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## **COMMON OFFENCES**

This part is a quick reference guide to some of the common offences you may encounter. It:

- outlines the elements of the offence;
- provides guidance on evidential matters and other material issues;
- details the maximum sentence you may impose.

It is **not** a replacement for the legislation. You must always go to the legislation and make your own decision.



**The following offences are those that are commonly heard before the Island Magistrates' Courts, although on Funafuti these may be heard by the Resident or Senior Magistrate's Court. These are divided into the legislation that provides for the offence.**

# ***Penal Code (Cap 8)***

## Drunk and disorderly

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**Section** *s167(d) Penal Code (Cap 8)*

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**Description** Every person who is drunk and disorderly in a public place, or behaves in a riotous or disorderly fashion in any Police station or public place, and in any other place, who assembles together with others and behaves in a riotous or disorderly manner, is deemed an idle and disorderly person and convicted as such.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The person was either:
    - ⊖ drunk and disorderly in a public place; or
    - ⊖ behaving in a riotous or disorderly manner in a Police station or a public place; or
    - ⊖ assembled together with other people and behaving in a riotous or disorderly manner in any place.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who was found drunk in a public place.

Drunk and disorderly in a public place

The prosecution must prove by evidence that the accused was drunk and disorderly. There must be evidence that the person was drunk and there must be evidence that the person was behaving in a disorderly way. There must be good evidence of what was done or said and by whom.

The behaviour must be of real concern to ordinary members of the public.

The prosecution must prove it was a public place that the accused was drunk and disorderly in. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature.

See the definition of a public place in *s4 Penal Code*.

Behaving in a riotous or disorderly manner in a Police station or a public place

The prosecution must prove by evidence that the accused was behaving in a riotous or disorderly manner. The accused does not need to have been drunk under this ground. There must be evidence that the person was behaving in a riotous or disorderly way. There must be good evidence of what was done or said and by whom.

The behaviour must be of real concern to ordinary members of the public.

The prosecution must prove it was a public place or a Police station. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved.

See the definition of a public place in *s4 Penal Code*.

Assembled together with other people and behaving in a riotous or disorderly manner in any place

For a charge under this ground, the prosecution must prove that the person was assembled together with other people. This means two or more other people in the same place at the same time. They must also prove that, while with these other people, the accused was behaving in a riotous or disorderly manner. The accused does not need to have been drunk under this ground. There must be evidence that the person was behaving in a riotous or disorderly way. There must be good evidence of what was done or said and by whom.

The behaviour must be of real concern to ordinary members of the public.

The prosecution does not need to prove it was a particular place under this ground.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$20 fine or 2 months imprisonment.

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## Threatening and abusive behaviour

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**Section** *s169(n) Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who uses threatening or abusive or insulting words or behaviour in a public place with intent to provoke a breach of the peace; or whereby a breach of the peace may be occasioned.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused used words or behaviour that were threatening, abusive or insulting;
  - This was done a public place;
  - Either:
    - ⇒ the accused intended that the words or behaviour would cause anxiety or major concern to others such that they feel that harm may be caused to them or others; or
    - ⇒ the situation was such the words or behaviour might cause anxiety or major concern to others such that they feel that harm may be caused to them or others.
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**Commentary** Sometimes quite minor incidents are brought before the Court. There needs to be a real reason for arrest and bringing to Court. The prosecution must show that there was real concern for what might happen as a result of what was said or done.

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who used the words or behaviour.



Words or behaviour

There must be good evidence for what was said or done, and by whom.

Public place

The prosecution must prove by evidence that it was a public place. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature. See the definition of a public place in *s4 Penal Code*.

Breach of the peace

A breach of the peace means an incident that causes anxiety or major concern to one or more persons, such that they feel that harm may be caused to them or others.

Intention to provoke a breach of the peace

If this is the ground on which the charge is based, the prosecution must prove that the accused intended to provoke a breach of the peace by his or her words or actions. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances. Under this ground, the prosecution does not have to prove that there was or even might have been a breach of the peace.

Breach of peace may be occasioned

If this is the ground on which the charge is based, the prosecution must prove that the accused’s words or actions **might** have provoked a breach of the peace. The test is an objective one – would a reasonable person believe that the accused’s actions might have provoked a breach of the peace, in the particular circumstances?

Under this ground, the prosecution does not have to prove that the accused intended to provoke a breach of the peace or that there was in fact a breach of the peace.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence. The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

1 months imprisonment or \$10 fine

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## Drunk and incapable

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**Section** *s170 Penal Code (Cap 8)*

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**Description** Every person who is found in a public place drunk, so as to be incapable of taking care of him or herself, is guilty of an offence.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The person was found in a public place;
  - The person was drunk at the time;
  - The person was sufficiently drunk as to not be able to take care of him or herself.
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**Commentary** This section should not be used by the Police to arrest and remove anyone who has been drinking in public and who is making a nuisance of themselves. It is aimed at alcoholics, vagabonds and others whose drinking is so excessive that they are a danger to themselves, and it is usually applied to people who are asleep on the road or runway.

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who was found drunk in a public place.

Found drunk as to be incapable of taking care of him or herself

The prosecution must prove more than just that the accused was affected by alcohol or had been drinking. They must prove that the accused was drunk and good evidence of drunkenness must be given. The effect of the drunkenness must be such as to mean that the person was not in control and could not manage.

Public place

The prosecution must prove by evidence that it was a public place that the accused was found in. Locating them later in a non-public place is not enough. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature.

See the definition of a public place in *s4 Penal Code*.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$20 fine.

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## Common assault

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**Section** *s237 Penal Code (Cap 8)*

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**Description** Every person who unlawfully assaults another person is guilty of an offence.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused wanted to use force on another person;
  - The accused intended that the person he or she wanted to use force on, was aware that he or she wanted to use force on them..
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who used physical force.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence.

The context is very important:

- What was the situation?
- Where did the alleged assault occur?

The intention of the accused is immaterial: *s9(2) Penal Code*.

If the person assaulted is injured, then a more serious assault charge might be more appropriate.

Legal excuse

The prosecution must prove that there was no lawful reason for the assault.

If the defence provides a reason for the assault, what is it, and does it have any merit?

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

6 months imprisonment (or \$100 fine: *s26 Penal Code*)

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## Larceny (theft) of a bird or animal

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**Section** *ss269 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals a bird, beast or other animal ordinarily kept in a state of confinement or for a domestic purpose.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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### Elements

- The person named in the charge is the same person who is appearing in Court;
  - The accused took and carried away a bird or animal that did not belong to them;
  - The bird or animal is ordinarily kept in confinement or used for a domestic purpose;
  - The accused did this fraudulently and without claim of right in good faith;
  - The owner of the bird or animal did not consent to the taking;
  - The accused had the intention of permanently depriving the owner of the bird or animal at the time he or she took it.
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### Commentary

#### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

#### Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who stole the bird or animal.

Took and carried away

The prosecution must prove that the accused took the bird or animal and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

Bird or animal did not belong to them

The prosecution must provide evidence of the bird or animal and prove the owner of it. See the definition of “owner” in *s251(2)(c)*.

Bird or animal is ordinarily kept in confinement or used for a domestic purpose

The prosecution must show evidence of this.

Fraudulently and without claim of right in good faith

The accused must have had an intention to defraud or steal and no good claim to the bird or animal. Consider why did the accused take it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take the bird or animal, does their explanation have merit? Is their belief reasonable?

Owner did not consent

The prosecution must prove that the owner did not consent to the bird or animal being taken. This will be quite easy and is usually done by evidence from the owner of the bird or animal.

Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the bird or animal and using it as his or her own. If the accused later sells or gives it away, they have used it as their own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the bird or animal.**

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$100 fine or 6 months imprisonment.

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## Larceny (theft) or destruction of fish

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**Section** *ss270 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who takes or destroys, or attempts to take or destroy, any fish in water which is private property or where there is a private right of fishery.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused either:
    - ⊖ stole or destroyed fish that did not belong to them; or
    - ⊖ attempted to take or destroy fish that did not belong to them;
  - The fish was either:
    - ⊖ in water that was private property; or
    - ⊖ in water over which there was a private right of fishery;
  - The accused did this fraudulently and without claim of right in good faith;
  - The owner of the fish did not consent to the taking;
  - The accused had the intention of permanently depriving the owner of the fish at the time he or she took it.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.



The prosecution must provide evidence to prove that it was the accused who stole or destroyed the fish.

Took

If the charge is under this ground, the prosecution must prove that the accused took the fish. See the definition of “takes” in *s251(2)(a)*.

Destroyed

If the charge is under this ground, the prosecution must give evidence to prove that the accused destroyed the fish.

Attempted to take or destroy

See the definition of “attempt” in *s371 Penal Code*. Usually an attempt involves doing something to try and take or destroy the fish. It must be more than a mere preparatory act.

Fish did not belong to them

The prosecution must provide evidence of the fish and prove the owner of it. See the definition of “owner” in *s251(2)(c)*.

Fish was in water that was either private property or over which there was a private right of fishery

The prosecution must show evidence of this.

Fraudulently and without claim of right in good faith

The accused must have had an intention to defraud or steal or destroy, and no good claim to the fish. Consider why did the accused take or destroy it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take or destroy the fish, does their explanation have merit? Is their belief reasonable?

Owner did not consent

The prosecution must prove that the owner did not consent to the fish being taken or destroyed. This will be quite easy and is usually done by evidence from the owner of the fish.

Intention of permanently depriving owner

If the charge is under this ground, the prosecution must prove that the accused had the intention of keeping the fish and using it as his or her own. If the accused later sells or gives it away, they have used it as their own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the fish.**

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$10 fine.

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## Larceny (theft) or destruction of trees, shrubs, etc

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**Section** *ss272 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals, or cuts, breaks, roots up or otherwise destroys or damages with intent to steal, all or part of any tree, sapling, shrub or underwood worth more than 10 cents.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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### Elements

- The person named in the charge is the same person who is appearing in Court;
  - Either:
    - ⊖ the accused stole all or any part of a tree, etc, that did not belong to him or her; and
    - ⊖ the accused had the intention of permanently depriving the owner of the tree, etc, at the time he or she took it.
  - Or:**
    - ⊖ the accused cut, broke, rooted up or otherwise destroyed or damaged all or any part of a tree, etc, that did not belong to him or her; and
    - ⊖ the accused did this with the intention of stealing it;
  - The tree, etc, was worth at least 10 cents;
  - The accused did this fraudulently and without claim of right in good faith;
  - The owner of the tree, etc, did not consent to the taking, damaging or destroying.
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### Commentary

**For any charge under this section:**

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

### Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who committed the offence.

### Tree, etc, did not belong to them

The prosecution must provide evidence of the tree, etc, and prove the owner of it. See the definition of “owner” in *s251(2)(c)*.

### The whole or any part

Any part of the tree, etc, stolen or damaged is enough. It does not have to be the whole.

### Fraudulently and without right of claim in good faith

The accused must have had an intention to defraud or steal or destroy, and had no good claim to the tree, etc. Consider why did the accused take or destroy it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take or destroy the tree, etc, does their explanation have merit? Is their belief reasonable?

### Owner did not consent

The prosecution must prove that the owner did not consent to the tree, etc, being taken or destroyed. This will be quite easy and is usually done by evidence from the owner of the tree, etc.

### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

### **For a charge of stealing:**

#### Took and carried away

If the charge is stealing, the prosecution must prove that the accused took the tree, etc, and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

#### Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the tree, etc, and using it as his or her own. If the accused later sells or gives it away, they have used it as their own.

This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the tree, etc.**

**For a charge of damaging or destroying:**

Cut, broke, rooted up or otherwise destroyed or damaged all or any part

If the charge is on this ground, the prosecution must prove that the accused damaged the tree, etc, in some way, or destroyed it.

With the intention of stealing

The prosecution must prove that the accused damaged or destroyed the tree, etc, with the intention of stealing it. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

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**Sentence**

The section states that the accused is guilty of a misdemeanour but no penalty is specifically provided for this offence. *Section 42 Penal Code* states that where no punishment is provided for any misdemeanour, the penalty will be 2 years imprisonment and a fine.

Note *s275(b) Penal Code*, which states that the accused is guilty of a felony, and shall liable to imprisonment for 5 years if:

- the offence is committed in any place and the value of the tree, etc, is at least 10 cents, and the accused has 2 previous convictions under *s272*; or
- the tree, etc, was growing in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, and the value exceeds \$2; or
- the tree, etc, was growing in any place, and the value exceeds \$10.

As an Island Court Magistrate, the maximum fine you may impose is \$100 and 6 months imprisonment. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate’s Court for sentencing.

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## Larceny (theft) of or damage to fence

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**Section** *ss273 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals, or cuts, breaks or throws down with intent to steal, any part of any live or dead fence, post, pale, wire or rail used as a fence, or stile or gate.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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### Elements

- The person named in the charge is the same person who is appearing in Court;
  - Either:
    - ⇒ the accused stole any part of a fence, etc, that did not belong to him or her; and
    - ⇒ the accused had the intention of permanently depriving the owner of the fence, etc, at the time he or she took it.
  - Or:**
    - ⇒ the accused cut, broke, or threw down any part of a fence, etc, that did not belong to him or her; and
    - ⇒ the accused did this with the intention of stealing it;
  - The accused did this fraudulently and without claim of right in good faith;
  - The owner of the fence, etc, did not consent to the taking, damaging or destroying.
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### Commentary **For any charge under this section:**

#### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

#### Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who stole or damaged the fence, etc.

Fence, etc, did not belong to them

The prosecution must provide evidence that the thing stolen or damaged was a live or dead fence, post, pale, wire or rail used as a fence, or stile or gate fence, and prove the owner of it. See the definition of “owner” in *s251(2)(c)*.

Any part

Any part of the fence, etc, stolen or damaged is enough. It does not have to be the whole.

Place

It does not matter where the fence, etc was – just that it was owned by someone else. Of course, proving where it is may be relevant to ownership - if it is on a person’s land, that you may infer it belongs to them.

Fraudulently and without right of claim in good faith

The accused must have had an intention to defraud, steal, destroy or damage, and no good claim to the fence, etc. Consider why did the accused take, destroy or damage it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take, destroy or damage the fence, etc, does their explanation have merit? Is their belief reasonable?

Owner did not consent

The prosecution must prove that the owner did not consent to the fence, etc being taken or damaged. This will be quite easy and is usually done by evidence from the owner of the fence, etc.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

**For a charge of stealing:**

Took and carried away

If the charge is stealing, the prosecution must prove that the accused took the fence, etc, and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the fence, etc and using it as his or her own. If the accused later sells or gives it away, they have used it as their own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took** the fence, etc.

**For a charge of damaging:**

Cut, broke, or threw down

If the charge is on this ground, the prosecution must prove that the accused damaged the fence, etc.

With the intention of stealing

The prosecution must prove that the accused damaged the fence, etc with the intention of stealing it. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

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**Sentence**

The section states that the accused is guilty of a misdemeanour but no penalty is specifically provided for this offence.

*Section 42 Penal Code* states that where no punishment is provided for any misdemeanour, the penalty will be 2 years imprisonment and a fine.

As an Island Court Magistrate, the maximum fine you may impose is \$100 and 6 months imprisonment. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate’s Court for sentencing.

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## Larceny (theft) of or destruction/damage to fruit & vegetables

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**Section** *ss274 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals, destroys, roots up or damages with intent to steal, any plant, root, fruit or vegetable production, used for specific purposes listed, that is growing in any garden, orchard, pleasure ground, green-house, conservatory or any land.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - Either:
    - ⊖ the accused stole a plant, root, fruit or vegetable that did not belong to him or her; and
    - ⊖ the accused had the intention of permanently depriving the owner of the plant, root, fruit or vegetable at the time he or she took it.
  - Or:**
    - ⊖ the accused destroyed, rooted up or damaged a plant, root, fruit or vegetable that did not belong to him or her; and
    - ⊖ the accused did this with the intention of stealing it;
  - The accused did this fraudulently and without claim of right in good faith;
  - The plant, root, fruit or vegetable was used for any of the listed purposes;
  - The plant, root, fruit or vegetable was growing in a garden, orchard, pleasure ground, green-house, conservatory or on any land;
  - The owner of the plant, root, fruit or vegetable did not consent to the taking or damaging.
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### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

### **For a charge of stealing:**

#### Took and carried away

If the charge is stealing, the prosecution must prove that the accused took the plant, etc and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

#### Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the plant, etc and using it as his or her own. If the accused later sells or gives it away, they have used it as their own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the plant, etc.**

### **For a charge of damaging or destroying:**

#### Destroyed, rooted up or damaged

If the charge is on this ground, the prosecution must prove that the accused destroyed, rooted up or damaged the plant, etc.

#### With the intention of stealing

The prosecution must prove that the accused damaged or destroyed the plant, etc, with the intention of stealing it. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

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**Sentence**

The section states that the accused is guilty of a misdemeanour but no penalty is specifically provided for this offence.

*Section 42 Penal Code* states that where no punishment is provided for any misdemeanour, the penalty will be 2 years imprisonment and a fine.

*Note s275(c) Penal Code*, which states that the accused is guilty of a felony, and shall liable to imprisonment for 5 years if he or she has a previous conviction under *s274*.

As an Island Court Magistrate, the maximum fine you may impose is \$100 and 6 months imprisonment. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Larceny (theft) of or damage to fixtures

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**Section** *ss275 and 251 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals, or rips, cuts, severs or breaks with intent to steal any fixture, as listed.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - Either:
    - ⊖ the accused stole a fixture; and
    - ⊖ the accused had the intention of permanently depriving the owner of the fixture at the time he or she took it.
  - Or:**
    - ⊖ the accused ripped, cut, severed or broke a fixture that did not belong to him or her; and
    - ⊖ the accused did this with the intention of stealing it;
  - The accused did this fraudulently and without claim of right in good faith;
  - The fixture was:
    - ⊖ glass or woodwork belonging to any building; or
    - ⊖ metal or utensil or fixture fixed in or to any building; or
    - ⊖ something made of metal fixed in any land being private property, or as a fence to any dwelling-house, garden or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground;
  - The owner of the fixture did not consent to the taking or damaging.
-

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**Commentary****For any charge under this section:**Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who stole or damaged the fixture.

Fixture

The prosecution must prove that the item stolen or damaged was one of the types of fixtures listed. Note that the place that the fixture is attached to or in is important.

Fixture did not belong to them

The prosecution must provide evidence of the fixture and prove the owner of it. See the definition of “owner” in *s251(2)(c)*.

Fraudulently and without right of claim in good faith

The accused must have had an intention to defraud, steal or damage, and no good claim to the fixture. Consider why did the accused take or damage it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take or damage the fixture, does their explanation have merit? Is their belief reasonable?

Owner did not consent

The prosecution must prove that the owner did not consent to the fixture being taken or destroyed. This will be quite easy and is usually done by evidence from the owner of the fixture.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

**For a charge of stealing:**

Took and carried away

If the charge is stealing, the prosecution must prove that the accused took the fixture and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the fixture and using it as his or her own. If the accused later sells or gives it away, they have used it as their own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the fixture**.

**For a charge of damaging:**

Rips, cuts, severs or breaks

If the charge is on this ground, the prosecution must prove that the accused ripped, cut, severed or broke the fixture.

With the intention of stealing

The prosecution must prove that the accused damaged the fixture with the intention of stealing it. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

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**Sentence**

The accused is guilty of a felony, and shall liable to imprisonment for 5 years.

As an Island Court Magistrate, the maximum fine you may impose is \$100 and 6 months imprisonment. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate’s Court for sentencing.

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# ***Public Order Act (Cap 9)***

## Going armed in public

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**Section** *s25 Public Order Act (Cap 9)*

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**Description** Every person is guilty of an offence, who goes armed in public without lawful authority or reasonable excuse, such as to cause terror.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused carried a weapon in a public place;
  - The accused had no lawful authority or reasonable excuse to carry the weapon;
  - The accused intended to cause terror in another person;
  - The manner in which the accused was armed did in fact cause terror in another person.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who was armed.

Armed

Armed is not defined. It will need to be proved that the person carried a weapon that was capable of causing terror in others. The weapon must therefore be capable of causing serious injury to others or to property.

In public

The prosecution must prove by evidence that it was a public place.



Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature.

See the definition of a public place in *s4 Penal Code*.

#### Lawful authority or reasonable excuse

The prosecution must prove that there was no lawful reason or reasonable excuse for the accused to be carrying the weapon.

They may do this by referring to people who are allowed to carry weapons, as set out in *s16 Penal Code*.

If the defence provides a reason, what is it, and does it have any merit?

#### Intention to cause terror

The accused must have intended to cause terror in another. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

#### Caused terror

Just carrying a weapon in public is not enough to create an offence under this section. The deliberate use of the words ‘cause terror’ means that it is the effect on another person that is important. There will need to be proof:

- of how the weapon was brandished; and
- that someone else saw the weapon; and
- as a result, they were terrified.

This last is a subjective test – the person/s will need to give evidence that in fact they were terrified.

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

The maximum penalty is imprisonment for 2 years and a fine of \$200. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment or \$100 fine. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Unlawful fighting

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**Section** *s28 Public Order Act (Cap 9)*

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**Description** Every person is guilty of an offence who takes part in an unlawful fight.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused took part in a fight with at least one other person;
  - The fight is unlawful.
  - The fight threatened public order.
- 

**Commentary** Taking part in such a fight is also known as an affray.

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who was fighting.

Fighting

There needs to be clear evidence that the accused was a willing participant in the fight and not merely trying to defend him or herself against an attack.

Unlawful

The prosecution will need to prove that the fight was unlawful. Only boxing, wrestling matches and some other sports events would seem to amount to a lawful fight. Where two people agree to fight or one person challenges another to fight, then this will be unlawful if this threatens public order creating anxiety and fear in others, such that they believe that harm may be caused to them or others.

Place

The fight may be in a public place, such as a public bar or licensed premises, or it may be on private premises. However, if it is on private premises, the threat to public order needs to be shown.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

Self defence would be the most common defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

\$100 fine and 1 year imprisonment. As an Island Court Magistrate, the maximum term of imprisonment you may impose is 6 months. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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# ***Traffic Act (Cap 71)***

## Driving while unlicensed

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**Section** *s13 Traffic Act 1983 (Cap 71)*

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**Description** Every person is guilty of an offence who drives a motor vehicle on any public road and does not have a license to drive that vehicle, or who employs someone to drive who is unlicensed.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The person either:
    - drove a motor vehicle while unlicensed; or
    - employed another person to drive who was unlicensed;
  - The driving was on a public road.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who drove unlicensed or employed an unlicensed person to drive.

Public road

The driving must be on a public road. Usually evidence from the Police on the status of the road will be sufficient.

Drive

The prosecution must prove that actual driving took place.

Unlicensed

It is important for the prosecution to prove that the driver held no current license. This may include a person who has been disqualified from holding a license.

The prosecution may need to produce the result of a driver register search or obtain a proper admission from the driver.

Even if the driver has a license, it must be valid for the particular class of vehicle he or she drove. The prosecution may have to prove the class of vehicle driven, if the driver was in fact licensed but for another class of vehicle.

If a driver had a license and has failed to renew the license, then he or she does not have a valid license.

Note that *s13* is subject to *s14*, which allows a person to have a provisional license, which may have conditions. If the prosecution alleges that a driver was driving outside the terms of a provisional license, they will need to prove the terms of the license and show what the breach is..

#### Employed

If this is the ground on which the charge is based, the prosecution must prove that the accused did employ the unlicensed driver to drive. This may be admitted by the accused or the driver or another person may give evidence to show this.

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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### **Sentence**

6 months imprisonment or \$100 fine: *s27 Traffic Act*. Note that you may also disqualify the accused from holding a driving licence: *s25(1) Traffic Act*. After 6 months, they may apply for their licence back under *s26 Traffic Act*.

See *Tianamo Savave v R* (in *Pita v R*) [2002] TVHC 4.

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## Breach of provisional driving license

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**Section** *s14(3) Traffic Act (Cap 71)*

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**Description** Any person who has a current provisional license and who does not comply with any of the conditions contained as part of that license is guilty of an offence.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The person has a provisional driving license;
- The person has not complied with one or more of the conditions on which the license was granted.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who did not comply with the conditions of their provisional license.

Provisional license

The prosecution must show that the accused had a provisional driving license.

Conditions of license

The conditions of the license are provided for within the *Traffic Regulations* as may be amended from time to time: *reg 15 Traffic Regulations*. The prosecution must provide evidence of the conditions of the accused's provisional license and that the accused did not comply with one or more of those conditions.



Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

\$100 fine and/or 6 months imprisonment.

Note that you may also disqualify the accused from holding a driving license: *s25(1) Traffic Act*. After 6 months, they may apply for their license back under *s26 Traffic Act*.

See *Tianamo Savave v R* (in *Pita v R*) [2002] TVHC 4, 3/02 and *Viliamu v R* [2003] TVHC 9, 2/03.

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## Careless driving

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**Section** *s20 Traffic Act 1983 (Cap 71)*

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**Description** Every person is guilty of an offence who drives a motor vehicle or bicycle without due care and attention, or without reasonable consideration for others.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused drove a motor vehicle or rode a bicycle;
  - The driving or riding was:
    - ⊖ without care and attention expected of a reasonably competent driver; or
    - ⊖ was inconsiderate to others.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who drove or rode.

Place

There is no express statement that the driving must be on a road. This appears not to be an essential element, so the driving or riding may be on private property. Most bad driving that comes to attention, however, will be from driving on a public road.

Nature of the driving or riding

The prosecution must prove that the nature of the driving or riding was well below the standard others expect.

It will usually only be careless or inconsiderate if there is some consequence, such as an accident, or someone is really put at risk of harm or put to inconvenience.

If inconsiderate driving or riding is alleged, the prosecution must prove that other road users were inconvenienced.

Ask, “was the driving or riding well below an acceptable standard?”

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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#### **Sentence**

6 months imprisonment or \$100 fine. Note that you may also disqualify the accused from holding a driving licence: *s25(1) Traffic Act*. After 6 months, they may apply for their licence back under *s26 Traffic Act*.

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## Taking a vehicle without authority

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**Section** *s22 Traffic Act 1983 (Cap 71)*

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**Description** Every person is guilty of an offence who takes and drives away a vehicle without the consent of the owner or lawful authority.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused took the vehicle and drove it away;
  - Either:
    - the owner did not consent; or
    - the accused did not reasonably believe that the owner consented; or
    - the accused had no lawful authority to take and drive it;
  - The accused did not intend to permanently deprive the owner of the vehicle.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who took the vehicle.

Takes and drives away

It will usually be quite simple for the prosecution to prove that the vehicle was taken and driven away.

Without the owner's consent

The prosecution will need to prove who owns the vehicle and that they did not consent to it being taken by the accused.

Without lawful authority

Sometimes a person has lawful authority to take a vehicle, such as an agent of a company that is owed money and who has repossessed the vehicle. You would expect the Police to have investigated any such claim before bringing the case to Court.

The prosecution must prove that there was no lawful reason for the accused to take the vehicle. If the defence does not provide a lawful excuse, it would generally be enough for the owner to give evidence of that fact.

If the defence provides a reason, what is it, and does it have any merit?

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

If the accused can prove that he or she took the vehicle in the reasonable belief that he or she has lawful authority or that the owner would in the circumstances have given consent if asked, then that is a defence to the charge and the accused should be acquitted: *s22(2)*. The accused's belief must be reasonable in the circumstances. Listen to their story and see if it is one you can believe.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

\$100 fine and 6 months imprisonment.

You may also disqualify the accused from holding a driving licence: *s25(1) Traffic Act*. You **must** disqualify the accused from holding a driving licence if this was their second or subsequent conviction for taking a vehicle without authority: *s26(2)(c) Traffic Act*. After 6 months, they may apply for their licence back under *s26 Traffic Act*.

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## Driving while impaired by alcohol or drugs

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**Section** *s23 Traffic Act 1983 (Cap 71)*

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**Description** Every person is guilty of an offence who drives, or attempts to drive, or is in charge of a motor vehicle while his or her efficiency as a driver is impaired by drink or drug.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused drove, attempted to drive, or was in charge of a motor vehicle;
  - The driver had consumed drink or drug;
  - As a result of the drink or drugs, the driver was not able to drive to a standard expected of a reasonably competent sober driver.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who drove or attempted to drive or was in charge of a motor vehicle.

Place

There is no express statement that the driving must be on a road. This appears not to be an essential element, so the driving or attempted driving may be on private property.

Attempt to drive or in charge of

See the definition of “attempt” in *s371 Penal Code*. Usually an attempt involves any action taken in preparation for driving. Sitting in the driver’s seat with the key in the ignition may be sufficient.

### Drink or drug

The prosecution must prove that the driver had consumed drink or drug. These are not defined, but you can assume that the offence relates only to drink and drugs that can affect a person's ability, like alcohol and narcotic substances.

Sometimes the police will obtain a statement that helps them establish this. Other times they can smell alcohol or marijuana on the person. Often a test is given at the station to determine whether or not a person is drunk and the level of drunkenness. The police officer will need to give evidence if this is the case.

### Driver's ability impaired

The prosecution must prove more than the fact that the driver was affected by drink or drug. They must show that the driver's ability was impaired as a result.

Impaired means driving in such a manner that the driver's control of the vehicle is affected by the alcohol consumed. This may be evidenced by swerving the vehicle, driving very fast or other reasons. The police will need evidence to establish this.

Note *s23(3)*, which states that if a person drove within 2 hours of drinking alcohol and was involved in a driving offence or accident, you may presume that his or her driving ability was impaired, unless the accused proves otherwise, on the balance of probabilities. See *Lisale v R* [2003] TVHC 7, 1/03.

### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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## **Sentence**

1 years imprisonment and \$200 fine. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment or \$100 fine. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

Note that you must also disqualify the accused from holding a driving licence: *s26(2)(b) Traffic Act*. After 6 months, they may apply for their licence back under *s26 Traffic Act*.

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## Speeding

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**Section** *reg7(1), (2), (3) Traffic Regulations (Cap 71)*

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**Description** Any person who drives a vehicle faster than the speed specified for that vehicle in *reg7(1)* or the maximum speed indicated by a traffic sign in an area is guilty of an offence.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The person must have either:
    - ⇒ driven a vehicle above the specified speed for that vehicle; or
    - ⇒ driven a vehicle above the speed indicated by a traffic sign in the area.
- 

**Commentary** *Section 30 Traffic Act* allows the Minister to make regulations to carry out provisions of the Act for the purpose of prescribing speed limits.

All vehicles as described below cannot be driven on any road faster than the speed described below: *Reg7(1) and (2)*

- Private motor vehicle – 40 miles per hour;
- Public service vehicle – 30 miles per hour;
- Commercial vehicles – 20 miles per hour.

Any person who drives a vehicle above the maximum speed in an area where the maximum speed is indicated by traffic signs has committed an offence. *Reg7(3)*

**All charges under *reg7(1), (2) and (3)***

**Burden and standard of proof**

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.



Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court. The prosecution must provide evidence to prove that it was the accused who drove faster than the allowable speed.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence. The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

**Charges under *reg7(1) and (2)***

Type of vehicle

The prosecution will need to identify the vehicle the accused drove and the type of vehicle it was, i.e. personal, public service or commercial.

Specified speed

The prosecution must show what the specified speed is for the type of vehicle being driven by the accused.

Drove above the specified speed

The prosecution must prove that the accused drove faster than the specified speed.

**Charges under *reg7(3)***

Vehicle

The prosecution will need to identify the vehicle the accused drove.

Indicated speed

The prosecution must be able to identify the area in which the accused drove and identify the maximum speed for that area as indicated by traffic signs.

Drove above the maximum speed

The prosecution must prove that the accused drove faster than the maximum speed for that area as indicated by traffic signs.

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**Sentence**

\$50 fine.

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## ***Traffic Act* offences where no special penalty is provided**

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**Section** *s27 Traffic Act (Cap 71)*

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**Description** A general penalty is provided for offences under the *Traffic Act 1983* where no penalty has been provided.

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**Elements**

- The person has been found guilty of an offence under the *Traffic Act*;
- The offence the person has been found guilty of, has no special penalty attached to it.

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**Commentary** The *Traffic Act* has a number of offences which do not have specific sentences attached to them. Where an accused has been found guilty of such an offence, *s27 Traffic Act* applies.

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**Sentence** \$100 fine and/or 6 months imprisonment.

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# ***Alcoholic Drinks Act (Cap 69)***

## Drunkenness on licensed premises

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**Section** *s98 Alcoholic Drinks Act 1984 (Cap 69)*

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**Description** (1) Every licensee is guilty of an offence who permits drunkenness or violent, quarrelsome, indecent or grossly disorderly or offensive conduct to take place, or who sells or supplies alcohol to or for a drunken person or a person guilty of such conduct, on licensed premises.

(2) Every person is guilty of an offence who procures or attempts to procure alcohol for a drunken person or a person guilty of such conduct, or who helps such a person to obtain or drink alcohol, on licensed premises.

---

**Elements**

- The person named in the charge is the same person who is appearing in Court;

Specific under s98(1):

- The accused is the holder of a publican's license;
- The accused either:
  - ⇒ permitted drunkenness or violent, quarrelsome, indecent or grossly disorderly or offensive conduct to take place on the licensed premises; or
  - ⇒ sold or supplied alcohol to or for a drunken person or a person behaving in a violent, quarrelsome, indecent or grossly disorderly or offensive manner on the licensed premises.

Specific under s98(2):

- The accused either:
    - ⇒ procured or attempted to procure alcohol for a drunken person or a person behaving in a violent, quarrelsome, indecent or grossly disorderly or offensive manner on licensed premises; or
    - ⇒ helped a drunken person or a person behaving in a violent, quarrelsome, indecent or grossly disorderly or offensive manner to obtain or drink alcohol, on licensed premises.
-

**Commentary** This section is aimed at requiring licensees to take steps to keep the licensed premises orderly, preventing drunk people from becoming more drunk and preventing some of the worse behaviours arising from drunkenness in check.

### **All charges under s98**

#### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

#### Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who did the alleged acts.

#### Licensed premises

The prosecution must prove that the premises were licensed (the license should be produced as an exhibit) and that the alleged behaviour happened on those premises.

#### A person who was drunk or behaving in a violent, quarrelsome, indecent or grossly disorderly or offensive way

The prosecution must prove that the other person was either drunk or behaving one or more of these ways.

If the ground is drunkenness, the prosecution must prove more than just that the accused was affected by alcohol or had been drinking. They must prove that the accused was drunk and good evidence of drunkenness must be given.

Note that any alleged disorderly or offensive conduct must be gross, that is, extreme.

There must be good evidence of what was done or said and by whom.

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

### **Charges under s98(1)**

#### License holder

The accused must hold a publican's license. The prosecution should produce the license as an exhibit. It may not need to be the licensee personally who did the permitting or supplying – one of his or her employees may be sufficient.

#### Permitted

This means allowed. If the behaviour is occurring and the licensee has taken no steps to stop it or make the person leave, it can be inferred that they have permitted the behaviour.

#### Sold or supplied alcohol

Usually it may be inferred that someone on licensed premises who is drinking alcohol got it from the premises.

#### Defence

If the prosecution proves all the elements beyond reasonable doubt, then the accused may have a defence if they or their staff took all reasonable steps to prevent the behaviour. Ask yourself what steps were reasonable in the circumstances. The accused needs to prove this on the balance of probabilities, that is, their evidence must show it was more likely than not that they took such steps to prevent the behaviour.

### **Charges under s98(2)**

#### A person

The accused does not have to be a licensee under this ground.

#### Procured or attempted to procure or helped the person to obtain alcohol

Under this ground, the prosecution must prove that the accused got or attempted to get alcohol, or assisted the other person to get alcohol in some way.

See the definition of "attempt" in *s371 Penal Code*. Usually an attempt involves doing something to try and get the alcohol for the other person.

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**Sentence**

\$200 fine. As an Island Court Magistrate, the maximum fine you may impose is \$100. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Supplying a minor

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**Section** *s99(1) and (2) Alcoholic Drinks Act 1984 (Cap 69)*

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**Description** (1) Every licensee is guilty of an offence who sells or supplies alcohol to a person under 18 years, or permits it.

(2) Every employee of a licensee is guilty of an offence who knowingly sells or supplies any alcohol to a person under 18 years.

---

**Elements**

- The person named in the charge is the same person who is appearing in Court;

Specific under s99(1):

- The accused is the holder of a publican's license;
- The accused sold or supplied, alcohol to a person, or permitted it;
- the accused knew that the person supplied was under 18 years.

Specific under s99(2):

- The person named in the charge is the same person who is appearing in Court;
  - The accused is an agent or servant of a licensee;
  - The accused sold or supplied alcohol to a person;
  - The person supplied was under 18 years;
  - The accused knew that the person was under 18 years.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court, and provide evidence to prove that it was the accused who sold or supplied the alcohol or permitted it.



### Place

The offence does not require that the selling or supplying happened in any place in particular, although most often this will be on licensed premises.

### Sold or supplied alcohol

Usually it may be inferred that someone on the licensed premises who is drinking alcohol got it from the premises. In any case, the prosecution must prove that it was the accused who sold or supplied the alcohol or permitted it.

### Permitted

This means 'allowed'. If the licensee knows that someone else is serving alcohol to a person under 18 years and takes no steps to stop it, they have permitted the behaviour. The licensee will need to have some control over the person supplying the alcohol, as is the case with a servant or agent.

### Under 18 years

Proof of the age of the young person must be produced. This may be by producing birth records or evidence of someone who knows the age of the young person.

### Agent or servant of licensee knowingly

For a charge under *s99(2)*, the prosecution must prove that the accused was an agent or servant of a licensee.

They must also prove that the accused **knew** that the person they were serving alcohol to was under 18 years. This may sometimes be implied in the circumstances, e.g. if it was obvious or common knowledge.

### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (ie more likely than not)

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## **Sentence**

\$200 fine. As an Island Court Magistrate, the maximum fine you may impose is \$100. If you think the circumstances of the case require a great penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Under age drinking on licensed premises or public place

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**Section** *s99(3) Alcoholic Drinks Act (Cap 69)*

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**Description** Any person under 18 commits an offence who:

- gets or tries to get any alcoholic drink on or from a licensed premises; or
- drinks or has in his or her possession any alcoholic drink on a licensed premises or in a public place.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The person must be under the age of 18 years at the time of the alleged offence;
- The person either:
  - obtained or tried to get an alcoholic drink from a licensed premises; or
  - had in their possession or drank an alcoholic drink on a licensed premises or in a public place.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who had or tried to have the alcohol.

Under 18 years

Proof of the age of the person must be produced. This may be by producing birth records or evidence of someone who knows the age of the young person.

Licensed premises or public place

The prosecution must prove that the premises were licensed (the license should be produced as an exhibit) and that the alleged behaviour happened on those premises.

**or**

The prosecution must prove it was a public place that the alleged behaviour took place in. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature.

Alcoholic drink

The prosecution will need to have evidence that the drink in question was alcoholic. See the definition of alcoholic drink in *s2 Traffic Act*.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

\$200 fine.

Note that you may also make an order to prohibit the accused from drinking or having in his or her possession any alcoholic drink for up to 12 months if the accused is convicted of the same offence twice in the last 12 months. You will need to follow the procedure outlined at *ss82 –83 Alcoholic Drinks Act*.

See *Lausaveve v R* [2003] TVHC 5; 5/02.

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## Refusal to leave licensed premises

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**Section** *s101(2) Alcoholic Drinks Act (Cap 69)*

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**Description** Any person commits an offence who drinks alcohol on any part of a licensed premises and does not leave the licensed premises after being asked by a representative of the licensed premises or by a police officer.

This offence does not apply to a genuine lodger or genuine guest of that lodger.

---

### Elements

- The person named in the charge is the same person who is appearing in Court;
  - The person is not a genuine lodger or genuine guest of a lodger of the licensed premises;
  - The person must have been asked by a representative of the licensed premises or by a police officer to leave the licensed premises;
  - The person must have stayed on the licensed premises and continued drinking.
- 

### Commentary

#### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

#### Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who remained and continued drinking.

#### Licensed premises

The prosecution must prove that the premises were licensed (the license should be produced as an exhibit) and that the alleged behaviour happened on those premises.

Request to leave

The prosecution must have good evidence that the accused was asked to leave the licensed premises and that this was done by either a representative of the licensed premises or by a police officer.

The person asking the accused to leave will need to be identified and would usually give evidence of their status as representative of the licensed premises or police officer as well as the request.

Failure to leave and drinking alcohol

The prosecution must show that the accused was on any part of licensed premises and that he or she was drinking alcohol there after being asked to leave.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$200 fine.

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## Possession of a dangerous weapon on licensed premises

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**Section** *s105(1)(a) Alcoholic Drinks Act (Cap 69)*

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**Description** Any person commits an offence who, without a lawful excuse, has any dangerous or offensive weapon or instrument in his or her possession on licensed premises.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The person was on licensed premises;
- The person had a dangerous or offensive weapon or instrument.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who had the weapon or instrument while on licensed premises.

Dangerous or offensive weapon or instrument

The prosecution will need to provide good evidence that the weapon or instrument in the possession of the accused was dangerous or offensive. This offence would not apply to darts or other instruments used in games usually played on licensed premises.

**On licensed premises**

The prosecution must prove that the premises were licensed (the license should be produced as an exhibit) and that the alleged behaviour happened on those premises.

Injury not necessary

It does not matter whether the weapon or instrument was used or intended to be used to cause injury to another person.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have a defence if he or she can prove that he or she has a lawful and reasonable excuse for having the weapon while on licensed premises. The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

\$200 fine.

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## Possession of a dangerous weapon while under the influence of alcohol

---

**Section** *s105(1)(b) Alcoholic Drinks Act (Cap 69)*

---

**Description** Any person commits an offence who is under the influence of alcohol and has any dangerous or offensive weapon or instrument in his or her possession without a lawful excuse.

---

**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The person was under the influence of alcohol;
- The person had a dangerous or offensive weapon or instrument.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who had the weapon or instrument while under the influence.

Dangerous or offensive weapon or instrument

The prosecution will need to provide good evidence that the weapon or instrument in the possession of the accused was dangerous or offensive.

Place

This can be either in a public or private place, such as a home. The conduct of the person in possession must be such that there is a fear that an offence may be committed by them by reason of their actions. This will vary according to the facts of each case.



Under the influence of alcohol

The prosecution must prove that the accused had consumed drink. Sometimes the police will obtain a statement that helps them establish this. Other times they can smell alcohol on the accused. The police officer will need to give evidence if this is the case.

Injury not necessary

It does not matter whether the weapon or instrument was used or intended to be used to cause injury to another person.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have a defence if he or she can prove that he or she has a lawful and reasonable excuse for having the weapon while under the influence. The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$200 fine.

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## Drinking alcohol in prohibited public place

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**Section** *s118(2) Alcoholic Drinks Act (Cap 69)*

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**Description** Any person commits an offence who drinks alcohol in any public place which has been declared to be a prohibited area, other than licensed premises.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The person drank alcohol;
- The person was in a public place which had been declared by the Minister to be a prohibited area.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who drank in a prohibited public place.

Public place

The prosecution must prove it was a public place that the alleged behaviour took place in. Often a description of the place may be sufficient because you may know it. Otherwise it needs to be proved that the place was public in nature.

Prohibited area

***The Minister may declare any part of Tuvalu to be a prohibited area. The prosecution will need to provide good evidence that the Minister had made such a declaration by notice.***

***At the time of writing, the following areas are prohibited within Tuvalu:***

- on Funafuti – from the BP fuel tanks to the southern end of the runway;
- on Nui, the part of the island between Tabontebike and the pig fence; and
- on Vaitapu, that part of the island which is communal land comprising the main village bounded by an area 600 yards to the North and South of that communal land.

**Not licensed premises**

This offence does not apply to premises which were licensed to allow drinking at the time of the alleged offence. The prosecution must prove that the premises were licensed (the license should be produced as an exhibit) and that the alleged behaviour happened on those premises.

**Drank alcohol**

The prosecution must prove that the accused had consumed drink. The police will obtain evidence that helps them establish this. They must establish that the accused was seen drinking alcohol in a prohibited place. It is not sufficient to show that the accused was carrying alcohol or an open beer can, although that may suggest that the accused had been and intended to continue drinking.

**Defences**

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

\$200 fine.

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**The following offences are usually heard by the Magistrate's Court although they are within the jurisdiction of the Island Magistrate's Court.**

## Criminal trespass

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**Section** *s182 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence, who:

(1)(a) enters another person's property with intent to commit an offence, or intimidate or annoy that person; or

(1)(b) having lawfully entered another person's property, unlawfully remains there with intent to intimidate, assault or annoy that person, or commit an offence; or

(1)(c) unlawfully persists in coming or remaining upon another person's property after being warned not to come on, or to leave; or

(2) enters another person's house or adjoining property, without lawful excuse at night.

---

**Elements**

Specific under s182(1)(a):

- The person named in the charge is the same person who is appearing in Court;
- The accused entered another person's property;
- The accused did this with the intention of:
  - ⊖ committing an offence; or
  - ⊖ intimidating or annoying the other person.

Specific under s182(1)(b):

- The person named in the charge is the same person who is appearing in Court;
- The accused lawfully entered another person's property;
- The accused unlawfully stayed there with the intention of:
  - ⊖ committing an offence; or
  - ⊖ intimidating, assaulting or annoying the other person.

Specific under s182(1)(c):

- The person named in the charge is the same person who is appearing in Court;
- The accused:
  - unlawfully continued to come onto another person's property after being warned not to; or
  - unlawfully remained upon another person's property after being warned to leave.

Specific under s182(2):

- The person named in the charge is the same person who is appearing in Court;
- The accused entered another person's house or adjoining property;
- The accused had no lawful excuse for entering the house or property;
- The accused entered the house or property at night.

---

**Commentary**    **All charges under s182**

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who entered or remained.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

**Charges under s182(1)(a)**

Property

Property includes a building, vessel or land.

Possession

This will include ownership and lease and any other kind of possession. The possession must be lawful.

You can infer that a person in possession of property includes family members or others who live there, even if they are not the person named on the title or lease.

Intent to commit an offence

If this is the ground on which the charge is based, the prosecution must prove that the accused intended to commit an offence. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

Under this ground, the prosecution does not have to prove that the accused actually committed an offence – intention to do so is enough.

Intention to intimidate or annoy

If this is the ground on which the charge is based, the prosecution must prove that the accused intended to intimidate or annoy the

other person. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

Under this ground, the prosecution does not have to prove that the accused actually intimidated or annoyed the other person – intention to do so is enough.

### **Charges under *s182(1)(b)***

#### Property

Property includes a building, vessel or land.

#### Possession

This will include ownership and lease and any other kind of possession. It does not have to be a legal possession under this ground. You can infer that a person in possession of property includes family members or others who live there, even if they are not the person named on the title or lease.



### Lawful entering

The accused must have entered the property for a lawful purpose. This includes being invited onto the property by the other person, or entering the property to deliver something or some other good reason.

### Unlawfully remaining

The prosecution must prove that there was no lawful reason for remaining.

If the other person asks the accused to leave and he or she does not, the accused is unlawfully remaining. If the lawful entering was something like making a delivery, as soon as that has been done, the accused should leave the property, otherwise he or she is unlawfully remaining.

If the defence provides a reason for remaining, what is it, and does it have any merit?

### Intent to commit an offence

If this is the ground on which the charge is based, the prosecution must prove that the accused intended to commit an offence. This is a subjective test – it is the accused's intention that is important. You may have to infer this from the circumstances.

Under this ground, the prosecution does not have to prove that the accused actually committed an offence – intention to do so is enough.

### Intention to intimidate, insult or annoy

If this is the ground on which the charge is based, the prosecution must prove that the accused intended to intimidate, assault or annoy the other person. This is a subjective test – it is the accused's intention that is important. You may have to infer this from the circumstances.

Under this ground, the prosecution does not have to prove that the accused actually intimidated, insulted or annoyed the other person – intention to do so is enough.

### **Charges under s182(1)(c)**

#### Property

Property includes a building, vessel or land.

#### Possession

This will include ownership and lease and any other kind of

possession. Possession does not have to be lawful under this ground. You can infer that a person in possession of property includes family members or others who live there, even if they are not the person named on the title or lease.

Unlawfully persists in coming or remaining after being warned

The prosecution must prove that:

- the accused was warned not to come onto, or to leave, the property;
- he or she continued to come onto or remain on the property; and
- there was no lawful reason for coming onto or remaining on the property.

An example is where a person has been invited onto the premises for a purpose and then is asked to leave, but refuses to do so.

If the defence provides a reason for continuing to come onto or remain on the property, what is it, and does it have any merit?

**Charges under s182(2)**

Any dwelling-house, etc

For this ground, the prosecution must prove that the accused entered a house or its surroundings, that is:

- any verandah or passage attached to the house;
- any yard, garden or other land next to, or within the curtilage of the house.

By night

The prosecution must prove that it was night. Night is defined under s4 Penal Code as the period of time between 6-30pm and 6-30am the following morning.

Without lawful excuse

The prosecution must prove that there was no lawful reason for entering the house or its surroundings. It does not have to be proved that the accused was intending to commit an offence.

If the defence provides a reason for entering the house or property, what is it, and does it have any merit?

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**Sentence****Convictions under *s182(1)(a), (b) and (c)***

3 months imprisonment (or \$100 fine: *s26 Penal Code*). However, if the property entered was:

- a building, tent or vessel used as a human dwelling; or
- any building used as a place of worship or for custody of property,

then 1 years imprisonment. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment or \$100 fine. If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

**Convictions under *s182(2)***

1 years imprisonment. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment or \$100 fine. If you think the circumstances of the case require a greater penalty than you may impose then transfer the matter to the Magistrate's Court for sentencing.

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## Assault causing actual bodily harm

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**Section** *s238 Penal Code (Cap 8)*

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**Description** Every person who assaults another person and causes bodily harm is guilty of an offence.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused used physical force on another person;
  - The result of the assault must cause a reasonable injury.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who used physical force.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence. In this case, the person assaulted must be injured. This will require medical evidence to establish actual bodily harm. Bodily harm means any hurt or injury interfering with the health and comfort of the victim.

A severe punch or some kind of weapon may be involved. The injury caused need not be severe, but it must be more than just a bruise or soreness. The skin will be broken, or a bone may be broken. The context is very important:

- What was the situation?
- Where did the alleged assault occur?

The intention of the accused is immaterial: *s9(2) Penal Code*.

### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

### **Sentence**

The maximum penalty is imprisonment for 5 years. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Assault with intention to commit felony or resist or prevent apprehension or detention

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**Section** *s240(a) Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who assaults another person with intent to:

- commit a felony; or
- resist or prevent lawful apprehension or detention of him or herself, or another person, for an alleged offence.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The accused used physical force on another person;
- There was no legal excuse for the force being used;
- The accused did this with the intention of:
  - committing a felony; or
  - resisting or preventing the lawful apprehension or detention of him or herself or another person for an alleged offence.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who used physical force.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence.

#### Intention of committing a felony

The prosecution must prove that the accused intended to commit a felony. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The accused must be shown to have decided to commit a **felony**. If, in the course of carrying out that felony, the accused assaulted someone, that amounts to an offence under this section.

The offence intended must be a felony. See definition in *s4 Penal Code*.

#### Intention of resisting or preventing the lawful apprehension or detention of him or herself or another person for any offence

The accused must have intended to resist or prevent someone lawfully apprehending him or her, or another person.

The apprehension or detention, or attempted apprehension or detention, must be lawful.

If, in the course of trying to resist apprehension or detention, the accused assaulted someone, that amounts to an offence under this section.

The assaulted person need not be the police officer or other official attempting to make the apprehension or detention.

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

### **Sentence**

The maximum penalty is imprisonment for 2 years. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate’s Court for sentencing.

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## Assaulting, resisting or wilfully obstructing a police officer

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**Section** *s240(b) Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who assaults, resists or wilfully obstructs:

- a police officer who is duly executing his or her duty; or
- any person acting in aid of that police officer.

---

**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The accused:
  - used physical force on a police officer or person helping the police officer; or
  - resisted a police officer or person helping the police officer; or
  - wilfully obstructed a police officer or person helping the police officer;
- There was no legal excuse for the force being used;
- The police officer was duly executing his or her duty.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who assaulted, resisted or obstructed.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence.



The intention of the accused is immaterial: *s9(2) Penal Code*.

Definition of resist

To resist is to prevent the police officer from carrying out his or her duty by resisting.

The intention of the accused is immaterial: *s9(2) Penal Code*.

Definition of wilfully obstruct

If this is the ground for the charge, note that the obstructing must be wilful or deliberate. Therefore, the prosecution must prove that the accused intended to prevent the police officer from carrying out his or her duty, a person from helping the police officer.

Police duly executing duty

The prosecution must satisfy you that the police officer was acting in the course of his or her duty, that is, with proper authority.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

The maximum penalty is imprisonment for 2 years. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Assaulting, resisting or obstructing a person engaged in process or distress

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**Section** *s240(d) Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence:

- who assaults, resists or obstructs any person who is engaged in the lawful execution of process or in making a lawful distress;
- with the intention of rescuing lawful taken property under such process or distress.

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**Elements**

- The person named in the charge is the same person who is appearing in Court;
- The accused:
  - ⇒ used physical force on a person who is engaged in the execution of process or in making a distress; or
  - ⇒ resisted a person who is engaged in the execution of process or in making a distress; or
  - ⇒ obstructed a person who is engaged in the execution of process or in making a distress;
- The execution of process or distress was lawful;
- The accused intended to rescue property taken under process or distress.

---

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who assaulted, resisted or obstructed.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence.

Definition of resist

To resist is to prevent the person from lawfully executing process or making lawful distress, by resisting.

Definition of obstruct

To obstruct is to prevent the person from lawfully executing process or making lawful distress by getting in their way or putting something in their way.

Intention

The intention of the accused is immaterial: *s9(2) Penal Code*.

Engaged in the execution of process or distress

The prosecution must satisfy you that the person was lawfully, that is, with proper authority.

With the intention of rescuing property taken under process or distress

The prosecution must satisfy you that the accused acted with the intention of rescuing the property.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

The maximum penalty is imprisonment for 2 years. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Assaulting any person in execution of lawful duty

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**Section** *s240(e) Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who assaults any person on account of any act done by him or her in the execution of any duty imposed on him or her by law.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused used physical force on another person;
  - That person was undertaking a duty imposed by law, and had the authority to do that act by reason of his or her position.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who used physical force.

Definition of assault

An assault is any act by which a person intentionally causes another person to apprehend immediate unlawful violence.

On account of any act done

The assault must have been prompted by the person acting in the execution of a lawful duty.

Execution of any lawfully imposed duty

The prosecution must prove that the person assaulted was acting in the course of a duty imposed on him or her by law.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

---

**Sentence**

The maximum penalty is imprisonment for 2 years. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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## Simple larceny (theft)

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**Section** *ss251 and 254 Penal Code (Cap 8)*

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**Description** Every person is guilty of an offence who steals something.

*Section 250* sets out the things that are capable of being stolen.

*Section 251* defines stealing as, fraudulently and without claim of right made in good faith, taking and carrying away a thing capable of being stolen, without the consent of the owner and with the intent of permanently depriving the owner of the thing.

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- Elements**
- The person named in the charge is the same person who is appearing in Court;
  - The accused took and carried away a thing that did not belong to them;
  - The thing taken was capable of being stolen;
  - The accused did this fraudulently and without claim of right in good faith;
  - The owner of the thing did not consent to the taking;
  - The accused had the intention of permanently depriving the owner of the thing at the time he or she took it.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.

Identification

In Court, the prosecution should identify the person charged by clearly pointing out that person in Court.

The prosecution must provide evidence to prove that it was the accused who stole.

Took and carried away

The prosecution must prove that the accused took the thing and carried it away. See the definition of “takes” in *s251(2)(a)*. See the definition of “carries away” in *s251(2)(b)*.

A thing capable of being stolen

The prosecution must provide evidence to identify the thing. The thing taken must be capable of being stolen. See *s250* for a list of the things that may be stolen.

Did not belong to them

The prosecution must provide evidence to prove the owner of the thing. See the definition of “owner” in *s251(2)(c)*.

Fraudulently and without claim of right good faith

The accused must have had an intention to defraud or steal and no good claim to the thing. Consider why did the accused take it? Was there an honest intention? If the accused puts forward an explanation to show he or she honestly believed in their right to take the thing, does their explanation have merit? Is their belief reasonable?

Owner did not consent

The prosecution must prove that the owner did not consent to the thing being taken. This will be quite easy and is usually done by evidence from the owner of the thing.

Intention of permanently depriving owner

The prosecution must prove that the accused had the intention of keeping the thing and using it as his or her own. If the accused later sells or gives it away, he or she has used it as his or her own. This is a subjective test – it is the accused’s intention that is important. You may have to infer this from the circumstances.

The prosecution must show that the accused intended this **at the time he or she took the thing**.

Jurisdiction

Remember that the jurisdiction of the Island Court under this section is limited to things worth \$50 or less: *Schedule 2 ICA*.

Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence.

The accused will have to establish their defence to your satisfaction, on the balance of probabilities (i.e. more likely than not).

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**Sentence**

The maximum penalty is imprisonment for 5 years: *s254 Penal Code*. As an Island Court Magistrate, the maximum you may impose is 6 months imprisonment (or \$100 fine: *s26 Penal Code*). If you think the circumstances of the case require a greater penalty than you may impose, then transfer the matter to the Magistrate's Court for sentencing.

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