons to enable the summons to be issued on time.
- Where the accused person wishes to plead alibi, he is required to give particulars of the alibi at the CMC

- The judge shall then set timelines for the trial of the case and set a date for the trial to commence.

Witness Statements

The use of witness statements in criminal proceedings was introduced by the Practice Direction on disclosures and case management.

- It is prepared by the prosecutor from the statement of the witness given to the police and after witness conference
- It should be a detailed statement of the witness covering all the essential parts of the witness' testimony
- It must indicate all documents to be identified or tendered in evidence by the witness
- It may be handwritten or type written
- The statement must be dated, signed or thumb printed by the witness
- It shall have the following Statement of Truth as the final clause:

"I verify that this statement is true to the best of my knowledge and belief".

- The witness statement may be tendered in evidence by the accused
- If the witness statement is used as evidence in chief, it must be read in court before cross-examination
- Where the witness is not available to testify, the witness statement may be tendered in evidence as hearsay statement under the hearsay rules.

Objectives

At the end of the topic, the student is expected to know;

1. What disclosure is all about
2. Why disclosure required
3. What is to be disclosed
4. How is disclosure done
5. When is disclosure done
6. What Case Management Conference is and the procedure for conducting same.
7. What a witness statement is and how to draft the statement.

Chapter 14

MODES OF TRIAL

a. Summary trial
b. Trial on indictment

Summary Trial

The topic looks at the following:

1. Offences tried summarily
2. Procedure for summary trial
3. Appearance of parties before the court
4. Plea of the accused
5. Procedure after plea of guilt
6. Procedure after plea of not guilty
7. Disclosure and Case Management Conference
8. Opening of case for the prosecution
9. Examining of witnesses
10. Close of prosecution's case
11. Submission of no case to answer
12. The defence
13. Addresses
14. The decision

There are two main modes of trial in Ghana – summary trial and trial on indictment. An offence is tried summarily if the enactment that creates the

offence makes the offence punishable on summary conviction and provides for no other mode of trial or the enactment which creates the offence does not provide for a mode of trial but the maximum punishment for the offence on conviction is a term of imprisonment that does not exceed six months, with or without a fine. An offence is also tried summarily if the enactment creating the offence does not provide for the mode of trial. A summary trial may be conducted in the District Court, Juvenile Court, Circuit Court or High Court depending on the nature of offence charged, and the trial shall be in accordance with Part III of the **Criminal and Other Offences (Procedure) Act 1960, (Act 30).** See, **(Part III Sections 163 – 177 of Act 30; Nokwe v. The Republic [1999-2000] GLR 49; State v. Poku & Anor. 1967 GLR 31; Republic v. District Magistrate Court, Grade II, Osu; Ex parte Yahaya [1984 – 86] 2 GLR 361; C.O.P v. Akoto [1964] GLR 231; Togbe v. Fiti IV v. State [1965] GLR 33; Comfort & Anor v. The Republic [1974] 2 GLR 1.**

Objectives

By the end of the topic the student is expected know:

1. the type of offences which are triable summarily.
2. be able to describe a summary trial from the first appearance of an accused before court till the time decision is given by the court.

Trial on Indictment

The topic looks at the following:

1. Offences tried on indictment.
2. Preliminary proceedings (committal proceedings).
3. Trial before the High Court.
4. Appearance of parties before the court.
5. Plea of the accused.
6. Procedure after plea of guilt.
7. Procedure after plea of guilty in a murder case.
8. Procedure after plea of not guilty.
9. Disclosure and Case Management Conference10. Empanelling of jurors/ assessors.

11. Peremptory challenge and challenge for cause.
12. The role of the jury/assessors.
13. Opening of case for the prosecution.
14. Examination of witnesses.
15. Close of prosecution's case.
16. Submission of no case to answer.
17. The defence.
18. Addresses.
19. Summing up.
20. The verdict.

An offence shall be tried on indictment if it is punishable by death, declared as a first degree felony or the enactment creating the offence provides that it shall be triable on indictment without providing for any other mode of trial. A trial on indictment is conducted before a judge and jury or a judge with the aid of assessors in the High Court and the trial shall be in accordance with **Part V of the Criminal and Other Offences (Procedure) Act 1960, (Act 30).** The trial is preceded by a preliminary hearing in the District Court before a Magistrate to determine whether there is a basis for committing the accused person to stand trial in the High Court. The standard for committing an accused person to stand trial at the High Court is the availability of just a scintilla of evidence from the bill of indictment presented to the court by the prosecution.

See, **Part IV, Sections181 – 286 of Act 30; State v. Bisa [1965] GLR 389; State v. Banful [1965] GLR 433; Tetteh Asamadey alias Osagyefo & Anor v. C.O.P [1963] 2 GLR 400; State v Kwame Amoh [1961] GLR (Part II) 637; Barkah v. State [1966] GLR 590; Berko v. The Republic [1982 – 83] GLR 23; Yankey v State [1968] GLR 115.**

Objectives

By the end of the topic the student is expected know: 1. the type of offences which are triable on indictment.

2. be able to know the difference between a jury trial and trial with the aid of assessors.
3. be able to describe a trial on indictment from the first appearance of an accused before court till the time decision is given by the jury.

Chapter 15

PUNISHMENT

The topic looks at the following:

1. The different kinds of punishment.
2. Rules on punishment for the various degrees of offences.
3. Rules relating to fines.
4. Previous convictions.
5. Concurrent sentence.
6. Consecutive sentence.

The **Criminal and Other Offences (Procedure) Act 1960, (Act 30)** sets out the rules guiding the nature of punishment to be meted out to persons convicted of various degrees of felonies and misdemeanors. There are different kinds of punishment set out under section 294 of Act 30. These are:

- death,
- imprisonment,
- detention,
- payment of fine,
- payment of compensation, and liablity for police supervision.
- Others may include probabtion, and
- bond for keeping the peace or to be of good behavior.

The death penalty is the mandatory punishment for the following offences: Murder, high treason, piracy, smuggling of gold or diamond. (See sections 46, 194(2), 317A of Act 29 and article 3(3) of the 1992Constitution).

Under section 32(2) of the Juvenile Justice Act 2003 (Act 653), the death penalty shall not be pronounced or recorded against a juvenile. The death penalty shall also not be recorded against a pregnant woman (section 312(1), (2) and (3) of Act 30). Section 312 (1) provides that where a woman is convicted of an offence punishable by death, the court shall order for the woman to be tested for pregnancy unless the court believes that the woman is post-menopausal.

A sentence of death must specify the manner in which the person condemned shall suffer death. (section 304(1), (2) and (3).

Imprisonment: A person convicted of an offence declared as a first degree felony is liable to imprisonment for life or a lesser term unless the statute creating the offence specifically provides for the minimum or maximum sentence.

A person convicted of an offence declared as a second degree felony is liable to a term of imprisonment not exceeding ten years unless the punishment for that offence is specifically provided for in the enactment or statute creating the offence. The law provides that if an offence is declared to be a felony without specifying whether it is a first or second degree felony, and the punishment for

the offence is not specified, such an offence would be deemed to be a second degree felony.

A person convicted of an offence declared as a misdemeanor with no specified punishment provided shall be liable to a term of imprisonment not exceeding 3years. A person convicted of any of the offences listed in section 296(5) is liable to a term of imprisonment not exceeding 25 years. Every sentence of imprisonment is with hard labour unless the court otherwise directs in respect of a sentence which is less three years. A juvenile cannot be sentenced to imprisonment with hard labour.

Fines: A person who is convicted of a felony, a misdemeanor or an offence punishable by imprisonment unless the sentence for that offence is fixed by law

may be sentenced to a fine in addition to or in lieu of any other punishment to which the person is liable.

Previous Conviction: A person having been convicted of a criminal offence is again convicted of a criminal offence is liable to increased punishment provided under section 300 of Act 30.

Concurrent and Consecutive sentence:

Where an accused person is convicted of more than one count in a case, the court is under a duty to sentence the accused person on each of the counts and further indicate whether the sentences are to be served consecutively or concurrently. Where the various counts under which an accused person is charged results from several acts done in execution of one grand design or forms one continuous transaction, the sentence for each of the counts must run concurrently. When the sentences run concurrently, the accused person is required to serve the highest or longest of the sentences imposed by the court. On the other hand, where sentences run consecutively the accused person would be required to serve the total of all the sentences put together, i.e cumulatively.

Part VI-S. 294 – 304 of Act 30; State v. Agyeman & Ors [1962] 2 GLR 67; Amoah v The Republic [1971] 2 GLR 72. Tetteh Asamadey @Osagyefo v Commissioner of Police 1963 2GLR 400; Adjei v The Republic 1977 1GLR 156; Adomakov The Republic 1984-86 2GLR 766.

Objectives

By the end of the topic the student is expected to know:

1. The rules of punishment relating to first and second degree felonies, misdemeanours and other offences.
2. The rules relating to fines.
3. The principles guiding punishment for previous conviction.
4. The circumstances under which sentences would run concurrently or consecutively.

Chapter 16

APPEALS

The topic looks at the following:

1. Time within which to file an appeal in the various courts.
2. Notice/petition of appeal.
3. Extension of time within which to file an appeal.
4. Grounds of appeal.
5. Circumstances under which an appeal would be granted.

The right of appeal is guaranteed by the 1992 Constitution whilst the procedure for filing an appeal is captured under **Part VIII of the Criminal and Other Offences (Procedure) Act 1960 (Act 30). The Court of Appeal Rules, C.I 19 and the Supreme Court Rules, C.I 16** also provide for the procedure for filing appeals in the Court of Appeal and the Supreme Court respectively.

An aggrieved party in a criminal proceeding who is dissatisfied with the decision of the court can appeal to a higher court. The right to appeal is conferred by statute. An appeal to the High Court should be in the form of a petition or

notice of appeal in writing presented by the appellant or his counsel. The petition or notice of appeal must be accompanied by copy of the judgment or order appealed against. The petition or notice of appeal must contain particulars of the alleged error of law or fact on which the appellant relies. The appeal must be entered within 30 days of the order or judgment against which the appeal is made.

After the statutory 30 days period, a convict or the Attorney-General who wants to appeal against the decision of a Court would have to apply for leave to appeal out of time. This is done by filing a motion on notice supported by an affidavit supported by an affidavit. The affidavit is supposed to clearly set out the grounds for seeking the leave of the Court to appeal out of time. The grounds should state the reasons why the applicant is seeking out of time. Until leave is granted, there cannot be any competent appeal before the appellate court.

An accused person may appeal against conviction and sentence, or appeal against sentence only. The prosecution on the other hand may appeal against an acquittal or sentence. Section 30 of the Courts Act provides the orders available to the appellate court on appeal, and section 31 of Act 459 deals with circumstances under which an appeal may be allowed by the appellate court.

See: **Part VIII - Sections 325 – 333 of Act 30; Amoah v. The Republic [1989 – 90] 1 GLR 266**

Objectives

By the end of the topic the student is expected to know:

1. How to draft a notice/petition of appeal.
2. How to draft an application for extension of time within which to file an appeal.
3. How to prepare grounds of appeal.
4. Considerations for a successful appeal.

Chapter 17

JUVENILE JUSTICE SYSTEM

The topic looks at the following:

1. The minor in conflict with the law.
2. The procedure for arraigning a juvenile before the juvenile court.
3. Procedure for the trial of a juvenile who commits offence with adults.
4. Punishment for the juvenile offender.

The **Juvenile Justice Act, 2003 (Act 653)** sets up a juvenile justice system which prescribes a different treatment for the minor who is in conflict with the law. The law protects the rights of juveniles, ensuring an appropriate response to the juvenile offender. The law also provides a different treatment for the young offender who is a young person who has attained eighteen years but is below twenty-one years.

Act 653 is primarily concerned with the welfare of the juvenile or what is in the best interest of the juvenile. A juvenile has the right to privacy during arrest, investigation and in the course of the trial. Trials in respect of the juvenile cannot therefore be published and the photograph of the juvenile cannot therefore be taken.

Section 17 of Act 653 gives exclusive jurisdiction of cases involving juveniles to the Juvenile Court. The Juvenile Court is constituted by a panel of three made up of the District Magistrate and two other persons appointed by the Chief Justice one of whom must be a social welfare officer. Section 17(3) & (4) provides exceptions for a juvenile who is jointly charged with an adult for a criminal offence and a juvenile who is charged with an offence punishable by death. Even in situations where a juvenile is tried by a court of summary

jurisdiction under the exceptions provided, the juvenile is to be remitted to the Juvenile Court upon conviction for sentence to be passed on him. Act 653 also provides various methods of dealing with the juvenile offender. The law also provides for the duration of detention of the juvenile in a correctional institute depending on the age of the juvenile and the offence committed. Cases involving juveniles are required to be dealt with expeditiously, and the law requires that the cases be disposed of within six months of the juvenile's appearance in court failing which the juvenile shall be discharged and the juvenile shall not be liable for further proceedings in respect of the same.

See: **Juvenile Justice Act, 2003 (Act 653).**

Objectives

By the end of the topic the student is expected to know:

1. The difference between the juvenile justice system and the justice system pertaining to adults.
2. Classification of offences under Act 653
3. How to try a juvenile who commits a serious offence with an adult.
4. The forms of punishment pertaining to the various categories of juvenile offenders.

Chapter 18

THE OFFICE OF THE SPECIAL PROSECUTOR

The Office of the Special Prosecutor was set up in 2017 under the Office of Special Prosecutor Act, 2017, (Act 959). The purpose of the Act is clearly set out in the memorandum which is provided in this manual. Students should read the memorandum to the Act together with the provisions of the Act in order to understand the purpose of the Act and the work of the Office of the Special Prosecutor.

Memorandum to the Office of the Special Prosecutor Act, 2017 (Act 959)

The purpose of the Bill is to establish the Office of the Special Prosecutor as a specialised agency to investigate specific cases of corruption involving public officers, and political office holders in the performance of their functions as well as individuals in the private sector implicated in the commission of corruption and prosecute these offences on the authority of the Attorney-General.

The establishment of the Office of the Special Prosecutor has become necessary in view of the institutional bottlenecks that impede the fight against corruption. The monopoly of prosecutorial authority by an Attorney-General, who is hired and fired by the President, has been singled out by governance experts as one of the key factors that stand in the way of using law enforcement and prosecution as a credible tool in the fight against corruption.

To this end, Government intends to establish, by an Act of Parliament, an Office of the Special Prosecutor to investigate and prosecute certain categories

of cases and allegations of corruption and other criminal wrongdoing, including those involving alleged violations of the Public Procurement Act, 2003 (Act 663) and cases implicating public officers and political office holders.

The establishment of the Office for the purpose of prosecuting corruption cases involving public officers and political office holders in the performance of their functions will undoubtedly yield positive results in the number of corruption cases prosecuted than a multi-purpose or mixed mandate agency such as the

Economic and Organised Crime Office. The Bill therefore seeks to vest the Special

Prosecutor with the authority and control required to effectively investigate and prosecute cases of corruption and restore public confidence in the justice delivery system and by extension Government.

Clause 1 of the Bill establishes the Office of the Special Prosecutor as a body corporate with perpetual succession. The object of the Office of the Special Prosecutor, as stated under *clause 2*, is to investigate and prosecute cases of corruption and corruption related offences to prevent corruption in the public sector and to recover the proceeds of corruption and corruption related offences.

The functions of the Office are provided for under *clause 3*. These include investigation and prosecution of cases of alleged corruption and corruption related offences under the Public Procurement Act, 2003 (Act 663) and investigate allegations of corruption and corruption related offences under the Criminal and Other Offences Act, 1960 (Act 29) implicating public officers and political office holders, prosecution of corruption and corruption related offences involving public officers and political office holders on the authority of the AttorneyGeneral, recovery of the proceeds of corruption and corruption related offences and co-operation with law enforcement agencies, public agencies and relevant foreign or international agencies in the performance of its functions.

Clause 4 provides for the independence of the Office by insulating the Office from the direction or control of a person or an authority in the performance of the functions of the Office.

Clause 5 deals with the governing body of the Office. The membership of the Board, duties and liabilities of members of the Board and the tenure of office of the members of the Board are provided for under clauses 5,6 and 7 respectively. The Board is required to formulate policies necessary for the achievement of the objects of the Office and to ensure the proper and effective performance of the functions of the Office. The Board is also required to meet on a quarterly basis.

The chairperson is, however, obliged to convene extraordinary meetings at the request of not less than five members of the Board. Matters before the Board are to be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding at the meeting of the Board is to have a casting vote.

Clause 9 is on disclosure of interest. A member of the Board who has an interest in a matter for consideration by the Board is required to disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter. The penalty for failure to disclose interest in a matter before the Board is revocation of the appointment of the member concerned in addition to recovery of the benefit derived by the member.

The standard provisions on establishment of committees of the Board and allowances for members of the Board and members of a Committee of the Board are provided for under clauses 10 and 11.

Administrative and financial matters are provided for under *clauses 12* to 24of the Bill. The appointment of the Special Prosecutor is provided for under clause12.The appointment is required to be done by the President in accordance with article 195 of the Constitution. *Clause 12* further provides for the Special Prosecutor to enjoy the salaries and privileges of a Justice of the Court of Appeal.

Clause 13 provides that the Special Prosecutor is responsible for the day to day administration and operations of the Office and is answerable to the Board in the performance of the functions under this Bill. The clause further confers power on the Special Prosecutor to delegate a function to an authorised officer. The Special Prosecutor is, however, not relieved of the ultimate responsibility

for the performance of the delegated function. The removal of the Special Prosecutor from office is spelt out in clause 14 of the Bill.

Clause 15 provides for the appointment of a Deputy Special Prosecutor. The salaries and privileges of a Justice of the High Court apply to the Deputy Special Prosecutor. Under clause 16, the Deputy Special Prosecutor is to perform functions assigned by the Special Prosecutor and act as the Special Prosecutor in the absence of the Special Prosecutor. The removal of the Deputy Special Prosecutor is dealt with in clause 17 of the Bill.

The Office is required to have three Divisions namely, the Administrative Division, the Investigations Division and the Prosecutions Division for the effective performance of its functions. The Board may however establish additional Divisions that it considers necessary to enable the Office perform its functions, *clause18.*

The appointment of other staff necessary for the effective performance of the functions of the Office of the Special Prosecutor is required to be done by the President in accordance with article 195 of the Constitution. The Office is also permitted to engage the services of advisers and investigators on the recommendation of the Board, *clause 19*.

Clause 20 outlines the sources of funds for the Office. The sources of funds for the Office include moneys approved by Parliament, donations, grants and gifts and any other moneys that are approved by the Minister responsible for Finance. Clause 21provides for the moneys for the Office to be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General whilst clause 22 provides for the expenses of the Office to be paid from the funds of the Office. The standard provisions on accounts and audit and annual report and other reports are provided for in clauses 23 and 24.

Clause 25 deals with the procedure for the lodging of a complaint with the Office of the Special Prosecutor. A person who has knowledge of the commission of corruption or a corruption related offence by a public officer or a political office holder may lodge a written or oral complaint to the Office of the Special Prosecutor for the necessary action to be taken.

Powers of the Office of the Special Prosecutor are provided for under clauses 26 to 29. Clause 26 vests the Special Prosecutor and authorised officers with powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) or any other law.

Clause 27 deals with request for information by the Special Prosecutor or any other authorised officer. The Special Prosecutor is empowered to request the presence of a person or representative of an entity whose affairs are to be investigated or any other person the Special Prosecutor considers necessary to assist the Office with information relevant to a matter being investigated by the Office. A person who appears before the Special Prosecutor is permitted to be represented by the counsel of the person at any stage of the process.

Clause 28 confers power on the Special Prosecutor, on the authority of the Court, to issue a warrant authorising a police officer to enter the premises of a person or entity under investigation for purposes of searching and taking possession of documents relevant to investigations being conducted by the Office. The Office is permitted to take possession of documents for a period necessary for the investigation or trial and any proceedings subsequent to the trial. Furthermore, a person or entity from whom a document has been retrieved is entitled to apply to the Court within twenty-one days after the date of retrieval, for an order to set aside the search, removal or retrieval and for the restoration of the document.

Clause 29 criminalises the obstruction of an authorised officer in the performance of a function under this Bill. The penalty for the offence in the case of an individual is a fine not less than one hundred penalty units and not more than two hundred penalty units or to a term of imprisonment of not less than six months and not more than fifteen months or to both or in the case of an entity, a fine not more than one thousand penalty units.

Clauses 30 to 38 specify how the Office of the Special Prosecutor is required to deal with proceeds of corruption and corruption related offences. An authorised officer of the Office or a police officer authorised by the Special Prosecutor is empowered to seize property reasonably suspected to be tainted with corruption or a corruption related offence. The Special Prosecutor is obliged to prefer charges against the person from whom the property was seized within fourteen working days after the seizure. Furthermore, the Special Prosecutor is to apply to the Court for an order for the continued seizure of the

property for a period of not more than three months at a time from the date of seizure and for a total period of not more than two years. In the absence of any charges, the Special Prosecutor is to direct the authorised officer to release the seized property to the person from whom it was seized, clauses 30 and 31.

The provisions on search by a police officer under Part Two of the Criminal and

Other Offences (Procedure) Act, 1960 (Act 30) apply under this Bill where an authorised officer has reasonable grounds to suspect that there is tainted property on land or in any premises, clause 32. *Clause 33* enumerates the circumstances under which an authorised officer is to exercise the powers of search and seizure under an emergency situation.

Clause 34, on the other hand, provides for offences in respect of search and seizure of property. *Clause 35* provides for property tracking. An authorised officer is mandated to apply to the Court for an order for the production of a document or information obtained from the document where the authorised officer has reasonable grounds to suspect that the document is required to identify, locate or quantify property or identify or locate a record in the possession or control of a person that is necessary for the transfer of the property in question to another person or entity.

Record keeping of seized property and return of seized property is provided for under clauses 36 and 37. An authorised officer who seizes property is required under clause 36 to make a written record of the property and hand over the record and the property to the Special Prosecutor within seven days from the date of seizure. *Clause 37*on the other hand grants a person who claims an interest in property seized under this Bill, the right to apply to the Court within thirty days after the date of seizure for an order that the property be returned to that person.

The provisions of the Mutual Legal Assistance Act, 2010 (Act 807) apply to cases where the Special Prosecutor suspects that property obtained from the commission of corruption or a corruption related offence is situated in a foreign country or a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of corruption or a corruption related offence within the jurisdiction of the foreign country, *clause 38*.

Clauses 39 to 46 provide for freezing orders. Clause 39 empowers the Special Prosecutor to issue a written directive in respect of the freezing of property in instances where the freezing is necessary to facilitate investigation or prosecution. It further provides for the Special Prosecutor to apply to the Court for a confirmation of the freezing of property within fourteen days after the issuance of the freezing order. An application for confirmation of the freezing order is to be made without notice to the respondent, clause40.

Clause 41 enumerates the conditions for the grant of a freezing order and the content of a freezing order. The contents of a freezing order include a prohibition from disposing of or dealing with the property in question or a part of the property or interest in the property that is specified in the order or a directive to a person who has possession of the property to give possession of the property to the Special Prosecutor to take custody and control of the property.

Clause 42 provides that a contract or other arrangement made by a person in respect of tainted property after the issue of the freezing order is of no effect whilst clause 43 provides for the penalty for breaching a freezing order.

The duration for a freezing order is twelve months after the date the order is made or a later date determined by the Court and a freezing order remains in force until discharged, revoked or varied or a confiscation order or a pecuniary penalty order is made in respect of the property which is the subject of the order, *clause 44*.

Under *clause 45*, a freezing order may be reviewed within fourteen days after its issuance. However, an application for review is to be made on notice to the Special Prosecutor. *Clause 46* relates to the extension of the duration of a freezing order. A freezing order may where necessary be extended upon application by the Special Prosecutor to the Court.

Clauses 47 to 62 deal with confiscation orders. *Clause 47* empowers the Special Prosecutor to serve notice on a person charged with corruption or a corruption related offence directing that person to make a declaration of his or her property and income. The declaration is to include property received or expected to be received by the accused person, the income as well as the source of the income of the accused person regardless of whether or not the person charged has actually received the income. The penalty in respect of failure to make the

declaration within the period specified in the notice is a fine of not less than one thousand penalty units and not more than two thousand penalty units or to imprisonment for a term of not less than two years and not more than four years or to both in addition to confiscation of the property or income to the State.

Clause 48 requires the Auditor-General to comply with a request of the Special Prosecutor for the submission of copies of the declaration of property and income to the Special Prosecutor and the Court.

Clause 49 is on use of information contained in the declaration of property and income required under *clause 49*. The Special Prosecutor is permitted to use information contained in a declaration of property and income for the implementation of the provisions of this Bill including the application for confiscation and pecuniary penalty orders and for any other lawful purpose.

50 provides for the action to be taken by the Special Prosecutor during proceedings under this Bill where the Special Prosecutor is of the opinion that a declaration of property and income provided by a declarant is inaccurate. Furthermore, the Court is mandated to make an order for the confiscation of the property or income to the State if it finds that the property or income in question was intentionally or negligently excluded by the declarant.

The presumption of acquisition of property and income is provided for in clause 51. The Court in determining whether or not a confiscation or pecuniary penalty order is to be made is to presume that the property or income which is the subject of the application was acquired as a result of corruption or a corruption related offence. The burden of proof that the property or income was lawfully acquired is therefore on the person convicted of the offence.

Clause 52 provides for the Special Prosecutor to apply for a confiscation or pecuniary penalty order where a person is on trial for corruption or a corruption related offence whilst *clause 53* provides for notice of the application. The Special Prosecutor is required under clause 53to give the respondent not less than eight days written notice of an application for a confiscation order or pecuniary penalty order.

The Court upon hearing an application for a confiscation or a pecuniary penalty order, is required to, on an application by the Special Prosecutor,

amend the application to include other property or benefit that the court is satisfied was not reasonably capable of identification when the application was made and the necessary evidence became available only after the application was made, *clause 54.*

Under *clause 55,* the Court is to have regard to the record of proceedings against a person convicted of corruption or a corruption related offence where an application is made to the Court for a confiscation order or a pecuniary penalty order in respect of the convicted person.

Clause 56 provides the procedure for an application for a confiscation order in respect of a tainted property where a person from whom the property was seized dies or absconds. A person is considered to have absconded if reasonable attempts to arrest that person pursuant to a warrant are unsuccessful during the period of three months after the date of issue of the warrant.

Clause 57 provides for a confiscation order against property .It specifies the conditions under which the Court, before which an application for a confiscation order has been made, is required to infer that the property was realised as a result of corruption or a corruption related offence. By virtue of clause 58, the effect of a confiscation order is that the confiscated property vests absolutely in the State free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration.

The Court is required under clause 59 to set aside a transaction related to property which is the subject of a confiscation order where the transaction was made after the seizure of the property or issuance of a freezing order. Clause 60 is on protection of third parties. A person who claims an interest in confiscated property is required to apply to the court for a declaration of interest in the confiscated property.

Where the Court makes a confiscation order against the property of a person convicted of corruption or a corruption related offence and the conviction is subsequently quashed, the quashing of the conviction shall result in the discharge of the order, clause 61. Clause 62 requires the court to make an order for the confiscation of tainted property in instances where proceedings in relation to the property have commenced but the person charged with corruption or a corruption related offence has died or absconded.

Clauses 63 to 68 deal with pecuniary penalty orders. Clause 63 enumerates the circumstances under which the Court is to make an order for payment of property rather than a confiscation order. These include instances in which the property in question is substantially diminished in value, rendered worthless or has been co-mingled with other property in a manner that poses a challenge to the division of the property.

Clause 64 provides that where the Court makes an order under clause 63 for the payment of property instead of confiscation, the amount to be paid is to be treated as a fine imposed on the person in respect of a conviction for corruption or a corruption related offence. A default in payment of the amount attracts a term of imprisonment of not less than twelve months and not more than five years to be served consecutively to any other term of imprisonment imposed on that person or being served by the person.

Clause 65 provides that where the Special Prosecutor applies to the Court for a pecuniary penalty order against a person convicted of corruption or a corruption related offence, the court is to make an assessment based on evidence to determine the benefit derived by the convicted person from the commission of the offence. The Court is further required to order the person to pay to the Republic an amount equal to the value of the benefit obtained or a higher amount if the Court is satisfied that the person benefited from corruption and a corruption related offence.

The Court is required to treat as property of a person, property that is, in the opinion of the Court, subject to the effective control of the person to assess the value of benefits derived by a person from the commission of a corruption offence, *clause 66.*

The Court is empowered under clause 67 to impose a term of imprisonment on a person who defaults in complying with a pecuniary penalty order. *Clause 68* deals with discharge of a pecuniary penalty order. A pecuniary penalty order is discharged if the conviction for corruption or a corruption related offence on the basis of which the order was made is quashed and another conviction for corruption or a corruption related offence is not substituted or by payment of the amount due to satisfy the order.

Clauses 69 and *70* relate to a production order. *Clause 69* requires a court to make a production order upon an application by the Special Prosecutor.

Under *clause 70*, a production order is to be made in instances where the Court is satisfied that there is reasonable ground to suspect that the person specified in the application for the order and who is under investigation has benefited from the commission of corruption or is suspected of the commission of the offence.

Clauses 71 to 74 deal with realisation of property. These provisions ensure that the Special Prosecutor has full authority and control over the case in the event that the convict concerned has benefited from a corrupt act or a corruption related offence. Thus the Court is required under clause 71 to, among other things, order a person who has possession of the realisable property to give possession of the property to the Special Prosecutor and the Special Prosecutor is required to take possession and manage the property where a pecuniary penalty order is made and the pecuniary penalty is neither discharged nor subjected to an appeal. Utilisation of the proceeds of realisable property is provided for under clause 72.

The Court is to provide directions for an amount out of the proceeds of realisable property to be paid to the Registrar of the Court and for part of the amount specified to be used to defray the expenses of the Office of the Special Prosecutor. Furthermore, thirty percent of the outstanding amount shall be used for the benefit of the institution of relevance to the action and the rest of the amount shall be paid into the Consolidated Fund.

Clause 73 excludes the application of the Insolvency Act, 2006 (Act 708) to property which is the subject of this Bill. Clause 74provides for the winding up of a company holding realisable property. A liquidator is prohibited from the performance of functions in relation to realisable property which is subject to a freezing order made before the winding up or realisation of the proceeds of property by the receiver.

Miscellaneous provisions are dealt with in *clauses 75* to 80. *Clause 75* deals with collaboration with public agencies. The Office of the Special Prosecutor is to collaborate with security agencies and other persons in its conduct of investigations. An officer of a public agency is thus required to co-operate with authorised officers of the Office of the Special Prosecutor in the performance

of its functions under this Bill. *Clause 76* mandates an authorised officer to keep information received in the performance of functions under this Bill confidential unless otherwise authorised.

The Minister responsible for Justice is empowered under *clause 77* to make Regulations for the effective implementation of the Bill in consultation with the Board. The matters to be provided for in the Regulations include the manner of tracking tainted property and procedure for its seizure as well as procedure for confiscation and pecuniary penalty orders. *Clauses 78* and *79* provide for the interpretation of words used in the Bill and consequential amendments respectively whilst clause 80 deals with transitional matters. The passage of this Bill will to a large extent curb corruption involving public officers and political office holders within the public sector.

Chapter 19

GHANA CODE FOR PROSECUTORS

The code which was issued by the Attorney-General, sets out the general principles to be applied by prosecutors as they take decision on cases

The code provides general principles on prosecution, the duty to review cases prior to the decision to charge an accused, the duty to conduct continuous review of cases, the test applied by prosecutors in deciding whether or not to prefer a charge. The code sets out the two main tests as the evidence and public interest test.

The code also sets out the Attorney-General's policy on trials, how to handle victims and witnesses, sentencing and the decision to restart a trial.

The evidence test

The prosecutor has a duty to satisfy herself that there is sufficient evidence to found a prima facie case against an accused who is charged with a criminal offence. In making this assessment, the prosecutor is obliged to take into consideration any explanation offered by the accused in answer to the charge, the case of the defence as far as it is known and any evidence the accused is likely to produce which might undermine the prosecution. The code provides that the evidence on which the prosecutor decides to prosecute must be reliable, relevant, admissible and available. The code further provides the following as guiding principles for the prosecutor in her application of the evidence test;

a. The accused is the right person to be prosecuted
b. Each person to be called as a prosecution witness is likely to give an accurate account of events and be credible, reliable and have no ulterior motive for giving evidence.
c. The witnesses to be called and the exhibits to be tendered will all be available for trial.
d. The evidence although relevant is not likely to be excluded by the court, for example, given the circumstances in which it was obtained.
e. Each requirement needed for the taking of a confession statement has been complied with.
f. The court is not likely to find the accused person's defence as far as it is known, credible in the light of the evidence as a whole.

The public interest test

The decision to prosecute a case in the public interest will depend on a number of factors. The code provides a list of factors to guide the prosecutor in his application of the public interest test. The following are examples of factors set out in the code in favour of a decision to prosecute;

a. The gravity of the offence
b. A conviction is likely to result in a significant sentence
c. A weapon was used or violence threatened during the commission of the offence
d. The offence was committed against a person serving the public eg, a police officer, prison officer, a nurse
e. The accused person was in a position of authority or trust
f. The victim was vulnerable, eg. a woman, a child, a disabled person.
g. The offence was motivated by any form of discrimination against the victim's ethnic or national origin, religious belief, political opinion, gender, occupation, disability or sexual orientation or the accused person demonstrated hostility towards the victim based on any of those characteristics.
h. The accused person has previous convictions that are relevant to the present offence

i. There are reasons for believing the offence is likely to be continued or repeated.

j. The offence though not serious is widespread in the community or area

k. A prosecution will serve as a deterrent

The following are examples of factors set out in the code against a prosecution;

a. The accused person is already the subject of sentence and further conviction will be unlikely to result in an additional sentence or a longer term of imprisonment.

b. There has been a long delay between the date of the offence and the date of charge or date of trial unless the offence is serious or the delay has been caused wholly or substantially by the accused or the complexity of the case has meant a long investigation.

c. Genuine mental or physical illness

d. In exceptional cases details of the case would be made public that could harm sources of information, international relations or national security.

e. The offence is minor and the parties are reconciled or recompense has been given

f. The maintenance of family cohesion and the offence is minor

g. The accused has suffered directly and substantially as a result of the offence.

Materials Used

» 1992 Constitution of Ghana;

» Criminal and Other Offences (Procedure) Act, 1960, (Act 30),

Criminal Offences Act, 1960 (Act 29);

» Courts Act, 1993 (Act 459);

» Juvenile Justice Act, 2003 (Act 653)

» Office of the Special Prosecutor Act, 2017 (Act 959)

» Ghana Code for Prosecutors

» A.N.E Amissah, Criminal Procedure in Ghana

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