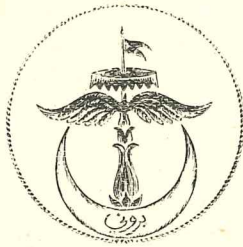


*Brunei, laws, statutes, etc. Revised statutes*



**THE LAWS  
OF  
BRUNEI**

**REVISED EDITION**

PREPARED UNDER THE AUTHORITY OF  
THE REVISED EDITION OF THE  
LAWS ENACTMENT, 1951

BY

**ROBERT YORKE HEDGES, LL.D.,**

*Puisne Judge, Nigeria; formerly Judge of Appeal,  
Brunei*

**VOLUME I**

CONTAINING CHAPTERS 1 TO 31 OF THE ENACTMENTS

Price per set — £10 0s. 0d.

PRINTED BY

C. F. ROWORTH LTD., 88 FETTER LANE, LONDON, E.C.4.  
1952.

*[Appointed by the Government of Brunei, the Government Printers for the purpose of this  
Edition of the Laws]*

To be purchased from the British Resident's Office, Brunei, and from the Crown Agents  
for the Colonies, 4, Millbank, London, S.W.1.

## CHAPTER 22.

## PENAL CODE.

No. 16 of  
1951.

TO ESTABLISH A CODE OF CRIMINAL LAW.

[1st May, 1952.]

## Chapter I.

## INTRODUCTION.

Short title.

1. This Enactment may be cited as the Penal Code.

Punishment  
of offences  
committed  
within the  
State.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof of which he shall be guilty within the State.

Punishment  
of offences  
committed  
beyond, but  
which, by  
law, may be  
tried within  
the State.

3. Any person liable to be tried for an offence committed beyond the limits of the State shall be dealt with according to the provisions of this Code for any act committed beyond the State in the same manner as if such act had been committed within the State.

Certain laws  
not to be  
affected by  
this Code.

5. \*Nothing in this Code is intended to repeal, vary, suspend or affect any of the provisions of any special or local law or any of the provisions of any Enactment for punishing offences by officers, soldiers or constables in the military or police forces of the State.

---

\* This Code is based on the Indian Penal Code. Certain sections have been omitted, and a few new sections have been added. For convenience in referring to Commentaries, the numbering of sections in the Indian Penal Code has been retained.

## Chapter II.

## GENERAL EXPLANATIONS.

6. Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Definitions in the Code to be understood subject to exceptions.

*Illustrations.*

(a) The sections in this Code which contain definitions of offences do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b) *A*, a police officer without warrant apprehends *Z*, who has committed murder: Here *A* is not guilty of the offence of wrongful confinement, for he was bound by law to apprehend *Z*, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.

Sense of expression once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.

Gender.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

Number.

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.

"Man."  
"Woman."

11. The word "person" includes any company or association, or body of persons, whether incorporated or not.

"Person."

12. The word "public" includes any class of the public or any community.

"Public."

“ Govern-  
ment.”

17. The word “ Government ” denotes the person or persons authorized by law to administer executive Government in any part of the State.

“ Judge.”

19. The word “ Judge ” denotes not only every person who is officially designated as a Judge, but also every person—

(a) who is employed by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

*Illustrations.*

(a) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

“ Court of  
Justice.”

20. The words “ Court of Justice ” denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

“ Public  
servant.”

21. The words “ public servant ” denote a person falling under any of the descriptions hereinafter following, namely—

(i) every person holding office by virtue of any Commission or Warrant granted by the Sultan or by his authority;

(ii) every commissioned officer in the military or police forces of the State or of Her Majesty the Queen while serving in the State;

(iii) every Judge;

(iv) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or

keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

(v) every juryman or assessor assisting a Court of Justice or public servant;

(vi) every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

(vii) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(viii) every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(ix) every officer whose duty it is as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

(x) every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

*Illustration.*

A Municipal Commissioner is a public servant.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation 2.*—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

“Movable property.”

**22.** The words “movable property” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

“Wrongful gain” and “wrongful loss.”

**23.** (1) “Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled: and “wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

(2) A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully.

(3) A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

“Dishonestly.”

**24.** Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly.”

“Fraudulently.”

**25.** A person is said to do a thing “fraudulently” if he does that thing with intent to defraud, but not otherwise.

“Reason to believe.”

**26.** A person is said to have “reason to believe” a thing if he has sufficient cause to believe that thing but not otherwise.

“Property in possession of wife, clerk or servant.”

**27.** When property is in the possession of a person’s wife, clerk or servant on account of that person, it is in that person’s possession within the meaning of this Code.

*Explanation.*—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

28. A person is said to “counterfeit,” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

“Counterfeit.”

*Explanation 1.*—It is not essential to counterfeiting that the imitation should be exact.

*Explanation 2.*—When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended, by means of that resemblance, to practise deception, or knew it to be likely that deception would thereby be practised.

29. The word “document” denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

“Document.”

*Explanation 1.*—It is immaterial by what means, or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

*Illustrations.*

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power of attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

*Explanation 2.*—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

*Illustration.*

A writes his name on the back of a bill of exchange payable to his order. The meaning of the indorsement as explained by mercantile usage, is that the bill is to be paid to the holder. The indorsement

is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

"Valuable security."

**30.** The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

*Illustration.*

A writes his name on the back of a bill of exchange. As the effect of this indorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the indorsement is a "valuable security."

"A will."

**31.** The words "a will" denote any testamentary document.

Words referring to acts include illegal omissions.

**32.** In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

"Act" and "omission."

**33.** (1) The word "act" denotes as well a series of acts as a single act.

(2) The word "omission" denotes as well a series of omissions as a single omission.

Acts done by several persons in furtherance of common intention.

**34.** When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

**35.** Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

**36.** Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission,



is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

*Illustration.*

*A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z: A has committed murder.*

**37.** When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly, or jointly with any other person, commits that offence.

Co-operation by doing one of several acts constituting an offence.

*Illustrations.*

(a) *A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him: Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts separate.*

(b) *A and B are joint jailors, and as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.*

(c) *A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office and B succeeds him. B without collusion or co-operation with A, illegally omits to supply Z with food knowing that he is likely thereby to cause Z's death. Z dies of hunger: B is guilty of murder; but, as A did not co-operate with B, A is guilty only of an attempt to commit murder.*

**38.** Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Persons concerned in criminal act may be guilty of different offences.

*Illustration.*

*A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him*

and not having been subject to the provocation assists *A* in killing *Z*. Here, though *A* and *B* are both engaged in causing *Z*'s death, *B* is guilty of murder, and *A* is guilty only of culpable homicide.

“Voluntarily.”

**39.** A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

*Illustration.*

*A* sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here, *A* may not have intended to cause death, and may even be sorry that death has been caused by his act: yet, if he knew that he was likely to cause death, he has caused death voluntarily.

“Offence.”

**40.** (1) Except in the Chapter and sections mentioned in subsections (2) and (3) of this section, the word “offence” denotes a thing made punishable by this Code.

(2) In Chapter IV and in the following sections, namely, sections 66, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445, the word “offence” denotes a thing punishable under this Code, or under any other laws for the time being in force.

(3) In sections 141, 176, 177, 201, 202, 212, 216 and 441, the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

“Special law.”

**41.** A “special law” is a law applicable to a particular subject.

“Local law.”

**42.** A “local law” is a law applicable only to a particular part of the State.

“Illegal.”

**43.** The word “illegal” is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be “legally bound to do” whatever it is illegal in him to omit.

44. The word "injury" denotes any harm whatever <sup>"Injury."</sup> illegally caused to any person, in body, mind, reputation, or property.

45. The word "life" denotes the life of a human being, <sup>"Life."</sup> unless the contrary appears from the context.

46. The word "death" denotes the death of a human <sup>"Death."</sup> being, unless the contrary appears from the context.

47. The word "animal" denotes any living creature <sup>"Animal."</sup> other than a human being.

48. The word "vessel" denotes anything made for <sup>"Vessel."</sup> the conveyance by water of human beings, or of property.

49. Wherever the word "year" or the word "month" <sup>"Year, month."</sup> is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

50. The word "section" denotes one of those portions <sup>"Section."</sup> of a chapter of this Code which are distinguished by prefixed numeral figures.

51. The word "oath" includes a solemn affirmation <sup>"Oath."</sup> substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

52. Nothing is said to be done or believed in "good <sup>"Good faith."</sup> faith" which is done or believed without due care and attention.

### Chapter III.

#### PUNISHMENTS.

53. The punishments to which offenders are liable under the provisions of this Code are—

- (i) death;

- (ii) imprisonment, which is of two descriptions namely—
- (a) rigorous, that is with hard labour;
  - (b) simple;
- (iii) forfeiture of property;
- (iv) fine;
- (v) whipping, subject to the provisions of the Criminal Procedure Code (*Chapter 7*).

Commutation of sentence of death.

**54.** In every case in which sentence of death shall have been passed, the Sultan may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of imprisonment.

**55.** In every case in which sentence of death, or of imprisonment for any period of not less than seven years shall have been passed, the Resident may without the consent of the person sentenced commute the punishment into temporary or perpetual deportation from the State.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

**60.** In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Amount of fine.

**63.** Where no sum is expressed to which a fine may extend, the amount of the fine to which the offender is liable is unlimited, but shall not be excessive.

Imprisonment for non-payment of fine.

**66.** The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Limit of punishment of offence made up of several offences.

**71.** Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

*Illustrations.*

(a) *A* gives *Z* fifty strokes with a stick. Here *A* may have committed the offence of voluntarily causing hurt to *Z* by the whole beating, and also by each of the blows which make up the whole beating. If *A* were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b) But if, while *A* is beating *Z*, *Y* interferes, and *A* intentionally strikes *Y*, here, as the blow given to *Y* is no part of the act whereby *A* voluntarily causes hurt to *Z*, *A* is liable to one punishment for voluntarily causing hurt to *Z*, and to another for the blow given to *Y*.

**72.** In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

**75.** Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or having been convicted in the Federation of Malaya or in the Colony of Singapore or Sarawak or North Borneo of an offence of a nature similar to any of those offences, shall be guilty of an offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to imprisonment for ten years.

Punishment of persons convicted after a previous conviction, of an offence punishable with three years' imprisonment.

**Chapter IV.**

GENERAL EXCEPTIONS.

**76.** Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact, and not by reason

Act done by a person bound, or by

mistake of fact believing himself bound, by law.

of a mistake of law, in good faith believes himself to be bound by law to do it.

*Illustrations.*

(a) *A*, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law: *A* has committed no offence.

(b) *A*, an officer of a Court of justice, being ordered by that Court to arrest *Y*, and after due inquiry, believing *Z* to be *Y*, arrests *Z*. *A* has committed no offence.

Act of Judge when acting judicially.

**77.** Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of Court.

**78.** Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done by a person justified, or by mistake of fact believing himself justified by law.

**79.** Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

*Illustration.*

*A* and *Z* commit what appears to *A* to be a murder. *A*, in the exercise to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes *Z* in order to bring *Z* before the proper authorities: *A* has committed no offence though it may turn out that *Z* was acting in self-defence.

Accident in doing a lawful act.

**80.** Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

*Illustration.*

*A* is at work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of *A*, his act is excusable, and not an offence.

**81.** Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm.

*Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature, and so imminent, as to justify or excuse the risk of doing the act with the knowledge it was likely to cause harm.

*Illustrations.*

(a) *A*, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat *B* with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat *C* with only two passengers on board, which he may possibly clear. Here, if *A* alters his course without any intention to run down the boat *C* and in good faith for the purpose of avoiding the danger to the passengers in the boat *B*, he is not guilty of an offence, though he may run down the boat *C* by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down *C*.

(b) *A* in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse *A*'s act, *A* is not guilty of an offence.

**82.** Nothing is an offence which is done by a child under seven years of age.

Act of a child under 7 years of age.

**83.** Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Act of a child above 7 and under 12 of immature understanding.

**84.** Nothing is an offence which is done by a person who, at the time of doing it by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Act of a person of un-sound mind.

Act of a person incapable of judgment by reason of intoxication caused against his will.

**85.** Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law:

Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

**86.** In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

Act not intended, and not known to be likely, to cause death or grievous hurt, done by consent.

**87.** Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

*Illustration.*

*A* and *Z* agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which in the course of such fencing may be caused without foul-play; and if *A*, while playing fairly, hurts *Z*, *A* commits no offence.

Act not intended to cause death, done by consent in good faith for person's benefit.

**88.** Nothing, which is not intended to cause death, is an offence by reason of any harm, which it may cause or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

*Illustration.*

*A*, a surgeon, knowing that a particular operation is likely to cause the death of *Z*, who suffers under a painful complaint, but



not intending to cause *Z*'s death, and intending, in good faith, *Z*'s benefit, performs that operation on *Z* with *Z*'s consent. *A* has committed no offence.

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person:

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

Provided that—

(i) this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

(ii) this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity;

(iii) this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(iv) this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration.*

*A*, in good faith for his child's benefit without his child's consent has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death: *A* is within the exception inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to

Consent known to be given under fear or misconception, and consent of child or person of unsound mind.

understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Exclusion of acts which are offences independently of harm caused.

**91.** The exceptions in sections 87, 88, and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

*Illustration.*

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause, or be intended to cause, to the woman. Therefore it is not an "offence by reason of such harm," and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Act done in good faith for benefit of a person without consent.

**92.** Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that—

- (i) this exception shall not extend to the intentional causing of death, or the attempting to cause death;
- (ii) this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt or the curing of any grievous disease or infirmity;
- (iii) this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;
- (iv) this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustrations.*

(a) *Z* is thrown from his horse, and is insensible. *A*, a surgeon, finds that *Z* requires to be trepanned. *A*, not intending *Z*'s death, but in good faith, for *Z*'s benefit, performs the trepan before *Z* recovers his power of judging for himself. *A* has committed no offence.

(b) *Z* is carried off by a crocodile. *A* fires at the crocodile knowing it to be likely that the shot may kill *Z*, but not intending to kill *Z*, and in good faith intending *Z*'s benefit. *A*'s ball gives *Z* a mortal wound. *A* has committed no offence.

(c) *A*, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. *A* performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. *A* has committed no offence.

(d) *A* is in a house which is on fire, with *Z*, a child. People below hold a blanket. *A* drops the child from the house-top, knowing it to be likely that the fall may kill the child but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, *A* has committed no offence.

*Explanation.*—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

**93.** No communication made in good faith is an offence by reason of any harm to the person to whom it is made if it is made for the benefit of that person.

Communi-  
cation made  
in good  
faith.

*Illustration.*

*A*, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock: *A* has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

**94.** Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence:

Act to  
which a  
person is  
compelled  
by threats.

Provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

*Explanation 1.*—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of robbers, knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2.*—A person seized by a gang of robbers, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and plunder it—is entitled to the benefit of this exception.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

#### THE RIGHT OF PRIVATE DEFENCE.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

(i) his own body, and the body of any other person, against any offence affecting the human body;

(ii) the property, whether movable or immovable, of himself or of any other person against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

Right of private defence against the act of a person of unsound mind, etc.

98. When an act, which would otherwise be a certain offence is not that offence, by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

(a) *Z*, under the influence of madness, attempts to kill *A*; *Z* is guilty of no offence. But *A* has the same right of private defence which he would have if *Z* were sane.

(b) *A* enters by night a house which he is legally entitled to enter. *Z*, in good faith, taking *A* for a house-breaker, attacks *A*. Here *Z*, by attacking *A* under this misconception, commits no offence. But *A* has the same right of private defence against *Z*, which he would have if *Z* were not acting under this misconception.

99. (1) There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Acts against which there is no right of private defence; and extent to which the right may be exercised.

(2) There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

(3) There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

(4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

*Explanation 1.*—A person is not deprived of the right of private defence against an act done or attempted to be done by a public servant, as such, unless he knows or has reason to believe that the person doing the act is such public servant.

*Explanation 2.*—A person is not deprived of the right of private defence against an act done or attempted to be done by the direction of a public servant unless he knows or has reason to believe that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority if demanded.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death, or of any other harm, to the assailant if the offence which occasions the

When the right of private defence of the body extends to causing death.

exercise of the right be of any of the descriptions hereinafter enumerated, namely—

(i) such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(ii) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

(iii) an assault with the intention of committing rape;

(iv) an assault with the intention of gratifying unnatural lust;

(v) an assault with the intention of kidnapping or abducting;

(vi) an assault with the intention of wrongfully confining a person under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

When such right extends to causing any harm other than death.

**101.** If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

**102.** The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed and it continues as long as such apprehension of danger to the body continues.

When the right of private defence of property extends to causing death.

**103.** The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death, or of any other harm to the wrongdoer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely—

- (i) robbery;
- (ii) house-breaking by night;
- (iii) mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property;
- (iv) theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

**104.** If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrongdoer of any harm other than death.

When such right extends to causing any harm other than death.

**105.** (1) The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Commencement and continuance of the right of private defence of property.

(2) The right of private defence of property against theft continues till the offender has effected his retreat with the property or either the assistance of the public authorities is obtained or the property has been recovered.

(3) The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant personal restraint continues.

(4) The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

(5) The right of private defence of property against house-breaking by night, continues as long as the house-trespass which has been begun by such house-breaking continues.

Right of private defence against deadly assault when there is risk of harm to innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

*Illustration.*

*A* is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. *A* commits no offence if by so firing he harms any of the children.

## Chapter V.

### ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing who—

(i) instigates any person to do that thing; or

(ii) engages, with one or more other person or persons, in any conspiracy for the doing of that thing, if an act or illegal omission take place in pursuance of that conspiracy, and in order to the doing of that thing; or,

(iii) intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

*Illustration.*

*A*, a public officer, is authorized by a warrant from a Court of Justice to apprehend *Z*. *B*, knowing that fact, and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z* and thereby intentionally causes *A* to apprehend *C*. Here *B* abets by instigation the apprehension of *C*.

*Explanation 2.*—Whoever, either prior to, or at the time of, the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.