

**17:**

**CRIMINAL: COMMON OFFENCES**



## Intentional Assault

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**Section** *s107 Penal Code (Cap. 135)*

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**Description** Any person who intentionally assaults any portion of another person's body is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused assaulted a part or parts of another person's body; **and**
  5. The accused committed this assault intentionally.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Assault

Assault includes actual physical contact.

Intent

The accused must have purposely intended to assault the other person's body.

Physical force

The physical force used by the accused against the complainant must be without the complainant's consent.

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**

3 months imprisonment if no physical damage is caused.

1 year imprisonment if damage of a temporary nature is caused.

5 years imprisonment if permanent damage is caused.

10 years imprisonment if the damage caused results in death, although the offender did not intend to cause death.

Before sentencing, please note that the Magistrate's Courts generally have jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

As a consequence, a Magistrate can only hear and sentence an accused if the effect of the assault had no physical damage or damage was of a temporary nature.

Only a Senior Magistrate or Judge of the Supreme Court would be able to hear and sentence an accused where permanent damage or death resulted from the offence of intentional assault.

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## Careless Driving

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**Section** *s14 Road Traffic Control Act 1962 (Cap 29)*

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**Description** Any person who drives a motor vehicle on a road without due care and attention, or without reasonable consideration for other persons using the road, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused used a motor vehicle on a road; **and**
  5. The accused did not use care and attention;
- or**
4. The accused used a motor vehicle on a road; **and**
  5. The accused did not use reasonable consideration for other persons using the road.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Due care and attention or without reasonable consideration

The prosecution must be able to prove that the accused either did not use due care and attention while driving on the road *or* that the accused drove without reasonable consideration for other persons using the road.

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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**Maximum Sentence**

6 months imprisonment or a fine of VT 50,000, or both.

Additionally you are able to use your discretion and, in circumstances where you think it appropriate, you can make an order to disqualify an offender found guilty of this offence from driving a motor vehicle for up to 5 years: *s55(1) RTCA 1962*.

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## Driving Under Influence of Liquor

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**Section** *s16 Road Traffic Control Act 1962*

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**Description** Any person who drives on a public road when under the influence of alcohol or a drug to such an extent that he or she is incapable of properly controlling the vehicle, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was under the influence of either alcohol or drug(s); **and**
  5. The accused drove on a public road; **and**
  6. The accused was affected by the alcohol or drug(s) to such an extent that he or she was incapable of properly controlling the vehicle.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Public road

Public road includes every road or right of way, which the public may have at any time, unrestricted right of access: *s2 RTCA*.

Under influence

The prosecution will need to show that the accused was under the influence of alcohol or a drug at the time of the offence. This may mean that the prosecution will need to provide evidence that the accused had taken alcohol or a drug sometime prior to the event, ie in the previous 3-4 hours before the offence occurring.

Control of vehicle

The Court needs to hear evidence of the driver's incapability to properly control his or her vehicle such as excessive swerving over the road or dangerous driving.

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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**Maximum Sentence**

3 months imprisonment or fine not exceeding VT 30,000, or both: *s53(2)RTCA 1962*.

Additionally you are able to use your discretion and, in circumstances where you think it appropriate you are able to make an order to disqualify an offender from driving a motor vehicle for not more than 5 years: *s55(1) RTCA 1962*.

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## Providing False Information (False Statements)

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**Section** *s76 Penal Code (Cap 135)*

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**Description** Any person who makes a statement or declaration within a judicial proceeding (whether on oath or affirmation or not), which would amount to perjury, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-7 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused made a statement or declaration; **and**
  5. The accused statement or declaration was made during a judicial proceeding; **and**
  6. The accused statement or declaration is false; **and**
  7. The accused committed perjury, ie the accused intended to mislead the judicial proceeding with his or her false statement or declaration.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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*

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*accused* who committed the offence.

Definition of perjury: s 74 Penal Code

'Perjury' is an assertion (ie statement or declaration) of a fact, opinion, belief or knowledge, made by a witness as part of his or her evidence in any judicial proceeding, known by the person making it that it is false **and** is intended to mislead the judicial proceeding.

Witness: s74 (2) Penal Code

For the purpose of this section, every person is a witness who actually gives evidence in a judicial proceeding, whether the witness is competent or not and whether the evidence is admissible or not.

Definition of judicial proceeding: s74(3)Penal Code

Every proceeding is judicial (whether or not it is duly instituted or not and whether it is invalid or not) if it is held before:

- any Court of Justice;
- Parliament or any Parliamentary Committee;
- any Arbitrator or any person authorised by law to make an inquiry and to take evidence on oath in relation to that inquiry;
- any legal Tribunal where any legal right or liability can be established; and
- any person acting as a Court or Tribunal having power to hold a judicial proceeding.

Intention

Intention is an important element of this offence and the prosecution must provide evidence that the accused intended to mislead the judicial proceedings in which the assertion was made to. However intention can be inferred from evidence given on events before, during or after the offence.

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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**Maximum Sentence**

3 years imprisonment

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## Indecent Act in Public Place

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**Section** *s94 Penal Code (Cap 135)*

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**Description** Any person who wilfully does any indecent act in any place, in which the public have either access to or is within view of the public, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused did an act which is held to be indecent; **and**
  5. The accused did the indecent act in a place where the public have access to, or in a place within view of a place which the public have access to; **and**
  6. The accused did the indecent act wilfully, on purpose.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

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Indecent act

The prosecution will need to provide evidence that:

- the accused did an indecent act; and
- the act performed by the accused would be considered indecent if seen by an objective bystander.

Public access, public view

The prosecution will need to prove that the indecent act was done in an area that the public had lawful access to or that the act was done in a place in which the public could see it.

Defences

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

It is a defence to a charge under this section if the person charged proves that he or she had reasonable grounds for believing he or she would not be observed: *s94(2) Penal Code*.

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

**Maximum Sentence**

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2 years imprisonment.

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## Contempt of Court (Premises and Proceedings)

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**Section** *s82(1)(a) Penal Code (Cap 135)*

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**Description** Any person who shows disrespect (by either speech or manner) in any premises where judicial proceedings occur, by either reference to any proceeding or to anyone in which the proceedings were being held in front of, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was on or near the premises where any type of judicial proceedings occur; **and**
  5. The accused used speech or manner to show disrespect to either the proceedings, or to any person in which the proceedings were being conducted in front of.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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*

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*accused* who committed the offence.

Premises

The prosecution will need to provide evidence that the accused was in a place that hears judicial proceedings or was very near by.

Disrespect

The prosecution will need to show that the accused either by his or her words or manner actually showed disrespect, either to the proceedings directly or to the person who was hearing the proceedings when the offence occurred.

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).

**Maximum Sentence**

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5 years imprisonment, or where the offence is committed in your view, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court on the matter before it rises at the end of the day, sentence him or her a fine up to VT 5000.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (as a Witness)

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**Section** *s82(1)(b) Penal Code (Cap 135)*

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**Description** Any person is guilty of an offence who having been called to give evidence in a judicial proceeding either fails to attend, or:

- refuses to be sworn or affirmed; *or*
- refuses to answer a question, without lawful excuse ; *or*
- refused to produce a document; without lawful excuse *or*
- remains in the room during the judicial proceedings having been ordered to leave.

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**Elements** Every element (ie. numbers 1-5 below must be proved by the prosecution)

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was required to attend judicial proceedings; **and**
  5. The accused failed to attend the judicial proceeding; *or*
  5. The accused did attend the judicial proceedings but refused to be sworn or affirmed; *or*
  5. The accused was sworn/affirmed but refused, without lawful excuse, to answer a question or produce a document; *or*
  5. The accused refused to leave the room where the judicial proceeding were being held after being ordered to leave.
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**Commentary****Burden and standard of proof**

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

**Elements of offence**

The prosecution need to prove elements 1-4 above and one of the listed no. 5 elements.

**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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**Maximum Sentence**

5 years imprisonment, or where the offence is committed in your view, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court on the matter before it rises at the end of the day, sentence him or her a fine up to VT 5000.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Obstruction or Disturbance)

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**Section** *s82(1)(c) Penal Code (Cap 135)*

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**Description** Any person who causes an obstruction or disturbance in the course of judicial proceedings, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-4 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused caused an obstruction or a disturbance during the course of a judicial proceeding.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

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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**Maximum Sentence**

5 years imprisonment, or where the offence is committed in your view, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court on the matter before it rises at the end of the day, sentence him or her a fine up to VT 5000.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Misrepresenting Proceedings)

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**Section** *s8(1)(d) Penal Code (Cap 135)*

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**Description** When a judicial proceeding is pending, any person who misrepresents that proceeding by speech or writing, or prejudices any person in favour of or against any party to the proceedings or calculates to lower the authority of any person in which the proceedings will be conducted in front of, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. Judicial proceedings were pending; **and**
  5. The accused either:
    - misrepresented the proceedings (including by speech or writing); **or**
    - prejudiced any person in favour of or against any party to the proceedings; **or**
    - calculated to lower the authority of the person in which the proceedings will be heard in front of.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

#### 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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### **Maximum Sentence**

5 years imprisonment or where the offence is committed in your view, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court on the matter before it rises at the end of the day, you may sentence him or her a fine up to VT 5000.

#### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Publishing Evidence Held by the Court to be Private)

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**Section** *s82(1)(e) Penal Code (Cap 135)*

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**Description** Any person who publishes a report of evidence taken in any judicial proceeding which has been directed by the Court to be held in private, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. A judicial hearing was directed by the Court to be held in private; **and**
  5. Evidence was given during the judicial hearing which was held in private; **and**
  6. The accused published a report of the evidence taken in the private judicial proceedings.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

#### Publish

The prosecution must prove that the evidence published in the report was about evidence given while the judicial proceedings were held in private and not at any other time, ie the information published cannot have been made public by some other means. For further information see legal principles relevant to the law of defamation.

#### 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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### **Maximum Sentence**

5 years imprisonment or where the offence is committed in your view, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court on the matter before the Court rises at the end of the day, you may sentence him or her a fine up to VT 5000.

#### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Interfere or Influence Witnesses)

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**Section** *s82(1)(f) Penal Code (Cap 135)*

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**Description** Any person who attempts wrongfully to interfere with or influence a witness in connexion with the evidence of that witness, either before or after the witness has given evidence in any judicial proceedings, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused attempted to interfere with or influence a witness who either was to give, or had given, evidence in a judicial hearing; **and**
  5. The accused attempted to interfere with or influence the witness in connexion to the evidence of the witness; **and**
  6. The accused wrongfully attempted to interfere with or influence the witness.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Wrongly

The prosecution must provide evidence of the accused 'wrong' intention, however intention can be inferred from evidence on the matter gained before, during and after the offence.

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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**Maximum Sentence**

5 years imprisonment or where the offence is committed in your view of the Court, you may have the offender detained in custody and may, after allowing sufficient time for the offender to gain representation and be heard before the Court before it rises at the end of the day, sentence him or her a fine up to VT 5000.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Employee as a Witness)

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**Section** *s82(1)(g) Penal Code (Cap 135)*

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**Description** Any person, who dismisses a servant or employee because he or she has given evidence on behalf of any party to a judicial proceeding, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-7 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused employed a servant or an employee; **and**
  5. The servant or employee gave evidence in a judicial proceeding; **and**
  6. The accused dismissed the servant or employee from employment with the accused; **and**
  7. The accused did this because he the servant or employee had given evidence in a judicial hearing.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

#### 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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### **Maximum Sentence**

5 years imprisonment or where the offence is committed in your view, you may have the offender detained in custody and may, (after allowing sufficient time for the offender to gain representation and be heard before the Court before it rises at the end of the day), sentence him or her a fine up to VT 5000.

#### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Contempt of Court (Intentional Disrespect)

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**Section** *ss82(1)(h) Penal Code (Cap 135)*

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**Description** Any person who commits any other intentional act of disrespect (other than those recorded at *ss82(1)(a)-(g) Penal Code*) in any judicial proceedings, or to any person before whom such judicial proceedings are being conducted, is guilty of an offence.

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**Elements** Every element (ie. numbers 1-5 below) must be proved by the prosecution

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused must intentionally commit an act of disrespect; **and**
  5. The accused must do this act to:
    - any judicial proceeding; **or**
    - any person before whom the judicial proceeding is being considered.
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**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

#### 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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### **Maximum Sentence**

5 years imprisonment or where the offence is committed in your view, you may have the offender detained in custody and may, (after allowing sufficient time for the offender to gain representation and be heard before the Court before it rises at the end of the day), sentence him or her a fine up to VT 5000.

#### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s82 Penal Code*, when the prosecution has made an application to have the matter heard before the Magistrates' Court.

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## Failure to Maintain Family

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**Section** *s1 Maintenance of Family (Cap 42)*

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**Description** Any:  
(a) man who fails to make adequate provision for the maintenance of his legal wife, or his legitimate children under the age of 18 years for a period exceeding 1 month;  
**or**  
(b) any mother who deserts her children under the age of 18 years for a period exceeding 1 month;  
  
- is guilty of an offence.

---

**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific under s1(a)

4. The accused is a man; **and**
5. The accused failed to make adequate provision for more than 1 month for the maintenance of either his:
  - legal wife; or
  - his legitimate children under 18 years; **or**

Specific under s1(b)

4. The accused is the mother of a child or children under 18 years; **and**
  5. The accused deserted those children for more than 1 month.
-

## Commentary

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### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

### Specific under s1(a)

The prosecution will need to prove the man was either legally married to the woman, and/or that the children are legally his responsibility.

### Exceptions to s1(a)

The offence described at s1(a) *Maintenance Of Family Act* does not apply to any man who is rendered financially incapable of making such provision by reason of:

- illness or injury;
- incarceration in prison; or
- any other circumstances beyond his control.

### Specific under s1(b)

The prosecution will need to prove that the woman is the mother to children under 18 and that she deserted them.

### 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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## Maximum Sentence

3 months imprisonment or a fine of VT 20,000. Where a man is convicted under s1(a), you may make an order for the offender to make adequate provision for his wife and children as you think fit: s 2 *Maintenance of Family*.

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## Failure to Control Dangerous Dog

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**Section** *s11 Control and Registration of Dogs (Cap 64)*

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**Description** Every person is guilty of an offence who fails to keep a dangerous dog under proper control.

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**Elements** **Every element (ie. numbers 1-7 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was responsible for a dog; **and**
  5. The accused did not properly control the dog; **and**
  6. The dog attacked or attempted to attack another person; **and**
  7. The accused cannot prove that the dog was wilfully provoked by the person who the dog attacked or attempted to attack, or was wilfully provoked by any other person.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

---

Dangerous dog

Any dog which has attacked or attempted to attack any person is deemed for the purposes of *s11 Failure to Control Dangerous Dog*, to be a dangerous dog.

Defences

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

It will be a defence for the accused if he or she can prove that the dog was wilfully provoked either by the complainant or some other person. 'Wilfully' is an important element of the defence and the onus is on the accused to clearly show that the dog was purposely provoked. It is not up to the prosecution to prove that the dog was not provoked.

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

**Maximum Sentence**

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3 months imprisonment or a fine of VT 25,000, or both.

Additionally the District Commissioner of the district concerned may, on the conviction of the accused under this section, order the dog to be destroyed humanely by an officer or agent of the Ministry of Agriculture and Livestock.

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## No Public Vehicle Drivers Permit

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**Section** *s2 Part 11, Taxis Act*

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**Description** Every person is guilty of an offence who drives a public vehicle without a valid public vehicle driver's permit issued by the licensing officer of the region in which the vehicle is to be driven.

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**Elements** **Every element (ie. numbers 1-5 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused drove a public vehicle which was intended to carry passengers for hire or reward; **and**
  5. The accused did not have a valid public vehicle drivers permit which had been issued by the licensing officer of the region in which the accused was driving in.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Public vehicle

The accused must have either used or intend to use the vehicle to carry passengers from the public, for hire or reward.

Public vehicle driver's permit

For a public vehicle drivers license to be valid it must conform to the requirements prescribed in *Schedule 1, Taxis Act* and must have been obtained in accordance with *Part 11 Taxi's Act*.

Exceptions to this offence

This section does not apply to a person hiring a public vehicle to drive him or her self provided that person can provide a drivers license (valid in the country of origin) to the owner of the public vehicle and does not any passengers for hire or reward.

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).

**Maximum Sentence**

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1 year imprisonment or fine of VT 50,000, or both.

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## Trespass (Criminal)

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**Section** *s144 Penal Code (Cap.135)*

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

- enters another person's property with intent to commit an offence, or intimidate or annoy that person; *or*
- having lawfully entered another person's property, unlawfully remains there with intent to intimidate, insult or annoy that person or commit an offence.

---

**Elements** **Every element (ie. numbers 1-5/6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific under s144(a)

4. The accused entered in or onto property; **and**
5. The property was in lawful possession of another; **and**
6. The accused entered with the intention of either committing an offence; or intimidating or annoying the other person.

**or**

Specific under s144(b)

4. The property was in lawful possession of another; **and**
  5. The accused then unlawfully remained there with the intention of intimidating or annoying the other person, or committing an offence.
-

## Commentary

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### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

### *Under s144(a)*

#### Property in the possession of another

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.

### Intention

The prosecution must prove that the accused intended to commit an offence or intimidate, insult or annoy the other person. It is the accused' intention that is important. You may have to infer this from the circumstances. The prosecution does not have to prove that the accused actually committed an offence or intimidated, insulted or annoyed the other person —intention to do so is enough.

### *Under s144(b)*

#### Lawful entering

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

### Intention

---

The prosecution must prove that the accused intended to commit an offence or intimidate, insult or annoy the other person. It is the accused' intention that is important. You may have to infer this from the circumstances. The prosecution does not have to prove that the accused actually committed an offence or intimidated, insulted or annoyed the other person —intention to do so is enough

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).

**Maximum Sentence**

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1 year imprisonment.

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## Malicious Damage to Property

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**Section** *s133 Penal Code (Cap. 135)*

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**Description** Any person who wilfully and unlawfully destroys or damages any property which he or she knows belongs to another is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-7 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused destroyed the property; **and**
  5. The accused knew that the property belonged to another; **and**
  6. The accused intentionally destroyed the property; **and**
  7. The accused did not have a lawful excuse to damage or destroy the property;
- or**
4. The accused damaged the property; **and**
  5. The accused knew that the property belonged to another; **and**
  6. The accused did intentionally damaged the property; **and**
  7. The accused did not have a lawful excuse to damage or destroy the property.
- 

**Commentary** Burden and standard of proof

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The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

#### Intention

Intention is an important element of this offence. Intention may be inferred from the surrounding circumstances before, during or after the offence has been committed.

#### Knowledge

The prosecution will need to prove that the accused had knowledge that the property belonged to another. Knowledge may be inferred from the surrounding circumstances before, during or after the offence has been committed.

#### Damage or destroy

The Courts in Vanuatu have made a distinction between destroy and damage. To wilfully destroy is considered a more serious offence than to wilfully damage. As a consequence your sentencing should reflect this distinction.

#### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a legal defence. The prosecution will need to show the Court that the accused did not have a lawful excuse for destroying or damaging the property, in order to fulfil the required elements to the offence, before the accused can be convicted.

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### **Maximum Sentence**

1 year imprisonment or fine of VT 5000, or both: *Interpretation Act*.

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## Forgery

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**Section** *s140 Penal Code (Cap. 135)*

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**Description** Any person who commits forgery, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused made a false document or falsified a document; **and**
  5. The accused knew the document was false; **and**
  6. The accused made or falsified the document with the intent that the document would be used or acted upon as genuine;
- or**
4. The accused made a false document or falsified a document; **and**
  5. The accused knew the document was false; **and**
  6. The accused made or falsified the document with the intent that some person shall be induced by the belief that it is genuine to do an action or omit to do an action.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

### Making a false document

'Making a false document' includes making any material alteration to a genuine document whether by insertion, addition, obliteration, erasure, removal or otherwise: *s139(2) Penal Code*

### False document

'False document' means a document of which either all or any part of it (including the time and place of its making) appears to be made by or on behalf of any person (including real, fictitious or deceased), who did not make or authorise either all or any part of it. For a more comprehensive definition see *s139(3) 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 (ie. more likely than not).

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## **Maximum Sentence**

10 years imprisonment

Before sentencing, please note that the Magistrates' Court generally has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

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# Theft

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**Section** *s125(a) Penal Code (Cap. 135)*

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**Description** Any person who causes loss to another by theft is guilty of an offence.

A person commits theft who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with the intention (at the time of such taking) to permanently to deprive the owner of the thing.

---

**Elements** **Every element (ie. numbers 1-7) must be proved by the prosecution.**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused took and carried away anything capable of being stolen; **and**
  5. The accused did this without the consent of the owner; **and**
  6. The accused did this fraudulently and without a claim of right made in good faith; **and**
  7. The accused, at the time of taking the property, intended to permanently deprive the owner of the thing.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need not to prove anything, however 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.

### Theft Defined

*Section 122* further defines the elements of the offence of theft.

### “Takes”

The expression “takes” includes obtaining possession:

- by any trick;
- by intimidation;
- under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained; or
- by finding, where at the time of the finding the finder believes that the owner can be discovered by taking reasonable steps: *s122(3)(a): Penal Code*.

### “Carries away”

The expression “carries away” includes any removal of anything from the place which it occupies, but in the case of a thing attached, only if it has been completely detached: *s122(3)(b) Penal Code*.

### “Owner”

Under *s122(3)(c)*, the expression “owner” includes any part owner, or person having physical control of, or a special property or interest in, anything capable of being stolen.

Whether the owner is named or not, ownership must be proved by the prosecution as an essential element of the offence.

### “Bailee / part-owner”

Such person(s) may be guilty of stealing any such thing notwithstanding that he or she has lawful possession of the thing, if, being a bailee or part-owner of the thing, he or she fraudulently converts the thing to his or her own use or the use of a person other than the owner: *s122(2) Penal Code*.

### Without claim of right made in good faith

An accused may have a valid defence where he or she has an

honest belief that he or she has a legal right to take the goods in question.

Intent at the time of taking to permanently deprive

There must be a coincidence of *actus reus* and *mens rea* for this element to stand, although issues of continuing trespass against the owner's property may arise.

The requirement of permanent deprivation disqualifies situations of borrowing or temporary possession.

Fraudulently

Usually the intent to defraud will consist of an intention to steal but not always so. A fraud is complete once a false statement is made by an accused who knows the statement is false and the victim parts with his or her property on the basis of that statement: See *Denning* [1962] NSWLR 175.

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 any defence to your satisfaction, on the balance of probabilities (ie. more likely than not).

For instance, the defence may raise a belief of honest claim of right, which the prosecution must rebut.

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**Maximum Sentence**

12 years imprisonment.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s125 Penal Code*, where the relevant property is less than VT 1,000,000.

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## Unlawful Entry

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### Section

*s143 Penal Code (Cap. 135)*

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### Description

Any person who is in, or enters into, any house, building, tent, vessel or other place with intent to commit an offence is guilty of a further offence.

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### Elements

Every element (ie. numbers 1-5) must be proved by the prosecution.

#### General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date and/or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence is alleged to have been committed; **and**

#### Specific

4. The accused entered in or onto a house, building, tent, vessel or other place; **and**
  5. The accused entered in or onto a house, tent, vessel or other place with the intention of committing an offence in or on that place.
- 

### Commentary

#### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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 ie. it was *the accused* who committed the offence.

### Entering

An accused may still be guilty of this offence even if he or she entered the place with lawful authority, for example by invitation by another person or entered by means of threat or collusion with any person in or on the place. This also includes entering the place to deliver goods or some other good reason.

### Intention

The prosecution must prove that the accused intended to commit an offence. It is the accused's intention that is important. You may have to infer this from the circumstances. The prosecution does not have to prove that the accused actually committed an offence - intention to do so is enough.

### Defences

If the prosecution has proved the elements of the offence, beyond reasonable doubt, the accused may still have a defence under legislation or common law.

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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## **Maximum sentence**

20 years imprisonment where the place was used for human habitation.

10 years imprisonment where the place was not used for human habitation.

### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

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## Misappropriation

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**Section** *s125(b) Penal Code (Cap. 135)*

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**Description** Any person who causes loss to another by misappropriation is guilty of an offence.

---

**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was entrusted with property capable of being stolen; **and**
  5. The property entrusted to the accused was for custody, return, accounting or any particular manner of dealing (but not a loan of money or monies for use); **and**
  6. The accused destroyed, wasted, or converted the property entrusted to him or her.
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Misappropriation

A person commits misappropriation of property who destroys, wastes or converts any property capable of being taken which has been entrusted to him for custody, return accounting or any particular manner of dealing not being a loan of money or monies for consumption: *s123 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 (ie. more likely than not).

---

**Maximum Sentence**

12 years imprisonment.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s125 Penal Code*, where the relevant property is less than 1,000,000 VT

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## Escape

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**Section** *s84 Penal Code (Cap. 135)*

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**Description** Any person, who escapes while in lawful custody, is guilty of an offence.

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**Elements** **Every element (ie. numbers 1-5) must be proved by the prosecution.**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused was being held in custody; **and**
  5. The accused was held in custody which was lawful; **and**
  6. The accused unlawfully escaped from custody
- 

**Commentary** Burden and standard of proof  
The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

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 any defence to your satisfaction, on the balance of probabilities (ie. more likely than not).

---

**Sentence**

2 years imprisonment.

**Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s84 Penal Code*, when the prosecutor has made an application to have the matter heard in the Magistrates' Court.

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## Obtaining Property by False Pretences

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**Section** *s125 Penal Code (Cap. 135)*

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**Description** Any person who causes loss to another by false pretences is guilty of an offence.

---

**Elements** **Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused made a false statement, **and**
  5. The accused knew the statement to be false or untrue at the time he or she made it; **and**
  6. The accused made the false statement with the intention to defraud another, so that he or she could obtain possession , (directly or indirectly), or title to anything capable of being stolen;
- or**
4. The accused made a false representation (either by words, writing or conduct); **and**
  5. The accused knew the statement to be false or untrue at the time he or she made it; **and**
  6. The accused made the false statement with the intention to procure anything capable of being delivered to any person other than himself or herself.
- 
-

## Commentary

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### Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

### False pretences

A 'false pretence' is defined as any representation made by words, writing or conduct, of a matter of fact, either past or present, which is false and the person making it knows it is false or not true, with the intent to defraud so as to obtain (either directly or indirectly) possession of or title to anything capable of being stolen, or procures anything capable of being stolen to be delivered to any person other than himself or herself; *s124 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 any defence to your satisfaction, on the balance of probabilities (ie. more likely than not).

---

## Maximum Sentence

12 years imprisonment.

### **Important Note**

Generally the Magistrates' Court only has jurisdiction to hear criminal cases for which the maximum punishment **does not exceed** 2 years imprisonment unless the matter is heard before a Senior Magistrate or in the Supreme Court: *s14(2) Judicial Services and Courts Act*.

However *s146 Judicial Services and Courts Act No. 54 of 2000* as amended *No. 4 of 2003*, invests the Magistrates' Court with jurisdiction to try any proceeding under *s125 Penal Code*, where the relevant property is less than VT 1,000,000.

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## Receiving Property Dishonestly Obtained

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**Section**

*s131 Penal Code (Cap. 135)*

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**Description**

Any person who knowingly receives anything which has been dishonestly obtained (no matter where), which if committed in Vanuatu would be an offence, is guilty of a further offence

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**Elements**

**Every element (ie. numbers 1-6 below) must be proved by the prosecution**

General

1. The person named in the charge is the same person who is appearing in Court; **and**
2. There is a date or period of time when the offence charged is alleged to have taken place; **and**
3. There must be a place where the offence was alleged to have been committed; **and**

Specific

4. The accused received a thing; **and**
  5. The accused knew that the thing had been dishonestly obtained; **and**
  6. The thing had been dishonestly obtained by an action, that if committed in Vanuatu would be an offence, even if the offence was not performed in Vanuatu.
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**Commentary**

Burden and standard of proof

The prosecution must prove all the elements beyond reasonable doubt. The defence does not need to prove anything, however 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.

Dishonestly

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The prosecution needs to prove that the accused knew that the thing he or she had received was obtained dishonestly. It is the accused' knowledge that is important. You may have to infer this from the circumstances.

Offence

The prosecution will also need to prove that the thing was dishonestly obtained. It does not matter if the thing was dishonestly obtained somewhere other than Vanuatu. No matter where the offence occurred, if that same action had been performed in Vanuatu it would be considered an offence.

Obtained

The prosecution will also need to prove that the thing was dishonestly obtained

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 any defence to your satisfaction, on the balance of probabilities (ie. more likely than not).

**Maximum Sentence**

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1 year imprisonment or a fine of VT 5000 or both: *s36(3) Interpretation Act.*

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