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CRIMINAL:

APPEALS/ CASES STATED/ REVIEWS

1 Appeals to the Supreme Court

1.1 Right of Appeal

Any person convicted on a trial held by a Magistrate's Court may appeal to the Supreme Court: *s200(1) Criminal Procedure Code*.

The Public Prosecutor may appeal to the Supreme Court on a point of law against any judgment of a Magistrate's Court: *s200(3) Criminal Procedure Code*.

Every appeal from a trial Court to an appeal Court shall be final: *s212 Criminal Procedure Code*. This means that a trial originally heard in Magistrate's Court can only be appealed to the Supreme Court, with no further appeal to the Court of Appeal.

1.2 Commencement of Appeal

Appeals are brought by either the prosecutor or the offender (or his or her representative) giving a Notice of Appeal to the Registrar of the Supreme Court within 14 days from the date of your order or sentence being appealed against: *s201 Criminal Procedure Code*.

For further information on how an appeal is commenced with the Supreme Court, see *ss201-206 Criminal Procedure Code*.

If an appeal is brought by a prosecutor, the accused must be personally served with the notice of appeal. See *Public Prosecutor v Toa* [2003] VUCA 13; Criminal Appeal Case No 04 of 2003.

1.3 Bail

For criminal appeals, once an appeal has been launched, you may order that the appellant be released from custody on bail subject to any conditions you think fit: *s209(1) Criminal Procedure Code*.

The application for bail is made without formal process to any Magistrate in the Court: *s209(2) Criminal Procedure Code*. You may hear the application for bail in chambers.

If the appeal is dismissed and the original or some other sentence has been ordered, the time during which the appellant has been released on bail is excluded from computing the remaining term of imprisonment from which he or she is finally sentenced: *s209(3) Criminal Procedure Code*.

1.4 Further Evidence

In order to deal with the appeal, the Supreme Court may require additional evidence to be taken. The Supreme Court will record its reasons for doing so and may direct that the Magistrate's Court take the further evidence: *s210(1) Criminal Procedure Code*.

If you are directed to take further evidence:

- take the evidence in the presence of the accused or his or her advocate, unless the Supreme Court otherwise directs; and
- certify it to the Supreme Court: *s210 Criminal Procedure Code*.

1.5 Orders

Once the Supreme Court has dealt with the appeal, it will certify its judgment or order to the Magistrate's Court which originally passed the conviction, sentence or order appealed against: *s208(1) Criminal Procedure Code*.

Upon receiving this judgment, you must make all appropriate orders to bring the judgment of the Supreme Court into effect: *s208(2) Criminal Procedure Code*. If necessary, the record must also be amended to reflect the appeal judgment: *s208(2) Criminal Procedure Code*.

Any costs taxed by the Supreme Court Registrar are recovered by execution in the Magistrate's Court: *s211 Criminal Procedure Code*.

2 Appeals From Island Courts

2.1 Right of Appeal

Any person may appeal to the Magistrate's Court from a decision of an Island Court within 30 days from the date of the order or decision of the Island Court: *s22(1) as amended by s7 Schedule Island Courts (Amendment) Act No. 15 of 2001*.

Notwithstanding the 30 day requirement, if you receive an application, you may grant an extension to bring the appeal, provided the application is made within 60 days of the date of the order or decision of the Island Court: *s22(5) Island Courts Act*.

2.2 Hearing the Appeal

When hearing an appeal against a decision of an Island Court, you must appoint two or more assessors knowledgeable in custom to sit with the Court: *s22(2) Island Courts Act*.

When hearing the appeal, you must:

- consider any records relevant to the decision;
- receive any relevant evidence; and
- make any inquiries you think fit: *s22(3) Island Courts Act*.

On hearing the appeal, you may:

- make any order or pass any sentence the Island Court could have made or passed when hearing the matter; or
- order that the cause or matter be reheard before the same court or before any other Island Court: *s23 Island Courts Act*.

3 Cases Stated

A case stated is a statement of certain relevant portions of the case for the opinion or judgment of another Court. Unlike an appeal, a case stated is limited to a specific issue. Once the issue is decided, the case returns to Magistrate's Court for determination of the case itself.

For any civil or criminal matter, you may reserve any question of law for the Supreme Court to determine through a case stated: *s17(1) Judicial Services and Courts Act*.

After sending a case stated to the Supreme Court you cannot deliver judgment on the case until the Supreme Court has given its opinion: *s17(2) Judicial Services and Courts Act*.

After the Supreme Court hears argument on the case, it will make its determination. Upon receiving this determination you may proceed in accordance with it to continue with the proceedings.

4 Review of Island Court Decisions by Supervising Magistrate

The decisions of all Island Courts are subject to the review by the Court's Supervising Magistrate.

At all times, the Supervising Magistrate must have access to the Island Courts and their records within his or her jurisdiction: *s21(1) Island Courts Act*.

4.1 Review

For both civil and criminal matters, on his or her own application or on the application of any other person, the Supervising Magistrate may:

- revise any of the proceedings as an Island Court;
- make any order or pass any sentence which the Island Court itself could have done;
- order any case to be retried before the same or any other Island Court under his or her supervision; or
- at any stage of the proceedings order the case to be transferred to himself or herself for hearing: *s21(2) Judicial Services and Courts Act*.

Supervising Magistrate Increasing Penalty

In criminal cases, the Supervising Magistrate cannot increase the fine or term of imprisonment without first giving the accused an opportunity to be heard: *s21(2)(a) Judicial Services and Courts Act*.

If the Supervising Magistrate increases the fine or term of imprisonment upon review, a right of appeal to the Supreme Court is available. The Supreme Court may then reduce, remit or increase any such sentence: *s21(2)(a) Judicial Services and Courts Act*.

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CRIMINAL: COMMON OFFENCES