

## Tuvalu

### Penal Code

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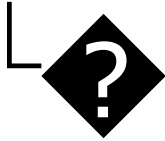
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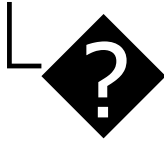
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## **PENAL CODE<sup>1</sup>**

Commencement [18th October 1965]

### **PART I - PRELIMINARY**

#### **Short title**

This Act (hereinafter referred to as this Code) may be cited as the Penal Code.

#### **Saving of certain laws**

Except as hereinafter expressly provided nothing in this Code shall affect —

- (a)**  
the liability, trial or punishment of a person for an offence against the common law or against any other law in force in Tuvalu other than this Code; or
- (b)**  
the liability of a person to be tried or punished for an offence under the provisions of any law in force in Tuvalu relating to the jurisdiction of the High Court in respect of acts done beyond the limits of Tuvalu; or
- (c)**  
the power of any court to punish a person for contempt of such court; or
- (d)**



the liability or trial of a person or the punishment of a person under any sentence passed or to be passed, in respect of any act done or commenced before the commencement of this Code; or

(e)

any power of Her Majesty, or of the Governor-General as the representative of Her Majesty, to grant any pardon or to remit or commute in whole or in part or to respite the execution of any sentence passed or to be passed; or

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(f) any of the Statutes, Acts, Regulations or Articles for the time being in force for the government of Her Majesty's naval, military or air forces, or the police forces of Tuvalu:

Provided that if a person does an act which is punishable under this Code and is also punishable under another Act, Statute or other law of any of the kinds mentioned in this section, he shall not be punished for that act both under that Act, Statute or law and also under this Code.

## PART II - INTERPRETATION

### General rule of construction of Code

This Code shall be interpreted in accordance with the Interpretation and General Provisions Act,<sup>2</sup> and the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith.

### Interpretation

In this Code, unless the context otherwise requires —

“**cattle**” includes horses, asses, mules, sheep, goats and swine;

“**dangerous harm**” means harm endangering life;

“**document of title to goods**” includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought or sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to;

“**document of title to lands**” includes any deed, map, roll, register, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate or to any interest in or out of any real estate;

“**dwelling-house**” includes any building or structure or part of a building or structure which is for the time being kept by the owner or occupier for the residence therein of himself, his family or servants or any of them, and it is immaterial that it is from time to time uninhabited; a building or structure adjacent to or occupied with a dwelling-house is deemed to be part of the dwelling-house;

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“**felony**” means an offence which is declared by law to be a felony or, if not declared to be a misdemeanour, is punishable, without proof of previous conviction, with imprisonment for 3 years or more;

“**grievous harm**” means any harm which amounts to maiming or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;

“**harm**” means any bodily hurt, disease or disorder whether permanent or temporary;

“**judicial proceeding**” includes any proceeding had or taken in or before any court, tribunal, commission of inquiry or person, in which evidence may be taken on oath;

“**knowingly**” used in connection with any term denoting uttering or using, implies knowledge of the character of the thing uttered or used;

“**mail**” includes every conveyance by which postal packets are carried, whether it be a vessel, car, coach, cart, horse or any other conveyance, and also a person employed in conveying or delivering postal packets, and also any vessel employed by or under the post office for the transmission of postal packets by contract or otherwise in respect of postal packets transmitted by the vessel;

“**mail bag**” includes a bag, box, parcel or any other envelope or covering in which postal packets in course of transmission by post are conveyed, whether it does or does not contain any such packet;

“**maiming**” means the destruction or permanent disabling of any external or internal organ, member or sense;

“**misdemeanour**” means any offence which is not a felony;

“**money**” includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“**night**” or “**night-time**” means the interval between half-past six o’clock in the evening and half-past six o’clock in the morning of the next succeeding day according to the time adopted for general purposes in the particular locality in question;

“**oath**” includes affirmation or declaration and “**swear**” includes affirm or declare;

“**offence**” is an act, attempt or omission punishable by law;

“**officer of the post office**” includes the Postmaster and any person employed in any business of the post office, whether employed by the Postmaster or by any person under him or on behalf of the post office;

“**Act**” includes any Act of the Imperial Parliament having the force of law in Tuvalu;



“**person**” and “**owner**” and other like terms, when used with reference to property, include corporations of all kinds and any other association of persons capable of owning property, and also when so used include Her Majesty;

“**person employed in the public service**” means any person holding any of the following offices or performing the duty thereof, whether as a deputy or otherwise, namely —

- (i) any civil office, including the office of Minister the power of appointing a person to which or of removing from which is vested in Her Majesty or in the Governor- General; or
- (ii) any office to which a person is appointed or nominated by Act or by selection; or
- (iii) any civil office, the power of appointing to which or of removing from which is vested in any person or persons holding an office of any kind included in either of the 2 last preceding paragraphs of this section; or
- (iv) any office of arbitrator or umpire in any proceeding or matters submitted to arbitration by order or with the sanction of any court, or in pursuance of any Act;

and the said term further includes —

- (i) a magistrate;
- (ii) a member of a commission of inquiry appointed under or in pursuance of any Act;
- (iii) any person employed to execute any process of a court;
- (iv) all persons in the employment of any department of the Government;
- (v) a person acting as a minister of religion of whatsoever denomination, in so far as he performs functions in respect of the notification of intending marriage or in respect of the solemnisation of marriage, or in respect of the making or keeping of any register or certificate of marriage, birth, baptism, death or burial, but not in any other respect;
- (vi) a person in the employ of a Kaupule;

“**possession**”

- (a) “**be in possession of**” or “**have in possession**” includes not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;
- (b)

if there are 2 or more persons and any 1 or more of them with the knowledge and consent of the rest has or have anything in his or their

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custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

“**postal packet**” means a letter, post-card, reply post-card, newspaper, book, packet, pattern or sample packet, or parcel, and every packet or article transmissible by post, and includes a cable message and a telegram;

“**property**” includes any description of real and personal property, money, debts and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise;

“**public**” refers not only to all persons within Tuvalu, but also to the persons inhabiting or using any particular place, or any number of such persons, and also to such indeterminate persons as may happen to be affected by the conduct in respect to which such expression is used;

“**public place**” or “**public premises**” includes any public way and any buildings, place or conveyance to which, for the time being, the public are entitled or permitted to have access either without any condition or upon condition of making any payment, and any building or place which is for the time being used for any public or religious meetings or assembly or as an open court;

“**public way**” includes any highway, market place, square, street, bridge or other way which is lawfully used by the public;

“**publicly**” when applied to acts done, means either —

(a)

that they are so done in any public place as to be seen by any person whether such person be or be not in a public place; or

(b)

that they are so done in any place not being a public place as to be likely to be seen by any person in a public place;

“**trustee**” means a trustee on some express trust created by some deed, will, or instrument in writing, and includes the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor and administrator, and an official receiver, assignee, liquidator or other like officer acting under any present or future Act relating to joint stock, companies or bankruptcy;

“**utter**” includes using or dealing with and attempting to use or deal with and attempting to induce any person to use, deal with or act upon the thing in question;

“**valuable security**” includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund or debt of any part of Her Majesty’s dominions, or any territory which is under Her



Majesty's protection or in respect of which a mandate has been accepted by Her Majesty, or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without Her Majesty's dominions, or any territory which is under Her Majesty's protection or in respect of which a trusteeship has been accepted by Her Majesty, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order or other security for the payment of money, or any authority or request for the payment of money or for the delivery or transfer of goods or chattels, or any accountable receipt, release or discharge, or any receipt or other instrument evidencing the payment of money, or the delivery of any chattel personal, and any document of title to lands or goods;

“**vessel**” includes any ship, a boat and every other kind of vessel used in navigation either on the sea or in inland waters, and includes aircraft;

“**wound**” means any incision or puncture which divides or pierces any exterior membrane of the body, and any membrane is exterior for the purpose of this definition which can be touched without dividing or piercing any other membrane.

## **PART III - TERRITORIAL APPLICATION OF THIS CODE**

### **5 Application of Code**

Subject to the provisions of this Code, this Code shall apply to every place within Tuvalu or within the territorial limits thereof.

### **6 Offences committed partly within and partly beyond the jurisdiction**

When an act which, if wholly done within the jurisdiction of the court, would be an offence against this Code, is done partly within and partly beyond the jurisdiction, every person who within the jurisdiction does or makes any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within the jurisdiction.

## **PART IV - GENERAL RULES AS TO CRIMINAL RESPONSIBILITY**

### **7 Ignorance of law**

Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.



## ***bona fide claim of right***

A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

## **9 Intention**

**(1)**

Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

**(2)**

Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

**(3)**

Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act or to form an intention is immaterial so far as regards criminal responsibility.

## **10 Mistake of fact**

**(1)**

A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent, than if the real state of things had been such as he believed to exist

**(2)**

The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

## **11 Presumption of sanity**

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question until the contrary is proved.

## **12 Insanity**

Subject to the express provisions of this Code and of any other law in force a person shall not be criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission:

Provided that a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind the effects above mentioned in reference to that act or omission.



### 13 Intoxication

(1)

Save as provided in this section intoxication shall not constitute a defence to any criminal charge.

(2)

Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and —

(a)

the state of intoxication was caused without his consent by the malicious or negligent act of another person; or

(b)

the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission.

(3)

Where the defence under the preceding subsection is established, then in a case falling under paragraph (a) thereof the accused shall be discharged and in a case falling under paragraph (b) the provisions of this Code and of the Criminal Procedure Code<sup>3</sup> relating to insanity shall apply.

(4)

Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence.

(5)

For the purpose of this section “intoxication” shall be deemed to include a state produced by narcotics or drugs.

### 14 Immature age

(1)

A person under the age of 10 years is not criminally responsible for any act or omission.

(2)

A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3)

A male person under the age of 12 years is presumed to be incapable of having sexual intercourse.

## **15 Judicial officers**

Except as expressly provided by this Code, a judicial officer is not criminally responsible for anything done or omitted to be done by him in the exercise of his judicial functions, although the act done is in excess of his judicial authority or although he is bound to do the act omitted to be done.

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## **16 Compulsion**

A person is not criminally responsible for an offence if it is committed by 2 or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse any offence.

## **17 Defence of defence of person or property**

Subject to any express provisions in this Code or any other law in operation in Tuvalu, criminal responsibility for the use of force in the defence of person or property shall be determined according to the principles of common law.<sup>4</sup>

## **18 Use of force in effecting arrest**

Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the apprehension of such person, have regard to the gravity of the offence which had been or was being committed by such person and the circumstances in which such offence had been or was being committed by such person.

## **19 Compulsion by husband**



A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

## **20 Person not to be punished twice for same offence**

A person cannot be punished twice either under the provision of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

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# **PART V - PARTIES TO OFFENCES**

## **21 Principal Offences**

**(1)**

When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say —

**(a)**

every person who actually does the act or makes the omission which constitutes the offence;

**(b)**

every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;

**(c)**

every person who aids or abets another person in committing the offence;

**(d)**

any person who counsels or procures any other person to commit the offence.

**(2)**

In the last mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

(3)

A conviction of counselling or procuring the commission of an offence entails the same consequences in all respects as a conviction of committing the offence.

(4)

Any person who procures another to do or omit to do any act of such a nature that, if he had himself done the act or made the omission, the act or omission would have constituted an offence on his part, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had himself done the act or made the omission; and he may be charged with doing the act or making the omission.

### **Offences committed by joint offenders in prosecution of common purpose**

When 2 or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.

### **Counselling another to commit an offence**

When a person counsels another to commit an offence, and an offence is actually committed after such counsel by the person to whom it is given, it is immaterial whether the offence actually committed is the same as that counselled or a different one, or whether the offence is committed in the way counselled or in a different

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way, provided in either case that the facts constituting the offence actually committed are a probable consequence of carrying out the counsel.

In either case the person who gave the counsel is deemed to have counselled the other person to commit the offence actually committed by him.

If the facts constituting the offence actually committed are not a probable consequence of carrying out the counsel, the person who gave the counsel is not deemed to be responsible.

## **PART VI - PUNISHMENTS**

### **Imprisonment to be without hard labour**

All imprisonment for an offence shall be without hard labour.

### **Person liable to certain imprisonment may be sentenced to shorter term**

A person liable to imprisonment for life or any other period may be sentenced for any shorter term of imprisonment:

Provided however that nothing in this section shall apply to any sentence of imprisonment for life required to be imposed by section 47, 48, 63 or 193 (relating to the offences of treason, instigating, invasion, piracy and murder).

### **Fine in addition to, or instead of, imprisonment**

A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or instead of imprisonment:

Provided however that nothing in this section shall apply to any imprisonment sentence of imprisonment for life required to be imposed by section 47, 48, 63 or 193 (relating to the offences of treason, instigating invasion, piracy and murder).

### **26A Weekend detention<sup>5</sup>**

(1)

A person liable to imprisonment for an offence may be sentenced to a period of weekend detention, being a specified number of consecutive weekends during which he shall report to the officer in charge of a prison designated for the purposes of weekend detention.

(2)

No person shall be sentenced to fewer than four weekends of weekend detention although the provisions for remission of sentence for prison sentences shall apply to weekend detention in a like manner.

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(3)

A sentence of weekend detention is an additional disposal available to the court and shall not in anyway reduce the options and powers available to any court on the matter of sentencing.

(4)

For the purposes of jurisdiction and sentencing one weekend of a period of weekend detention shall be calculated as of like effect to seven days imprisonment.

(5)

A sentence of weekend detention shall for all purposes be regarded as a sentence of imprisonment except that a person serving weekend detention shall be released on Sunday evening unless by order of a court he is ordered to be detained for a longer period.

(6)

The Minister may make regulations for the implementation of weekend detention orders, including the classification, management, discipline and employment of persons sentenced to weekend detention in a like manner to regulations under the Prisons Act<sup>6</sup> and may provide for weekend detention in such Prison Regulations.

### **Concurrent sentences**

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence of imprisonment which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence.

### **Warrants and orders**

(1)

A warrant under the hand of the judge or magistrate by whom any person is sentenced to imprisonment, ordering that the sentence be carried out in any prison within Tuvalu, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of such prison and to all other persons for carrying into effect the sentence described in such warrant.

(2)

Except where otherwise provided in this Code or otherwise ordered by the court, every sentence shall be deemed to commence from and to include the whole of the day on which it was pronounced.

(3)

Every warrant for the execution of any sentence may be issued either by the judge or magistrate passing sentence or by the successor in office.

(4)

The court may at any time amend any defect in substance or in form in any order or warrant, and no omission or error as to the time and place, and no

## **^ Suspended sentence of imprisonment**

(1) In this section —

“**suspended sentence**” means a sentence suspended in accordance with the provisions of subsection (2);

“**operational period**” means the period specified in an order made under the provisions of subsection (2);

“**court**” means a Magistrate’s Court, the Senior Magistrate’s Court or the High Court;

(2)

Subject to subsection (3) a court, which passes a sentence of imprisonment for a term of not more than 2 years, may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than 2 years from the date of the order, the offender commits another offence punishable with imprisonment and thereafter a court having power to do so orders that the original sentence shall take effect.

(3)

A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence.

(4)

A court which passes a suspended sentence shall explain to the offender his liability to be imprisoned if during the operational period he commits an offence punishable with imprisonment.

(5)

Where an offender is convicted of an offence punishable with imprisonment committed during the operational period of a suspended sentence and either he is so convicted by a court having power under subsection (6) to deal with him in respect of the suspended sentence or he appears or is brought before such a court in pursuance of subsection (7) that court shall consider his case and deal with him by one of the following methods —

(a)

the court may order that the suspended sentence shall take effect with the original term unaltered;

(b)

it may order that the sentence shall take effect with the substitution of a lesser term for the original term;

(c)

it may by order vary the original order by substituting for the operational period specified therein a period expiring not later than 2 years from the date of the variation; or

(d)

it may make no order with respect to the suspended sentence:

Provided that a court shall make an order under paragraph (a) of this subsection unless the court is of opinion that it would be unjust to do so in



view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence, and where it is of that opinion the court shall state its reasons.

**(6)**

When an offender is convicted by a court of an offence punishable with imprisonment, and the court is satisfied that the offence was committed during the operational period of a suspended sentence then that court may deal with the offence if —

**(a)**

the court is a magistrate's court and the suspended sentence was imposed by a magistrate's court; or

**(b)**

the court is the Senior Magistrate's Court or the High Court irrespective of the court which imposed the suspended sentence.

**(7)**

Where an offender is convicted by an island court of an offence punishable with imprisonment and the island court is satisfied that the offence was committed during the operational period of a suspended sentence the island court may proceed to sentence on the conviction but shall take no action on the suspended sentence save to notify forthwith the clerk to the magistrate's court of the fact of the conviction.

**(8)**

Where the clerk to the magistrate's court receives notification from an island court under subsection (7) then —

**(i)**

if the suspended sentence in question was imposed by the magistrate's court then a magistrate may, if he thinks fit, having regard to all the circumstances including the nature of the offence for which the suspended sentence was imposed and the nature of the conviction before the island court, issue a summons requiring the person whose conviction is so notified to appear before the magistrate's court or may issue a warrant for his arrest and on appearance may deal with the suspended sentence in any of the ways that it could have been dealt with had the conviction before the island court been a conviction before the magistrate's court.

**(ii)**

if the suspended sentence was imposed by the Senior Magistrate's Court the clerk to the magistrate's court shall report the matter to the Senior Magistrate who may if he thinks, fit, having regard to all the circumstances including the nature of the offence for which the suspended sentence was imposed and the nature of the conviction before the island court issue a summons requiring the person whose conviction is so notified to appear before the Senior Magistrate's Court or may issue a warrant for his arrest and on appearance may deal with the suspended sentence in any of the ways it could have been dealt with had the conviction before the island court been a conviction before the Senior Magistrate's Court.

**(9)**

Where an offender is convicted by a magistrate's court of an offence punishable with imprisonment, and the court is satisfied that the offence was

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committed during the operational period of a suspended sentence passed by the Senior Magistrate's Court or the High Court then that magistrate's court shall commit the offender in custody or on bail for sentence to the Senior Magistrate's Court.

**(10)**

Where a court orders that a suspended sentence shall take effect, with or without any variation of the original term, the court may order that that sentence shall take effect immediately or that the term thereof shall commence on the expiration of another term of imprisonment passed on the offender by that or another court.

**(11)**

Where the court dealing with an offender under subsection (5) is not the court which passed the suspended sentence, the appropriate officer of the court shall notify the appropriate officer to the court which passed the sentence of the method adopted.

**(12)**

For the purposes of any Act conferring rights of appeal in criminal cases any order made by a court with respect to a suspended sentence shall be treated as a sentence passed on the offender by the court for the offence for which the suspended sentence was passed.

**(13)**

A court may at the time it suspends a prison sentence under the provisions of this section make a residence order under section 37.

**28B Deferment of sentence**

**(1)**

Subject to the provisions of this section, a magistrate's court, the Senior Magistrate's Court or the High Court may defer passing sentence on an offender for the purpose of enabling the court to have regard, in determining his sentence, to his conduct after conviction (including, where appropriate, the making by him of reparation for his offence) or to any change in his circumstances.

**(2)**

Any deferment under this section shall be until such date as may be specified by the court, not being more than 6 months after the date of the conviction; and where the passing of sentence has been deferred under this section it shall not be further deferred hereunder.

(3)

The power conferred by this section shall be exercisable only if the offender consents and the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to exercise the power.

(4)

A court which under this section has deferred passing sentence on an offender may pass sentence on him before the expiration of the period of deferment if satisfied that during that period the offender has been convicted of any offence whether such conviction was by that or another court.

(5)

A court which convicts an offender of an offence punishable by imprisonment and is satisfied that the offender has had sentence on another conviction

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deferred then the appropriate officer of the court shall inform the appropriate officer of the court which deferred the sentence of the conviction.

(6)

Where a court which under this section has deferred passing sentence on an offender proposes to sentence him, whether on the date originally specified by the court or by virtue of subsection (4) before that date, it may issue a summons requiring him to appear before the court, or may issue a warrant for his arrest.

(7)

A court may at the time it defers sentence make a residence order under section 37.

## **Fines**

Where a fine is imposed under any law, then in the absence of express provisions relating to such fine in such law the following provisions shall apply —

(a)

where no sum is expressed to which the fine may extend, the amount of the fine which may be imposed is unlimited, but shall not be excessive;

(b)

where the sum to which the fine may amount is expressed, any lesser fine may be imposed;

(c)



in the case of an offence punishable with a fine or a term of imprisonment the imposition of a fine or a term of imprisonment shall be a matter for the discretion of the court;

**(d)**

in the case of an offence punishable with imprisonment as well as a fine in which the offender is sentenced to a fine with or without imprisonment and in every case of an offence punishable with fine only in which the offender is sentenced to a fine, the court passing sentence may, in its discretion —

**(i)**

direct by its sentence that in default of payment of the fine the offender shall suffer imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of sentence; and also

**(ii)**

issue a warrant for the levy of the amount on the immovable and movable property of the offender by distress and sale under warrant:

Provided that if the sentence directs that in default of payment of the fine the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue a distress warrant.

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**Imprisonment in default of payment**

(1) The term of imprisonment to which a person may be sentenced by a court in default of payment of a fine shall be such term as in the opinion of the court will satisfy the justice of the case but shall not exceed the maximum fixed by the following scale —

**Amount Maximum Period**

Not exceeding \$20 14 days

Exceeding \$20 but not exceeding \$100 1 month

Exceeding \$100 3 months.<sup>7</sup>

(2) The imprisonment which is imposed in default of payment of a fine shall terminate whenever the fine is either paid or levied by process of law.

**Distress**

(1)

When a court orders money to be paid by an accused person or by a prosecutor or complainant for fine, penalty, compensation, costs, expenses or otherwise, the money may be levied on his movable and immovable property under warrant. If he shows sufficient movable property to satisfy the order his immovable property shall not be sold.

(2)

Such person may pay or tender to the officer having the execution of the warrant the sum therein mentioned, together with the amount of the expenses of the distress up to the time of payment or tender, and thereupon the officer shall cease to execute the same.

(3)

A warrant under this section may be executed within the territorial limits of the jurisdiction of the court issuing the same, and it shall authorise the distress and sale of any property belonging to such person without such limits when endorsed by a magistrate within the territorial limits of whose jurisdiction such property is found.

(4)

Any person claiming to be entitled to or to have a legal or equitable interest in the whole or part of any property attached in execution of a warrant issued under this section may, at any time prior to the receipt by the court of the proceeds of sale of such property, give notice in writing to the court of his objection to the attachment of such property. Such notice shall set out shortly the nature of the claim which such person (hereinafter in this section referred to as the objector) makes to the whole or part of the property attached, and shall certify the value of the property claimed by him. Such value shall be deposited to upon affidavit which shall be filed with the notice.

(5)

Upon receipt of a valid notice given under subsection (4), the court shall, by an order in writing addressed to the officer having the execution of the warrant, direct the stay of the execution proceedings.



(6)

Upon the issue of an order under subsection (5), the court shall, by notice in writing, direct the objector to appear before such court and establish his claim upon a date to be specified in the notice.

(7)

A notice shall be served upon the person whose property was, by the warrant issued under subsection (1), directed to be attached and, unless the property is to be applied to the payment of a fine, upon the person entitled to the proceeds of the sale of such property. Such notice shall specify the time and place fixed for the appearance of the objector and shall direct the person upon whom the notice is

served to appear before the court at the same time and place if he wishes to be heard upon the hearing of the objection.

**(8)**

Upon the date fixed for the hearing of the objection, the court shall investigate the claim, and, for such purpose, may hear any evidence which the objector may give or adduce and any evidence given or adduced by any person served with a notice in accordance with subsection (7).

**(9)**

If, upon investigation of the claim, the court is satisfied that the property was not, when attached, in the possession of the person ordered to pay the money or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the person ordered to pay the money at such time it was so in his possession not on his own account or as his own property but on account of or in trust for some other person or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

**(10)**

If, upon the date fixed for his appearance, the objector fails to appear, or if, upon investigation of the claim in accordance with subsection (8), the court is of opinion that the objector has failed to establish his claim, the court shall order the attachment and execution to proceed, and shall make such order as to costs as it deems fit.

**(11)**

Nothing in this section shall be deemed to deprive a person who has failed to comply with the requirements of subsection (4) of the right to take any other proceedings which, apart from the provisions of this section, may lawfully be taken by a person claiming an interest in property attached under a warrant.

**(12)**

No distress made under this section shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress or other proceedings relating thereto.

**Suspension of execution of sentence of imprisonment in default of a fine**

(1) When a convicted person has been sentenced to imprisonment in default of payment of a fine, and whether or not a warrant of distress has been issued under section 31, the court may make an order directing the fine to be paid on

or before a specified date, not being more than 30 days from the date of the order, and in the event of the fine not being paid on or before that date may, subject to the other provisions of this section, forthwith issue a warrant of committal. The court may, before making such order, require the convicted person to execute a bond, with or without sureties, conditioned for his appearance before the court on the specified date if the fine be not in the meantime paid. Upon the making of an order under this subsection the sentence of imprisonment shall be deemed to be suspended and the convicted person shall be released from custody.

**(2)**

In any case in which an order for the payment of money has been made, on non-recovery of which imprisonment may be awarded, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (1), and in default of his so doing may at once pass sentence of imprisonment as if the money had not been recovered.

**(3)**

The court may in its discretion direct that any money to which this section applies may be paid by installments at such times and in such amounts as the court may deem fit, but so nevertheless that in default of payment of any such installment the whole of the amount outstanding shall become and be immediately due and payable, and all the provisions of this Code applicable to a sentence of fine and to imprisonment in default of payment thereof shall apply to the same accordingly.

**(4)**

A warrant of commitment to prison in respect of the non-payment of any sum of money by a person to whom time has been allowed for payment under subsection (1), or who has been allowed to pay by installments under subsection (3), shall not be issued unless the court shall first make inquiry as to his means in his presence:

Provided that a court may issue such a warrant of commitment without any further inquiry as to means if it shall have made such inquiry in the presence of the convicted person at the time when the fine was imposed or at any subsequent time and the convicted person shall not before the expiration of the time for payment have notified the court of any change in his means or applied to the court for an extension of time to pay the fine.

**(5)**

After making inquiry in accordance with subsection (4), the court may, if it thinks fit, instead of issuing a warrant of commitment to prison, make an order extending the time allowed for payment or varying the amount of the installments or the times at which the installments were, by the previous order of the court, directed to be paid, as the case may be.

**(6)**

For the purpose of enabling inquiry to be made under subsection (4) the court may issue a summons to the person ordered to pay the money to appear before it and, if he does not appear in obedience to the summons, may issue a warrant for his arrest or, without issuing a summons, issue in the instance a warrant for his arrest.



### **Commitment in lieu of distress**

**(1)**

If the officer having the execution of a warrant of distress reports that he could find no property or not sufficient property whereon to levy the money mentioned in the warrant with expenses, the court may by the same or a subsequent warrant commit the person ordered to pay to prison for a time specified in the warrant, unless the money and all expenses of the distress, commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

**(2)**

When it appears to the court that distress and sale of property would be ruinous to the person ordered to pay the money or his family, or (by his confession or otherwise) that he has no property whereon the distress may be levied, or other sufficient reason appears to the court, the court may if it thinks fit, instead of or after issuing a warrant of distress, commit him to prison for a time specified in the warrant, unless the money and all expenses of the commitment and conveyance to prison, to be specified in the warrant, are sooner paid.

**(3)**

The period for which a person may be committed to prison in default of or in lieu of distress under this section shall be —

**(a)**

if the person has been sentenced to a term of imprisonment in default of payment of a fine, the period to which he was so sentenced;

**(b)**

in other cases such period as the court considers reasonable subject to the maximum laid down in section 30 relating to fines.

### **Payment after committment**

**(1)**

Any person committed for non-payment may pay the sum mentioned in the warrant, with the amount of expenses therein authorised (if any), to the person in whose custody he is, and that person shall thereupon discharge him if he is in custody for no other matter.

**(2)**

If any person committed to prison for non-payment shall pay any sum in part satisfaction of the sum adjudged to be paid, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which such person is committed, as the sum so paid bears to the sum for which he is liable.

(3)

The officer in charge of a prison in which a person is confined who is desirous of taking advantage of the provisions of the preceding subsection shall, on application being made to him by such prisoner, at once take him before a court and such court shall certify the amount by which the term of imprisonment originally awarded is reduced by such payment in part satisfaction, and shall make such order as is required in the circumstances.

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### **Security for keeping the peace**

(1)

A person convicted of an offence may, instead of or in addition to any punishment to which he is liable, be ordered to enter into his own recognisance, with or without sureties, in such amount as the court thinks fit, conditioned that he shall keep the peace and be of good behaviour for a time to be fixed by the court, not exceeding 2 years, and may be ordered to be imprisoned until such recognisance, with sureties if so directed, is entered into; but so that the imprisonment for not entering into the recognisance shall not extend for a term longer than 6 months:

Provided that no order shall be made under this section where the person convicted has been sentenced to a term or imprisonment of more than 6 months.

(2)

In addition to the powers conferred by subsection (1) any court shall have power in any trial, whether or not the complaint be dismissed, to bind both the complainant and defendant with or without sureties, to keep the peace and be of good behaviour for a period not exceeding 1 year and may order any person so bound in default of compliance with the order, to be imprisoned for 3 months or until such earlier time as he so complies:

Provided that a defendant who has been sentenced to more than 6 months' imprisonment shall not be bound over under this subsection:

And provided further that a complainant shall not be bound over under the powers contained in this subsection unless he shall have been given an opportunity to address the court personally or by an advocate as to why he should not be bound over.

(3) Sections 111, 112 and 114 of the Criminal Procedure Code shall apply *mutatis mutandis* to recognisances taken under this section.

## Security for coming up for judgment

(1)

In any case in which a person is convicted before any court of any offence, if it appears to the court before which he is convicted that having regard to the circumstances including the nature of the offence and the character of the accused it is expedient to release the offender on probation, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, and during such period (not exceeding 2 years) as the court may direct, to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour.

(2)

If at any time the court which convicted the offender is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.

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(3)

An offender when apprehended on any such warrant shall be brought forthwith before the court by which the warrant was issued and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned for his appearing for sentence. Such court may, after hearing the case, pass sentence.

(4)

Where an order under subsection (1) is made by a court, the order shall, for the purpose of re-vesting or restoring stolen property and for the purpose of enabling the court to make any order under sections 155 and 156 of the Criminal Procedure Code, have the like effect as a conviction.

(5)

Sections 111, 112 and 114 of the Criminal Procedure Code shall apply *mutatis mutandis* to recognisances taken under this section.

## Residence Orders

(1)

Where any person is liable for an offence the High Court or a magistrates court may, in addition to or instead of any penalty imposed in respect of that offence, by order direct that such person be conveyed to his place or island of origin in Tuvalu or the place or island in Tuvalu in which such is

ordinarily resident and that he reside there for such period not exceeding 1 year as may be specified in the order.

**(2)**

Where an order under subsection (1) is made additional to a sentence of imprisonment the order shall take effect forthwith upon the termination of the sentence of imprisonment.

**(3)**

Any person who being subject to an order under subsection (1) contravenes that order shall be liable to imprisonment for 6 months.

### **Discharge of offender without punishment**

**(1)**

Where, in any trial, the court thinks that the charge against the accused person is proved but is of opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is not expedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge, either absolutely or conditionally.

**(2)**

An order made under this section shall, for the purpose of re-vesting or restoring stolen property, and of enabling the court to make any order under sections 155 and 156 of the Criminal Procedure Code, have the like effect as a conviction.

### **Offenders under the age of 16 years**

**(1)**

Without prejudice to section 35, 36 or 38 where in any trial the court thinks that the charge against the accused person is proved but is of the opinion that he is under the age of 16 years and is in need of care, protection or control the court may —



**(a)**

without proceeding to conviction make an order committing him to the care of any fit person whether a relative or not who is willing to undertake the care of him and at the same time, or at any subsequent time on the application of the person to whose care the accused person has been committed, make an order that the parent or guardian of the accused person make a contribution towards the maintenance of the accused person of such sum as the court, having regard to the means of the parent or guardian, thinks fit, and upon the making of such an order sections 31, 33 and 34 shall apply *mutatis mutandis* to such parent or guardian as they apply to an accused person; or

**(b)**

order his parent or guardian to enter into a recognisance with or without sureties in such amount as the court thinks fit to exercise proper care and guardianship.

**(2)**

Every order and every recognisance made or entered into pursuant to subsection (1) shall, unless some earlier date of termination is ordered by the court, remain in force until the person in respect of whom the order was made or the recognisance entered into attains the age of 18 years.

**(3)**

Any fit person to whose care, protection or control any person has been committed under this section may at any time apply to the court for variation or cancellation of the order and the court may vary or cancel the order or replace it by such order as may to the court appear expedient.

**(4)**

Any person committed to the care of a fit person under this section who absconds therefrom may be arrested by any police officer without warrant and either brought before a magistrate's court or summarily returned to the care of such fit person; and in the case of any such person who is brought before a magistrate's court the court may order that he be returned to the custody of such fit person or if having regard to all the circumstances it appears to the court advisable so to do it may order that he be committed to the care of some other fit person.

**(5)**

For the purpose of this section and without prejudice to the generality of the expression a person shall be deemed to be "in need of care, protection or control" who in the opinion of the court is not receiving such care, protection or control as a good guardian may be expected to give or is beyond the parent or guardian's control, and the expression "fit person" includes any Kaupule, religious institution, welfare association or other organisation able and willing to undertake the care, protection or control of persons under the age of 18 years.



(6) Without prejudice to subsection (1) where in any case the accused person is charged with any offence for the commission of which a fine, costs or compensation may be imposed, and the court is of the opinion that he is under the age of 16 years it may without proceeding to conviction make an order that the fine, costs or compensation be paid by the parent or guardian of the accused person instead of by the accused person and in such event sections 31, 33 and 34 shall apply *mutatis mutandis* to such parent or guardian as they apply to an accused person.

## **Police supervision**

(1)

When any person, having been convicted of any offence punishable with imprisonment for a term of 3 years or upwards, is again convicted of any offence punishable with imprisonment for a term of 3 years or upwards, the court may, if it thinks fit, at the time of passing sentence of imprisonment on such person, also order that he shall be subject to police supervision as hereinafter provided for a term not exceeding 5 years from the date of the expiration of such sentence.

(2)

If such conviction is set aside on appeal or otherwise, such order shall become void.

(3)

Every person subject to police supervision, and who is at large in Tuvalu, shall —

(a)

report himself personally once in each month to the officer in charge of the police station nearest to his place of residence at such time as may be directed by such police officer, or as may be prescribed by regulations under this section; and

(b)

notify the place of his residence and any change of such residence at such time and place and in such manner and to such person as may be prescribed by regulations under this section.

(4)

If any person subject to police supervision who is at large in Tuvalu refuses or neglects to comply with any requirement prescribed by this section or by any regulation made thereunder, such person shall, unless he proves to the satisfaction of the court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence and liable to imprisonment for 6 months.

## **Power to make regulations for section 40**

The Chief Justice may make regulations for carrying out the provisions of section

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### **General punishment for misdemeanours**

When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for 2 years and with a fine.

### **Escaped convicts to serve unexpired sentence when recaptured**

The time during which an escaped person is at large shall not be counted as part of the term of the sentence which he was serving at the time of his escape.

### **Sentence on escaped convict**

When sentence is passed under this Code on an escaped convict, such sentence —

- (i)  
if a fine shall, subject to the provisions of this Code, take effect immediately;
- (ii)

if of imprisonment, shall be executed in accordance with the provisions of section 27.

### **Power of court to order forfeiture, and payment of compensation, in certain cases**

When any person is convicted of an offence under any of the following sections, namely sections 85, 86, 87, 111, 112 and 367, the court may, in addition to or in lieu of any penalty which may be imposed, order the forfeiture to Her Majesty of any property which has passed in connection with the commission of the offence or, if such property cannot be forfeited or cannot be found, of such sum as the court shall assess as the value of the property; and any property or sum so forfeited shall be dealt with in such manner as the court may direct. Payment of any sum so ordered to be forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine.

### **Compensation for personal injury**

When any person is convicted of an offence under section 181 or Part XXXV, the court may, in addition to, or in lieu of, any penalty which may be imposed, order him to pay compensation to any person injured by his offence.



## **PART VII - OFFENCES AGAINST PUBLIC ORDER AND EXTERNAL TRANQUILITY**

### **Treason by the law of England**

Any person who compasses, imagines, invents, devises or intends any act, matter or theory, the compassing, imagining, inventing, devising or intending whereof is treason by the law of England for the time being in force, and expresses, utters or declares such compassing, imagining, inventing, devising or intending by publishing any printing or writing or by any overt act, or does any act which, if done in England, would be deemed to be treason according to the law of England for the time being in force, is guilty of the offence termed treason and shall be sentenced to imprisonment for life.

### **Instigating invasion**

Any person who instigates any foreigner to invade Tuvalu with an armed force shall be guilty of treason, and shall be sentenced to imprisonment for life.

### **Concealment of treason**

Any person who —

**(a)**

becomes an accessory after the fact to treason; or

**(b)**

knowing that any person intends to commit treason does not give information thereof with all reasonable despatch to the Minister or to a magistrate or police officer or use other reasonable endeavours to prevent the commission of the offence,

shall be guilty of the felony termed misprision of treason, and shall be liable to imprisonment for life.

### **Treasonable felonies**

Any person who forms an intention to effect any of the following purposes, that is to say —

**(a)**

to depose Her Majesty from the style, honour and royal name of the Crown of the United Kingdom, or of any other of Her Majesty's dominions or countries; or

**(b)**

to levy war against Her Majesty within any part of Her Majesty's dominions, or within any country which has been declared to be under her protection or in respect of which Her Majesty has accepted a mandate, in order by

force or constraint to compel her to change her measures or counsels, or in order to put any force or constraint upon, or

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in order to intimidate or overawe, the legislature or legislative authority of any of Her Majesty's dominions, or of any country which has been declared to be under her protection or in respect of which Her Majesty has accepted a mandate; or

(c) to instigate any foreigner to make an armed invasion of any of Her Majesty's dominions or of any country which has been declared to be under her protection or mandate,

and manifests such intention by an overt act, or by publishing any printing or writing, shall be guilty of a felony, and shall be liable to imprisonment for life.

**51 Limitations as to trial for treason, misprision of treason, or treasonable felonies. At least two witnesses necessary.**

(1)

A person cannot be tried for treason, or for any of the felonies defined in the 3 last preceding sections, unless the prosecution is commenced within 2 years after the offence is committed.

(2)

Nor can a person charged with treason, or with any of such felonies, be convicted, except on his own plea of guilty, or on the necessary evidence in open court of 2 witnesses at the least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act, and one other witness to another overt act of the same kind of treason or felony.

(3)

This section does not apply to cases in which the overt act of treason alleged is the killing of Her Majesty, or a direct attempt to endanger the life or injure the person of Her Majesty.

**Inciting to mutiny**

Any person who advisedly attempts to effect any of the following purposes, that is to say —

(a), to seduce any person serving in Her Majesty's naval, military, or air forces or any police officer from his duty and allegiance to Her Majesty; or

(b)

to incite any such person to commit an act of mutiny or any traitorous or mutinous act; or

(c)

to incite any such persons to make or endeavour to make a mutinous assembly,

shall be guilty of a felony and shall be liable to imprisonment for life.

### **Aiding soldiers or police officers in acts of mutiny**

Any person who —

(a) aids, abets, or is accessory to, any act or mutiny by, or

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(b) incites to sedition or to disobedience to any lawful order given by a superior officer, any non-commissioned officer or private of Her Majesty's naval, military or air forces or any police officer,

shall be guilty of a misdemeanour.

### **Inducing soldiers or police officers to desert**

Any person who, by any means whatever, directly or indirectly —

(a)

procures or persuades or attempts to procure or persuade to desert, or

(b)

aids, abets or is accessory to the deserting of, or

(c)

having reason to believe he is a deserter, harbours or aids in concealing,

any non-commissioned officer or private of the said naval, military or air forces or any police officer shall be guilty of a misdemeanour and shall be liable to imprisonment for 6 months.

### **Aiding prisoners of war to escape**

Any person who —

(a)

knowingly and advisedly aids an alien enemy of Her Majesty, being a prisoner of war in Tuvalu, whether such prisoner is confined in a prison or elsewhere, or is suffered to be at large on his parole, to escape from his prison or place of confinement, or, if he is at large on his parole, to escape from Tuvalu, shall be guilty of a felony, and shall be liable to imprisonment for life;

(b)

negligently and unlawfully permits the escape of any such person as is mentioned in the last preceding paragraph,

shall be guilty of a misdemeanour.

### **Definition of overt acts**

In the case of any of the offences defined in this Part of this Code, when the manifestation by an overt act of an intention to effect any purpose is an element of the offence, every act of conspiring with any person to effect that purpose, and every act done in furtherance of the purpose by any of the persons conspiring, is deemed to be an overt act manifesting the intention.

### **Unlawful oaths to commit certain offences**

(1) Any person who —

- (a) administers, or is present at and consents to the administering of, any oath, or engagement in the nature of an oath, purporting to bind the

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person who takes it to commit any offence punishable only with imprisonment for life; or

- (b) takes any such oath or engagement, not being compelled to do so, shall be guilty of a felony, and shall be liable to imprisonment for life.

(2) Any person who —

**(a)**

administers, or is present at and consents to the administering of, any oath or engagement in the nature of an oath, purporting to bind the person who takes it to act in any of the ways following, that is to say —

**(i)**

to engage in any mutinous or seditious enterprise;

**(ii)**

to commit any offence not punishable only with imprisonment for life;

**(iii)** to disturb the public peace;

**(iv)**

to be of any association society or confederacy, formed for the purpose of doing any such act as aforesaid;

**(v)**

to obey the order or commands of any committee or body of men unlawfully constituted, or of any leader or commander or other person not having authority by law for that purpose;

**(vi)**

not to inform or give evidence against any associate, confederate or other person;

**(vii)** not to reveal or discover any unlawful association, society or confederacy, or any illegal act done or to be done, or any illegal oath or engagement that may have been administered or tendered to or taken by himself or

any other person, or the import of any such oath or engagement; or

**(b)**

takes any such oath or engagement, not being compelled to do so,

shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

### **Compulsion how far a defence**

A person who takes any such oath or engagement as is mentioned in the last 2 preceding sections cannot set up as a defence that he was compelled to do so, unless within 14 days after taking it, or, if he is prevented by actual force or sickness, within 14 days after the termination of such prevention, he declares by information on oath before a magistrate, or, if he is on actual service in the police force, either by such information or by information to his commanding officer, the whole of what he knows concerning the matter, including the person or persons by whom and in whose presence and the place where and the time when the oath or engagement was administered or taken.

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### **Unlawful drilling**

(1) Any person —

**(a)**

without the permission of the Minister trains or drills any other person to the use of arms or the practice of military exercises, movement, or evolution or,

**(b)**

is present at any meeting or assembly of persons, held without the permission of the Minister, for the purpose of training or drilling any other persons to the use of arms or the practice of military exercises, movements or evolutions,

shall be guilty of a felony and shall be liable to imprisonment for 7 years

(2) Any person who, at any meeting or assembly held without the permission of the Minister, is trained or drilled to the use of arms, or the practice of military exercises, movements or evolutions, or who is present at any such meeting or assembly for the purpose of being so trained or drilled, shall be guilty of a misdemeanour.

### **Spreading false rumours, etc.**

Any person who —

**(a)**

maliciously fabricates or knowingly spreads abroad or publishes, whether by writing or by word of mouth or otherwise, any false news or false report tending to create or foster public alarm, public anxiety or disaffection or



to produce public detriment; or

**(b)**

acts or is acting in a manner prejudicial to the public safety or to the peace and good order of any part of Tuvalu;  
or

**(c)**

endeavours to disturb the public peace by exciting hatred or contempt of any class of persons.

shall be guilty of a misdemeanour and shall be liable to imprisonment for 1 year or to a fine of \$200.

**61 repealed**<sup>8</sup>

## **PART VIII - OFFENCES AGAINST THE LAW OF NATIONS**

### **Genocide**

(1) A person commits the felony of genocide if he commits any of the following acts with intention to destroy, in whole or in part, a national, ethnical, racial or religious group, as such —

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**(a)**

killing members of the group;

**(b)**

causing serious bodily or mental harm to members of the group;

**(c)**

deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

**(d)**

imposing measures intended to prevent births within the group;

**(e)**

forcibly transferring children of the group to another group.

**(2)**

A person guilty of the felony of genocide shall on conviction —

**(a)**

if the offence consists of the killing of any person, be sentenced to imprisonment for life;

**(b)**

in any other case, be liable to imprisonment without the option of a fine for 14 years (section 26 notwithstanding).

**(3)**

Proceedings for an offence of genocide shall not be instituted except by or with the consent of the Attorney-General.

### **Piracy**

Any person who is guilty of piracy or any crime connected with or relating or akin to piracy shall be liable to be tried and punished according to the law of England for the time being in force:

Provided however that where according to such law any person is liable to suffer the punishment of death for piracy or any crime connected with or relating or akin to piracy he shall not suffer such punishment but he shall be sentenced to imprisonment for life.

## **PART IX - SEDITION AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY**

### **Interpretation**

(1) In this Part unless the context otherwise requires — “**imports**” includes —

**(a)**

to bring into Tuvalu; and

**(b)**

to bring within the inland waters of Tuvalu whether or not the publication is brought ashore, and whether or not there is an intention to bring the same ashore;

“**newspaper**” means a periodical publication containing any public news or comments thereon or any discussion of political matters;



“**periodical publication**” includes every publication issued periodically, or in parts or numbers at intervals, whether regular or irregular;

“**publication**” includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation or any recording of the human voice or of instrumental music or of sounds or any cinematographic film or anything which by its form, shape or in any manner is capable of suggesting words or ideas, and every copy and reproduction of any publication;

“**sedition publication**” means a publication having a seditious intention;

“**sedition words**” means words having a seditious intention.

(2) A seditious intention is an intention —

(i)

to bring into hatred or contempt or to excite disaffection against the person of Her Majesty, Her heirs or successors, or the Government of Tuvalu as by law established; or

(ii)

to excite Her Majesty’s subjects or inhabitants of Tuvalu to attempt to procure the alteration, otherwise than by lawful means, of any matter in Tuvalu as by law established; or

(iii) to bring into hatred or contempt or to excite disaffection against the administration of justice in Tuvalu; or

(iv)

to raise discontent or disaffection amongst Her Majesty’s subjects or inhabitants of Tuvalu; or

(v)

to promote feelings of ill-will and hostility between different classes of the population of Tuvalu,

But an act, speech or publication is not seditious by reason only that it intends —

(a)

to show that Her Majesty has been misled or mistaken in any of her measures; or

(b)

to point out errors or defects in the government or constitution of Tuvalu as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(c)

to persuade Her Majesty’s subjects or inhabitants of Tuvalu to attempt to procure by lawful means the alteration of any matter in Tuvalu as by law established; or

(d)

to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Tuvalu.

## **Determination of seditious intention**

In determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person

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shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

## **Offences**

(1) Any person who —

**(a)**

does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

**(b)**

utters any seditious words;

**(c)**

prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

**(d)**

imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and liable for a first offence to imprisonment for 2 years and to a fine of \$200, and for a subsequent offence to imprisonment for 3 years; and any seditious publication shall be forfeited to Her Majesty.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable for a first offence to imprisonment for 1 year and to a fine of \$100, and for a subsequent offence to imprisonment for 2 years; and such publication shall be forfeited to Her Majesty.

## **Legal proceedings**

**(1)**

No prosecution for an offence under section 66 shall be begun except within 6 months after the offence is committed.

**(2)**

A person shall not be prosecuted for an offence under section 66 without the written consent of the Attorney-General.

**(3)**

No person shall be convicted of an offence under section 66 on the uncorroborated testimony of one witness.

### **Suspension of newspaper**

Whenever any person is convicted of publishing in any newspaper matter having a seditious intention, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters —

(a)

prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding 1 year from the date of the order the future publication of that newspaper;

(b)

prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of

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that newspaper from publication, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise, in the publication, editing, or production of any newspaper; and

(c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

### **Punishment for disobeying orders under section 68**

(1)

Any person who contravenes an order made under section 68 shall be liable on summary conviction to imprisonment for 6 months and to a fine of \$50.

(2)

Nothing in this Act shall affect the power of the court to punish any person contravening an order made under this section for contempt of court:

Provided that no person shall be punished twice for the same offence.

### **Prohibition of circulation of seditious publication**

(1)

Whenever it is shown to the satisfaction of the court that the issue or circulation of a seditious publication is, or if commenced or continued would be, likely to lead to unlawful violence, or appears to have

the object of promoting feelings of hostility between different classes or races of the community, the court shall make an order (in this section called a “prohibition order”) prohibiting the issuing and circulation of that publication (in this section called a “prohibited publication”) and requiring every person having any copy of the prohibited publication in his possession, power, or control forthwith to deliver every such copy into the custody of the police.

(2)

It shall be sufficient if the order so describes the prohibited publication that it can be identified by a reasonable person who compares the prohibited publication with the description in the prohibition order.

(3)

Every person on whom a copy of a prohibition order is served by any police officer shall forthwith deliver to that officer every prohibited publication in his possession, power, or control, and if he fails to do so he shall be guilty of an offence and shall be liable to imprisonment for 1 year and to a fine of \$100.

### **Duty to deliver up prohibited publications**

Every person to whose knowledge it shall come that a publication is in his possession, power, or control shall deliver up forthwith every such publication into the custody of the police.

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### **Search warrants**

(1)

The court may, if it thinks fit, either before or after or without service of a prohibition order on any person, issue a warrant authorising any administrative officer or police officer not below the rank of sergeant and his assistants to break, enter and search, either by day or night, any building or place specified in the order, and any enclosure, room, box receptacle, or thing in such building or place, and to seize and carry away every prohibited publication there found, and to use such force as may be necessary for the purpose.

(2)

A copy of the prohibition order and of the search warrant shall be left in a conspicuous position at every building or place so entered.

### **Discharge of prohibition order**

The owner of any prohibited publication delivered or seized under this section may, at any time within 14 days after the order, delivery or seizure, petition the court for the discharge of the prohibition order and the court, if on the hearing of the petition it decides that the prohibition order ought not to have been made, shall discharge the order and shall order the prohibited publication delivered by or seized from the petitioner to be returned to him.

### **Forfeiture**

Every prohibited publication delivered or seized under this section with respect to which a petition is not filed within the time aforesaid or which is not ordered to be returned to the owner shall be deemed to be forfeited to Her Majesty.

### **Power to prohibit importation of publication**

If the Minister is of opinion that the importation of any publication would be contrary to the public interest he may, by notice, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or subsequent notice, prohibit the importation of any past or future issue thereof.

### **Importation etc. of prohibited publication**

Any person who imports, publishes, sells, offers for sale, distributes, or reproduces any publication, the importation of which has been prohibited under section 75, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for 2 years and to a fine of \$200, and for a subsequent offence to imprisonment for 3 years; and such publication or extract therefrom shall be forfeited to Her Majesty.



### **Possession of prohibited publication**

Any person who without lawful excuse has in his possession any publication the importation of which has been prohibited under section 75, or any extract therefrom, shall be guilty of an offence and liable for a first offence to imprisonment for 1 year and to a fine of \$100, and for a subsequent offence to imprisonment for 2 years; and such publication or extract therefrom shall be forfeited to Her Majesty.

### **Delivery up of prohibited publication**

Any person to whom any publication the importation of which has been prohibited under section 75, or any extract therefrom, is sent without his knowledge or privity or in response to a request made before the prohibition of the importation of such publication came into effect, or who has such a publication or extract therefrom in his possession at the time when the prohibition of its importation comes into effect, shall forthwith if or as soon as the nature of its contents have become known to him; or, in the case of publication or extract therefrom coming into the possession of such person before a notice prohibiting its importation has been made, forthwith upon the coming into effect of a notice prohibiting the importation

of such publication, deliver such publication or extract therefrom to the officer in charge of the nearest police station, and in default thereof shall be guilty of an offence and liable to imprisonment for 1 year and to a fine of \$100; and such publication or extract therefrom shall be forfeited to Her Majesty.

### **Effect of compliance with, or conviction under, section 78**

A person who complies with the provisions of section 78 or is convicted of an offence under that section shall not be liable to be convicted for having imported or having in his possession the same publication or extract therefrom.

### **Power to examine packages**

(1) Any of the following officers, that is to say —

**(a)**

the Customs Officer, the Commissioner of Police, the Postmaster, any administrative officer or any officer authorised in that behalf in writing by any of them; or

**(b)**

any other officer authorised in that behalf by the Minister;

may detain, open and examine any package or article which he suspects to contain any publication or extract therefrom which it is an offence under the provisions of section 76 or 77 to import, publish, sell, offer for sale, distribute, reproduce, or possess, and during such examination may detain any person importing, distributing, or posting such package or article or in whose possession such package or articles is found.

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(2) If any such publication or extract therefrom is found in such package or article the whole package or article may be impounded and retained by the officer and the person importing, distributing, or posting it, or in whose possession it is found, may forthwith be arrested and proceeded against for the commission of an offence under section 76, 77 or 78 as the case may be.

### **Saving of other powers**

Nothing under sections 64 to 80 inclusive shall prevent a prosecution under common law:

Provided that no person shall be punished twice for the same offence.<sup>9</sup>

### **Challenge to fight a duel**

Any person who challenges another to fight a duel, or attempts to provoke another to fight a duel, or attempts to provoke any person to challenge another to fight a duel, shall be guilty of a misdemeanour.



## **Threatening violence**

(1) Any person who —

**(a)**

with intent to intimidate or annoy any person, threatens to break or injure a dwelling-house; or

**(b)**

with intent to alarm any person in a dwelling-house, discharges loaded firearms or commits any other breach of the peace,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

(2) If the offence under this section is committed in the night the offender shall be liable to imprisonment for 2 years.

## **Assembling for the purpose of smuggling**

Any persons who assemble together, to the number of 3 or more, for the purpose of evading any of the provisions of any law for the time being in force relating to customs or excise shall be guilty of a misdemeanour, and each such person shall be liable on summary conviction to imprisonment for 12 months.

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# **PART X - CORRUPTION AND THE ABUSE OF OFFICE**

## **Official corruption**

Any person who —

**(a)**

being employed in the public service, and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or

**(b)**

corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure, or attempt to procure, to, upon, or for any person employed in the public service, or to, upon or for any other person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed,

is guilty of a felony and shall be liable to imprisonment for 7 years.

### **Extortion by public officers**

Any person who, being employed in the public service, takes or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 3 years.

### **Public officers receiving property to show favour**

Any person who, being employed in the public service, receives any property or benefit of any kind for himself or any other person, on the understanding, express or implied, that he shall favour the person giving the property or conferring the benefit, or anyone in whom that person is interested, in any transaction then pending, or likely to take place, between the person giving the property or conferring the benefit, or anyone in whom he is interested, and any person employed in the public service, shall be guilty of a misdemeanour and shall be liable to imprisonment for 6 months.

### **Officers charged with administration of property of special character or with special duties**

Any person who, being employed in the public service, and being charged by virtue of his employment with judicial or administrative duties respecting property of a special character or respecting the carrying on of any manufacture, trade or business of a special character, and having acquired or holding, directly or indirectly a private

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interest in any such property, manufacture, trade or business, discharges any such duties with respect to the property, manufacture, trade or business in which he has such interest or with respect to the conduct of any person in relation thereto, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

### **False claims by officials**

Any person who, being employed in the public service, in capacity as to require him to furnish returns or statements by officials touching any sum payable or claimed to be payable to himself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any such matter which is, to his knowledge, false in any material particular shall be guilty of a misdemeanour.

### **Abuse of office**

(1)

Any person who, being employed in the public service, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, is guilty of a misdemeanour.

If the act is done or directed to be done for purpose of gain, he shall be guilty of a felony, and shall be liable to imprisonment for 3 years.

(2)

A prosecution for any offence under this or either of the 2 last preceding sections shall not be instituted except by or with the sanction of the Attorney-General.

### **False certificates by public officers**

Any person who, being authorised or required by law to give any certificate touching any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, shall be guilty of a misdemeanour.

### **Unauthorised administration of oaths**

Any person who administers an oath, or takes a solemn declaration or affirmation or affidavit, touching any matter with respect to which he has not by law any authority to do so shall be guilty of a misdemeanour:

Provided that this section shall not apply to an oath, declaration, affirmation or affidavit administered by or taken before a magistrate or a justice of the peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, declaration, affirmation or affidavit administered or taken for some purpose which is lawful

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under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

### **False assumption of authority**

Any person who —

(a)

not being a judicial officer assumes to act as a judicial officer; or

(b)

without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

(c)

represents himself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority or testifying to any fact or event, and signs such a document as being so

authorised, when he is not, and knows that he is not, in fact, so authorised,  
shall be guilty of a misdemeanour.

### **Personating public officers**

Any person who —

**(a)**

personates any person employed in the public service on an occasion when the latter is required to do any act or attend in any place by virtue of his employment; or

**(b)**

falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employment,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 3 years.

### **Threat of injury to persons employed in public service**

**(1)**

Whoever holds out any threat of injury to any person employed in the public service, or to any person in whom he believes that person employed in the public service to be interested, for the purpose of inducing that person employed in the public service to do any act, or to forbear or delay to do any act connected with the exercise of the public functions of such person employed in the public service, shall be guilty of a misdemeanour.

**(2)**

A prosecution for an offence under this section shall not be instituted except by or with the sanction of the Attorney-General.

## **PART X1 - PERJURY AND FALSE STATEMENTS AND DECLARATIONS**

### **Perjury**

**(1)**

Any person lawfully sworn as a witness or as an interpreter in a judicial proceeding who wilfully makes a statement material in that proceeding which he knows to be false or does not believe to be true shall be guilty of the misdemeanour of perjury, and shall be liable to imprisonment for 7 years.

**(2)**

Where a statement made for the purpose of a judicial proceeding is not made before the tribunal itself but is made on oath before a person authorised by law to administer an oath to the person who makes the statement and to record or authenticate the statement it shall, for the purposes of this section, be treated as having been made in a judicial proceeding.

**(3)**

The question whether a statement on which perjury is assigned was material is a question of law to be determined by the court of trial.

### **False statements on oath made otherwise than in a judicial proceeding**

Any person who —

**(a)**

being required or authorised by law to make any statement made otherwise on oath for any purpose and being lawfully sworn (otherwise than in a judicial proceeding) wilfully makes a statement which is material for that purpose and which he knows to be false or does not believe to be true; or

**(b)**

wilfully uses any false affidavit,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

### **False statements etc. with reference to marriage**

Any person who —

**(a)**

for the purpose of procuring a marriage or a certificate or licence for marriage knowingly and wilfully makes a false oath or makes or signs a false declaration, notice or certificate required under any Act for the time being in force relating to marriage; or

**(b)**

knowingly and wilfully makes or knowingly and wilfully causes to be made for the purpose of being inserted in any register of marriage a false statement as to any particular required by law to be known and registered relating to any marriage; or



- (c) forbids the issue of any certificate or licence for marriage by falsely representing himself to be a person whose consent to the marriage is required by law knowing such representation to be false,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

### **99 False statements, etc. as to births, or deaths**

(1) Any person who —

**(a)**

wilfully makes any false answer to any question put to him by any registrar of births or deaths relating to the particulars required to be registered concerning any birth or death or wilfully gives to any such registrar any false information concerning any birth or death or the cause of any death; or

**(b)**

wilfully makes any false certificate or declaration under or for the purposes of any Act relating to the registration of births or deaths or knowing any such certificate or declaration to be false, uses the same as true or gives or sends the same as true to any person; or

**(c)**

wilfully makes, gives or uses any false statement or declaration as to a child born alive as having been still-born or as to the body of a deceased person or a still-born child in any coffin or falsely pretends that any child born alive was still-born; or

**(d)**

makes any false statement with intent to have the same inserted in any register of births or deaths,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

(2) A prosecution under this section shall not be commenced more than 3 years after the commission of the offence.

### **100 False statutory declarations and other false statements without oath**

(1) Any person who knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular and the statement is made —

**(a)**

in a statutory declaration; or

**(b)**

in an abstract, account, balance sheet, book, certificate, declaration, entry, estimate, inventory, notice, report, return or other document which he is authorised or required to make, attest or verify by any Act for the time being in force; or

**(c)**

in any oral declaration or oral answer which he is required to make by, under or in pursuance of any Act for the time being in force,

shall be guilty of a misdemeanour.

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(2) For the purposes of this section “statutory declaration” means a declaration made by virtue of the Oaths and Statutory Declarations Act.<sup>10</sup>

### **101 False declarations, etc., to obtain registration, etc., for carrying on a vocation**

Any person who —

**(a)**

procures or attempts to procure himself to be registered in any register or roll kept under or in pursuance of any Act for the time being in force of persons qualified to practise any vocation or calling; or

**(b)**

procures or attempts to procure a certificate of registration of any person on any such register or roll as aforesaid, by wilfully making or producing or causing to be produced either verbally or in writing, any declaration, certificate or representation which he knows to be false or fraudulent, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 12 months.

### **102 Aiders, abettors, suborners, etc.**

**(1)**

Every person who aids, abets, counsels, procures or suborns another person to commit an offence against any of the 6 preceding sections shall be liable to be proceeded against, tried and punished as if he were a principal offender.

**(2)**

Every person who incites or attempts to procure or suborn another person to commit an offence against any of the 6 preceding sections shall be guilty of a misdemeanour.

### **103 Corroboration**

A person shall not be liable to be convicted of any offence against any of the 7 preceding sections or of any offence declared by any other Act to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury solely upon the evidence of 1 witness as to the falsity of any statement alleged to be false.

#### **104 Fabricating evidence**

Any person who, with intent to mislead any tribunal in any judicial proceeding —

(a)  
fabricates evidence by any means other than perjury or subornation of perjury; or

(b)  
knowingly makes use of such fabricated evidence,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

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#### **105 Inconsistent or contradictory statement**

(1)

Where 2 or more inconsistent or contradictory statements of fact or alleged fact, material to the issue or matter in question, have been wilfully made on oath by one and the same witness in any judicial proceeding or proceedings, whether before the same court or tribunal or person or not, such witness shall be guilty of a misdemeanour, and shall be liable to imprisonment for 6 months.

(2)

Upon the trial of any person for an offence under this section, it shall not be necessary to prove the falsity of either of the inconsistent or contradictory statements, but, upon proof that both the statements were made by him, the court, if satisfied that the statements, or either of them, were or was made with intent to deceive the court, tribunal or person before whom the statements or either of them were or was made, shall convict the accused.

#### **106 Proof of certain proceedings on which perjury is alleged**

On a prosecution —

(a)

for perjury alleged to have been committed on the trial of an information for felony or misdemeanour; or

(b)

for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the information and trial purporting to be signed by the registrar or other person having the custody of the records of the court where the information was tried or by the deputy of that registrar or other person without proof of the signature or official character of the clerk or persons appearing to have signed the certificate.



## **' Forms and ceremonies of oath immaterial**

For the purposes of this Part, the forms and ceremonies used in administering an oath are immaterial if the court or person before whom the oath is taken has power to administer an oath for the purpose of verifying the statement in question and if the oath has been administered in a form and with ceremonies which the person taking the oath has accepted, without objection or has declared to be binding on him.

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## **PART XII - OTHER OFFENCES RELATING TO THE ADMINISTRATION OF JUSTICE**

### **› Deceiving witnesses**

Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token or writing, to any person called or to be called as a witness in any judicial proceeding, with intent to affect the testimony of such person as a witness, shall be guilty of a misdemeanour.

### **› Destroying evidence**

Any person who, knowing that any book, document, or thing of any kind whatsoever is or may be required in evidence in a judicial proceeding, wilfully removes or destroys it or renders it unintelligible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of a misdemeanour.

### **› Conspiracy to defeat justice and interference with witnesses**

Any person commits a misdemeanour who —

**(a)**

conspires with any other person to accuse any person falsely of any crime or to do anything to obstruct, prevent, pervert or defeat the course of justice; or

**(b)**

in order to obstruct the due course of justice, dissuades, hinders or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence or endeavours to do so; or

(c)

obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal.

### **! Compounding felonies**

Any person who asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue or delay a prosecution for a felony, or will withhold any evidence thereof, shall be guilty of a misdemeanour.

### **! Compounding penal actions**

Any person who, having brought, or under pretence of bringing, an action against another person upon a penal Act in order to obtain from him a penalty for any

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offence committed or alleged to have been committed by him, compounds the action without the order or consent of the court in which the action is brought or is to be brought, shall be guilty of a misdemeanour.

### **! Advertisements for stolen property**

Any person who —

(a)

publicly offers a reward for the return of any property which has been stolen or lost, and in the offer makes use of any words purporting that no questions will be asked, or that the person producing such property will not be seized or molested; or

(b)

prints or publishes any such offer,

shall be guilty of a misdemeanour.

### **! Corruptly taking a reward**

Any person who corruptly takes any money or reward directly or indirectly, under pretence or upon account of helping reward any person to recover any property which has, under circumstances which amount to felony or misdemeanour, been stolen or obtained in any way whatsoever, or received, shall (unless he has used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and shall be liable to imprisonment for 7 years.

**i Offences relating to judicial proceedings**

(1) Any person who —

**(a)**

within the premises in which any judicial proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being, had or taken; or

**(b)**

having been summoned by any court fails without good cause, the proof whereof shall lie on him, to appear on the date and at the time specified in the summons; or

**(c)**

being present at a judicial proceeding and being called upon to give evidence, refuses to be sworn or to make an affirmation; or

**(d)**

having been sworn or affirmed, refuses without lawful excuse to answer a question or to produce a document which it is within his power to produce; or

**(e)**

having attended a judicial proceeding to give evidence, remains in the room in which such proceeding is being had or taken after the witnesses have been ordered to leave such room; or

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**(f)**

causes an obstruction or disturbance in the course of a judicial proceeding; or

**(g)**

while a judicial proceeding is pending, makes use of any speech or writing misrepresenting such proceeding or capable of prejudicing any person in favour of or against any parties to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or

**(h)**

publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private: or

**(i)**

attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence; or

(j)

dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding; or

(k)

wrongfully retakes possession of land from any person who has recently obtained possession by a writ of court; or

(l)

commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken,

shall be guilty of an offence, and shall be liable to imprisonment for 3 months.

(2)

When an offence under paragraph (a), (b), (c), (d), (e), (g) or (l) of subsection (1) is committed in view of the court, the court may cause the offender to be detained in custody, and at any time before the rising of the court on the same day may take cognisance of the offence and sentence the offender to a fine of \$40 or in default of payment to imprisonment for 1 month.

(3)

The provisions of this section shall be deemed to be in addition to and not in derogation from the power of the High Court to punish for contempt of court.

## **PART XIII - RESCUES AND ESCAPES AND OBSTRUCTING OFFICERS OF COURT**

### **Rescue**

(1) Any person who by force rescues or attempts to rescue from lawful custody any other person —

(a) if such last-named person is under sentence of imprisonment for life, or charged with an offence punishable with imprisonment for life, shall be guilty of a felony, and shall be liable to imprisonment for life; and



(b)

if such other person is imprisoned on a charge or under sentence for any offence other than those specified above, shall be guilty of a felony, and shall be liable to imprisonment for 7 years; and

(c)

in any other case, shall be guilty of a misdemeanour.

(2) If the person rescued is in the custody of a private person, the offender must have notice of the fact that the person rescued is in such custody.

### **' Resisting arrest and escape**

Any person who, on being arrested for an offence, violently resists any police officer or special constable arresting him, or being in lawful custody, escapes from such custody, shall be guilty of a misdemeanour.

### **! Aiding prisoners to escape**

Any person who —

(a)

aids a prisoner in escaping or attempting to escape from lawful custody; or

(b)

conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner; or

(c)

being a gaoler, warder or other person lawfully placed in charge of any prisoner, knowingly or wilfully permits, or connives at, the escape of a prisoner from lawful custody,

shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

### **! Removal etc., of property taken under lawful seizure**

Any person who, when any property has been attached under the process or authority of any court, knowingly, with intent to hinder or defeat the attachment or process, receives, removes, retains, conceals, or disposes of such property, shall be guilty of a felony, and shall be liable to imprisonment for 3 years.

### **! Obstructing court officers**

Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court shall be guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

## **PART XIV - MISCELLANEOUS OFFENCES AGAINST PUBLIC**

### **AUTHORITY**

#### **! Frauds and breaches of trust by persons employed in the public service**

Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, shall be guilty of a misdemeanour.

#### **! False information to public servant**

Whoever gives to any person employed in the public service any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such person employed in the public service —

**(a)**

to do or omit anything which such person employed in the public service ought not to do or omit if the true state of facts respecting which such information is given were known to him; or

**(b)**

to use the lawful power of such person employed in public service to the injury or annoyance of any person,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 6 months or to a fine of \$100.

## **PART XV - OFFENCES RELATING TO RELIGION**

#### **! Insult to religion of any class**

Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons any class with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion shall be guilty of a misdemeanour.

#### **! Disturbing religious assemblies**

Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.



### **125 Trespassing on burial places**

Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or in any place of burial, or in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, shall be guilty of a misdemeanour.

### **126 Hindering burial of dead body, etc.**

Whoever unlawfully hinders the burial of the dead body of any person, or without lawful authority in that behalf disinters, dissects or harms the dead body of any person, or being under a duty to cause the dead body of any person to be buried, fails to perform such duty, shall be guilty of a misdemeanour.

### **127 Writing or uttering words with intent to wound religious feelings**

Any person who, with the deliberate intention of wounding the religious feelings of any person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

## **PART XVI - OFFENCES AGAINST MORALITY**

### **128 Definition of rape**

Any person who has unlawful sexual intercourse with a woman or girl, without her consent, or with her consent if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, is guilty of the felony termed rape.

### **129 Punishment of rape**

Any person who commits the offence of rape shall be liable to imprisonment for life.

## **) Attempt**

Any person who attempts to commit rape is guilty of a felony, and shall be liable to imprisonment for 7 years.

## **| Abduction**

Any person who, with intent to marry or have sexual intercourse with a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of a felony, and is liable to imprisonment for 7 years.

## **! Abduction of girl under 18 years of age with intent to have sexual intercourse**

Any person who with intent that any unmarried girl under the age of 18 years shall have unlawful sexual intercourse with any man, whether such sexual intercourse is intended to be with any particular man, or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, guardian or any other person having the lawful care or charge of her, shall be guilty of a misdemeanour:

Provided that it shall be a defence to any charge under this section if it shall be made to appear to the court that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of 18 years.

## **! Indecent assaults on females**

### **(1)**

Any person who unlawfully and indecently assaults any woman or girl is guilty of a felony, and shall be liable to imprisonment for 5 years.

### **(2)**

It is no defence to a charge for an indecent assault on a girl under the age of 15 years to prove that she consented to the act of indecency.

### **(3)**

Whoever, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman or girl, or whoever intrudes upon the privacy of a woman or girl by doing an act of a nature likely to offend her modesty, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

## **! Defilement of girl under 13 years of age**

(1) Any person who has unlawful sexual intercourse with any girl under the age of 13 years is guilty of a felony, and shall be liable to imprisonment for life.





(2)

Any person who attempts to have unlawful sexual intercourse with any girl under the age of 13 years is guilty of a misdemeanour, and shall be liable to imprisonment for 2 years.

(3)

It is no defence to a charge for an offence under this section to prove that the girl consented to the act.

### **§ Defilement of a girl between 13 and 15 years of age, or of idiot or imbecile**

(1) Any person who —

(a)

has or attempts to have unlawful sexual intercourse with any girl being of or above the age of 13 years and under the age of 15 years; or

(b)

has or attempts to have unlawful sexual intercourse with any female idiot or imbecile woman or girl under circumstances which do not amount to rape but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 5 years:

Provided that it shall be a sufficient defence to any charge under paragraph (a) if it shall be made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of 15 years.

(2)

No prosecution shall be commenced for an offence under subsection (1)(a) more than 12 months after the commission of the offence.

(3)

It is no defence to any charge under subsection (1)(a) to prove that the girl consented to the act.

### **§ Procuration**

(1) Any person who —

(a)

procures or attempts to procure any girl or woman under the age of 18 years, to have unlawful sexual intercourse, either in Tuvalu or elsewhere, with any other person or persons; or

(b)

procures or attempts to procure any woman or girl to become, either in Tuvalu or elsewhere, a common prostitute; or

**(c)**

procures or attempts to procure any woman or girl to leave Tuvalu, with intent that she may become an inmate of or frequent a brothel elsewhere; or

**(d)**

procures or attempts to procure a woman or girl to leave her usual place of abode in Tuvalu (such place not being a brothel), with intent that she

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may for the purposes of prostitution become an inmate of or frequent a brothel either in Tuvalu or elsewhere,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 2 years:

Provided that no person shall be convicted of any offence against this section upon the evidence of 1 witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

(2) It is no defence to any charge under this section to show that the girl or woman procured was procured with her consent.

### **Procuring defilement of woman by threats or fraud or administering drugs**

Any person who —

**(a)**

by threats or intimidation procures or attempts to procure any woman or girl to have sexual intercourse either in Tuvalu or elsewhere; or

**(b)**

by false pretences or false representations procures any woman or girl to have sexual intercourse, either in Tuvalu or elsewhere; or

**(c)**

applies, administers to, or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have sexual intercourse with such woman or girl,

shall be guilty of a misdemeanour, and shall be liable to imprisonment for 2 years:

Provided that no person shall be convicted of an offence under this section upon the evidence of 1 witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

### **Householder permitting defilement of girl under 13 years of age on his premises**

Any person who, being the owner or occupier of premises or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl under the age of 13 years to resort to or be upon such premises for the purpose of having unlawful sexual intercourse with any man, whether such sexual intercourse is intended to be with any particular man or generally, shall be guilty of a felony and shall be liable to imprisonment for life:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge shall be brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of 13 years.

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### **Householder permitting defilement of girl under 15 years of age on his premises**

Any person who, being the owner or occupier of premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any girl of or above the age of 13 and under the age of 15 years to resort to or be upon such premises for the purpose of having unlawful sexual intercourse with any man whether such sexual intercourse is intended to be with any particular man or generally, is guilty of a misdemeanour, and shall be liable for imprisonment for two years:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court before whom the charge is brought that the person so charged had reasonable cause to believe and did in fact believe that the girl was of or above the age of 15 years.

### **Detention with intention or in a brothel**

(1) Any person who detains any woman or girl against her will —

(a)

in or upon any premises with intent that she may have unlawful sexual intercourse with any man, whether any particular man, or generally; or

(b)

in a brothel,

shall be guilty of a misdemeanour, and shall be liable for imprisonment for 2 years.

(2)

When a woman or girl is in or upon any premises for the purpose of having unlawful sexual intercourse, or is in any brothel, a person shall be deemed to detain such woman or girl in or upon such premises or in such brothel if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the directions of such person, such person threatens such woman or girl with legal proceedings if she takes with her the wearing apparel so lent or supplied.

(3)

No legal proceedings, whether civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel, as was necessary to enable her to leave such premises or brothel.

### **| Disposing of minors under the age of 15 years for immoral purposes**

- (1) Any parent or any other person having the custody, charge or care of a minor under the age of 15 years who lets for hire or otherwise disposes of such minor with intent that such minor shall at any age be employed or used for the purpose of prostitution or unlawful sexual intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such minor

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at any age will be employed or used for any such purpose, shall be guilty of misdemeanour, and shall be liable for imprisonment for 2 years.

- (2) When a minor under the age of 15 years is let for hire or otherwise disposed of to a common prostitute or other person of known immoral character, until the contrary is proved, that parent or any other person having the custody, charge or care of a minor shall be deemed to have disposed of such minor with the intent mentioned in this section

### **! Obtaining minors under the age of 15 years for immoral purposes**

(1)

Any person who hires or otherwise obtains possession of any minor under the age of 15 years with intent that such minor shall at any age be employed or used for the purpose of prostitution or unlawful sexual intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such minor at any age will be employed or used for any such purpose, shall be guilty of a misdemeanour, and shall be liable to imprisonment for 2 years.

(2)

Any common prostitute or other person of known immoral character who hires or otherwise obtains possession of a minor under the age of 15 years shall, until the contrary is proved, be deemed to have obtained possession of such minor with the intent mentioned in this section.

### **! Power of search**

(1)

If it appears to any magistrate or island magistrate, on information made before him on oath by any parent, relative or guardian of any woman or girl or other person who, in the opinion of the magistrate, is acting *bona fide* in the interests of any woman or girl that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such magistrate or island magistrate, such magistrate or island magistrate may

issue a warrant authorising the person named therein to search for, and, when found, to take to and detain in a place of safety such woman or girl until she can be brought before a magistrate or island magistrate; and the magistrate or island magistrate before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit or require.

**(2)**

A magistrate issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be arrested and brought before a magistrate and proceedings to be taken for punishing such person according to law.

**(3)**

Any woman or girl shall be deemed to be unlawfully detained for immoral purpose if she is so detained for the purpose of being unlawfully and carnally known by any man, whether any particular man or generally; and —

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**(a)**

either is under the age of 15 years; or

**(b)**

if she is of or over the age of 15 years and under the age of 18 years, is so detained against her will or against the will of her father or mother or of any person having the lawful care or charge of her; or

**(c)**

if she is of or over the age of 18 years and is so detained against her will.

**(4)**

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter (if need be, by force) any house, building or other place mentioned in the warrant, and may remove such woman or girl therefrom.

**(5)**

Every warrant issued under this section shall be addressed to and executed by a police officer who shall be accompanied by the parent, relative or guardian or other person making the information if the person so desires unless the magistrate or island magistrate shall otherwise direct.

## **I Authority of court as to custody of girls**

Where on the trial of any offence under sections 128 to 143 inclusive it is proved to the satisfaction of the court that the seduction, prostitution or unlawful detention of any female under the age of 18 years has been caused, encouraged or favoured by her father, mother, guardian, master or mistress, the court may divest such father, mother, guardian, master or mistress of all authority over her and appoint any person or persons willing to take charge of such female to be her guardian until she has attained the age of 18 years or any age below this as the court may direct and the court may from time to time rescind or vary such order by the appointment of any other person or persons as such guardian or in any other respect.

### **§ Male person living on earnings of prostitution or persistently soliciting**

(1) Every male person who —

(a)

knowingly lives wholly or in part on the earnings of prostitution; or

(b)

in any public place persistently solicits or importunes for immoral purposes,

shall be guilty of a misdemeanour.

(2) Where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a manner as to show that he is aiding, abetting or compelling her prostitution with any other person, or generally, he shall, unless he shall satisfy the court to the contrary be deemed to be knowingly living on the earnings of prostitution.

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### **§ Woman for gain controlling, etc., prostitution of another woman**

Every woman who is proved to have, for the purpose of gain, exercises control, direction or influence over the movements of the prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally, shall be guilty of a misdemeanour.

### **§ Suspicious premises**

If it appears to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a woman or a girl for purposes of prostitution, and that any person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute, or is exercising control, direction or influence over the movements of the prostitute, the magistrate may issue a warrant authorising any police officer to enter and search the house and to arrest such person.

### **§ Brothels**

Any person who —

(a)

keeps or manages or acts or assists in the management of a brothel; or

(b)

being a tenant, lessee or occupier of any premises knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution; or

(c)

being the lessor or landlord of any premises or the agent of such lessor or landlord lets the same or any part thereof with the knowledge that such premises or some part thereof are or is to be used as a brothel or is wilfully a party to the continued use of such premises or any part thereof as a brothel,

shall be guilty of a misdemeanour.<sup>11</sup>

### **) Conspiracy to defile**

Any person who conspires with another to induce or defile any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful sexual intercourse with her shall be guilty of a misdemeanour.

### **) Attempts to procure abortion**

Any person who, with intent to procure the miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, shall be guilty of a felony, and shall be liable to imprisonment for 10 years.

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### **| The like by woman with child**

Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, shall be guilty of a felony, and shall be liable to imprisonment for life.

### **? Supplying drugs or instruments to procure abortion**

Any person who unlawfully supplies to or procures for any person any thing whatever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman, whether she is or is not with child, is guilty of a felony, and shall be liable to imprisonment for 5 years.

### **;) Unnatural offences**

Any person who —

(a)

commits buggery with another person or with an animal; or

**(b)**

permits a male person to commit buggery with him or her,

shall be guilty of a felony, and shall be liable to imprisonment for 14 years.

### **l Attempts to commit unnatural offences and indecent assault**

Any person who attempts to commit any of the offences specified in the last preceding section, or who is guilty of any assault with intent to commit the same, or any indecent assault upon any male person shall be guilty of a felony, and shall be liable to imprisonment for 7 years.

### **ï Indecent practices between males**

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.

### **ï Incest**

(1) Any male person who has sexual intercourse with a female person, who is to his knowledge his granddaughter, daughter, sister or mother, is guilty of a felony, and shall be liable to imprisonment for 7 years:

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Provided that if it is alleged in the information or charge and proved that the female person is under the age of 13 years, the offender shall be liable to imprisonment for life.

**(2)**

It is immaterial that the sexual intercourse was had with the consent of the female person.

**(3)**

If any male person attempts to commit any such offence as aforesaid he shall be guilty of a misdemeanour.

**(4)**

On the conviction before any court of any male person of an offence under this section, or of an attempt to commit the same, against any female under the age of 18 years, it shall be in the power of the court to divest the offender of all authority over such female, and, if the offender is the guardian of such female, to remove the offender from such guardianship, and in any such case to appoint any person or persons willing to take charge of such female, to be the guardian or guardians of such female



during her minority or any less period, and the court may at any time vary or rescind the order by the appointment of any other person as such guardian, or in any other respect.

(5)

Any female person of or above the age of 15 years who with consent permits her grandfather, father, brother or son to have sexual intercourse with her (knowing him to be her grandfather, father, brother or son, as the case may be) shall be guilty of a felony and shall be liable to imprisonment for 7 years.

### **' Test of relationship**

In section 156 the expressions “brother” and “sister” respectively include half-brother and half-sister, and the provision of the said section shall apply whether the relationship between the person charged with an offence and the person with whom the offence is alleged to have been committed is or is not traced through lawful wedlock.

### **) Sexual intercourse with certain collaterals**

(1)

Any person who has sexual intercourse with any collateral either by blood or adoption up to and including the second degree of cousinship shall be liable to imprisonment for 5 years.<sup>12</sup>

(2)

The provisions of this section do not apply to unions between any persons who are lawfully married.

### **) Sanction of Attorney-General**

No prosecution for an offence under section 156 or 158 shall be commenced without the sanction of the Attorney-General.

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### **) Ignorance of age of female immaterial**

Except as otherwise expressly stated, it is immaterial in the case of any of the offences referred to in this Part committed with respect to a woman or girl under a specified age, that the accused person did not know that the woman or girl was under that age, or believed that she was not under that age.

### **| Definition of sexual intercourse**

Whenever, upon the trial for any offence punishable under this Code, it may be necessary to prove sexual intercourse, it shall not be necessary to prove the completion of the intercourse by the actual emission of seed but the intercourse shall be deemed complete upon proof of penetration only.

## **PART XVII - OFFENCES RELATING TO MARRIAGE**

### **! Fraudulent pretence of marriage**

Any person who wilfully and by fraud causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be guilty of a felony, and shall be liable to imprisonment for 10 years.

### **! Bigamy**

#### **(1)**

Any person who, having been previously married and having a husband or wife living, goes through a ceremony of marriage which is void by reason of its taking place during the life of such husband or wife, shall be guilty of a felony and shall be liable to imprisonment for 7 years:

Provided that this section shall not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of 7 years, and shall not have been heard of by such person as being alive within that time.

#### **(2)**

For the purposes of this section a ceremony of marriage by native custom celebrated within Tuvalu shall not be deemed to constitute a valid previous marriage.

### **! Marriage ceremony fraudulently gone through without lawful marriage**

Any person who dishonestly or with fraudulent intention goes through the ceremony of marriage, knowing that he is not thereby lawfully married, shall be guilty of a felony, and shall be liable to imprisonment for 5 years.

## **PART XVIII - NUISANCES AND OTHER MISCELLANEOUS OFFENCES**

### **§ Common nuisance**

**(1)**

Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits the misdemeanour termed a common nuisance, and shall be liable to imprisonment for 1 year.

**(2)**

It is immaterial that the act or omission complained of is convenient to a larger number of the public than it inconveniences, but the fact that it facilitates the lawful exercise of their rights by a part of the public may show that it is not a nuisance to any of the public.

### **§ Traffic in obscene publications**

(1) Any person who —

**(a)**

for the purpose of or by way of trade or for the purpose of distribution or public exhibition, makes, produces or has in his possession any one or more obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, films as defined in the Cinemas and Films Act<sup>13</sup> or any other obscene objects or any other object tending to corrupt morals; or

**(b)**

for any of the purposes above mentioned imports, conveys or exports, or causes to be imported, conveyed or exported, any such matters or things, or in any manner whatsoever puts any of them in circulation; or

**(c)**

carries on or takes in any business, whether public or private, concerned with any such matters or things, or deals in any such matters or things in any manner whatsoever, or distributes any of them or exhibit any of them publicly, or makes a business of lending any of them; or

**(d)**

advertises or makes known by any means whatsoever with a view to assisting the circulation of, or traffic in, any such matters or things, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matters or things can be produced either directly or indirectly; or



(e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt morals,  
is guilty of a misdemeanour, and shall be liable to imprisonment for 2 years or to a fine of \$200.

(2)

If, in respect of any of the offences specified in paragraphs (a), (b), (c) or (d) of subsection (1), any constituent element thereof is committed in Tuvalu such commission shall be sufficient to render the person accused of such offence triable therefor in Tuvalu.

(3)

A court, on convicting any person of an offence against this section, may order to be destroyed any matter or thing made, possessed or used for the purpose of such offence.

(4)

A court may, on the application of the Attorney-General or public prosecutor, order the destruction of any obscene matter or thing to which this section relates, whether any person may or may not have been convicted under the provisions of this section in respect of such obscene matter or thing.

#### **' Idle and disorderly person**

The following persons —

person who, having no visible means of support or sufficient lawful means, shall not (being thereunto required by any magistrate or who, being duly summoned for such purpose, shall be brought before any magistrate) give a good account of his means of support to the satisfaction of such magistrate;

person wandering abroad or placing himself in any street to beg or gather alms or causing or procuring or encouraging any child so to do;

common prostitute behaving in a disorderly or indecent manner in any public place;

person who is drunk or disorderly in any public place or who on the premises of any police station or in any public place behaves in a riotous or disorderly manner, and every person in any other place whatsoever assembles together with others and while so assembled behaves in a riotous or disorderly manner;

person who without lawful excuse publicly does any indecent act;

person who in any public place solicits for immoral purposes; and

person wandering about and endeavouring by the exposure of wounds or deformation to obtain or gather alms,

are deemed idle and disorderly persons, and shall be liable to imprisonment for 2 months or to a fine of \$20:

Provided that in the event of conviction under this section the magistrate may in addition to or in lieu of any fine or imprisonment imposed as aforesaid by

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order direct that the person convicted, not being ordinarily resident within the place or district in which such person is ordinarily resident and that he shall reside there for such period not exceeding 1 year as may be specified in such order.

### **} Rogues and vagabonds**

The following persons —

**(a)**

any person convicted of an offence under the last preceding section after having been previously convicted as an idle and disorderly person;

**(b)**

any person going around as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any kind or nature, under any false or fraudulent pretence;

**(c)**

any person found wandering or loitering in or upon or near any premises or in any public way or any place adjacent thereto or in any public place at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose; and

**(d)**

any person wilfully and obscenely exposing his person in any public place or within view thereof,

are deemed to be rogues and vagabonds, and are guilty of a misdemeanour, and shall be liable for the first offence to imprisonment for 3 months, and for every subsequent offence to imprisonment for 1 year:

Provided that in the event of any conviction under this section the magistrate may in addition to or in lieu of any fine or imprisonment imposed as aforesaid by order direct that the person convicted, not being ordinarily resident within the place or district in which the conviction takes place, shall be conveyed to the place or district in which such person is ordinarily resident and that he shall reside there for such period not exceeding 1 year as may be specified by such order.

**) Offences in public way, etc.**

Any person who —

**(a)**

in any public way slaughters any animal except such as may have met with accident or which for public safety or other reasonable cause ought to be killed on the spot; or

**(b)**

in any public way leads or drives any cattle without proper and sufficient assistance; or

**(c)**

exposes for sale any goods whatsoever so that the same project into or over any public way; or

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**(d)**

hangs or places any clothes on any line or cord projecting over any part of public way or any wall, fence or paling abutting upon any public way; or

**(e)**

wantonly extinguishes the light of or destroys or damages any street-lamp or who wantonly disturbs any inhabitant by pulling or ringing any door-bell or knocking at any door; or

**(f)**

wantonly pulls down, destroys, damages or defaces any sign or signboard; or

**(g)**

without lawful authority lays down in any public way any stone, timber or other materials (except building materials so enclosed as to prevent injury to passengers); or

**(h)**

throws or who, being the owner or occupier of any house or other building permits to be thrown from any part of such house or building, into any public way any rubbish, water, matter or thing whatsoever; or

**(i)**

without lawful authority throws or lays any dirt, ashes or nightsoil or any carrion, offal, trees, bush, brushwood, decayed vegetables or rubbish or any kind into or upon any public way; or

**(j)**

being the owner of any dog knowingly suffers the same to go at large in a rabid state in any public place; or

**(k)**

in any public place or within the limits of any village or town area wantonly discharges a firearm; or

**(l)**

in or near any public place blasts any rock, stone or timber without permission of the island executive officer or the senior police officer on the island; or

**(m)**

in any public place writes or draws any indecent word or representation or uses any profane, indecent or obscene language or is otherwise guilty of any obscene or indecent conduct; or

**(n)**

in any public place uses threatening or abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace may be behaviour occasioned; or

**(o)**

in any public place carries or causes to be carried any butcher's meat without proper and sufficient covering; or

**(p)**

in any public way plays at any game or flies any kite or throws any stone or other missile or wilfully or negligently makes any noise or does any act or thing in a manner likely to terrify or injure any passenger or cattle or to injure any property; or

**(q)**

in any public way drives or conducts any cattle or any carriage or other vehicle in a careless or violent or furious manner or employs any incompetent person to drive or conduct any carriage or other vehicle or permits any horse or other animal to be driven in any carriage or vehicle unless properly harnessed; or

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**(r)**

permits any cattle to be at large in any public way or obstructs the passage of any public way or neglects or refuses to remove such obstruction when requested so to do by any police officer or private person; or

**(s)**

obstructs in any way the free passage of any public way or who in any manner wilfully prevents any person from passing him or who by negligence or misbehaviour prevents or interrupts the free passage on any public way of any person or vehicle; or

**(t)**

to the obstruction, annoyance or danger of any resident or passenger —

(i)

leaves or places or causes to be left or placed any furniture, goods, cask, tub, basket, box, pail, bucket, stool, bench, seat, or package on any public way; or

(ii)

places or causes to be placed any blind, shade, covering, awning or other projection over or along any public way unless the same be 8 feet at least above the public way; or

(iii) carries any naked light in any public way; or

(u)

uses any explosive as defined by section 2 of the Explosive Act for the purpose of catching or destroying fish within the territorial waters of Tuvalu, or in any public or private waters therein,

is guilty of an offence, and shall be liable to fine of \$100 or to imprisonment for 1 month.<sup>14</sup>

### **) Drunk and incapable**

Any person found in a public place drunk so as to be incapable of taking care of himself is guilty of an offence and shall be liable to a fine of \$200 and such person may be arrested without warrant by any police officer.<sup>15</sup>

### **| Shouting etc., in town, etc.**

(1)

Any person who in any village or town area wilfully and wantonly, and after being warned to desist, shouts or beats any drum or tomtom or blows any horn or shell, or sounds or plays upon any musical instrument, or sings or makes any other loud or unseemly noise, to the reasonable annoyance or disturbance of the public, is guilty of an offence, and shall be liable to a fine not exceeding \$10 or to imprisonment for a term not exceeding 1 month.

(2)

For the purposes of this section and section 169 —

“**town area**” means any area to which the provisions of this section may be applied by order of the Minister; and

“**village**” means any small assemblage of not less than 6 dwelling-houses or buildings for business, or both, whether upon regularly laid out streets or roads or not.



### **? Polluting or obstructing watercourses**



Any person who pollutes or obstructs any aqueduct, dam, sluice, pipe, pump, watercourses or fountain, is guilty of misdemeanour, and shall be liable to a fine of \$400 or to imprisonment for three months.<sup>16</sup>

### **! Posting placards, etc., on walls without consent of the owner**

Any person who, without the consent of the owner or occupier, posts or otherwise affixes any placard or other paper upon any wall, house or building, or defaces any such wall, house or building by chalk or paint or otherwise, is guilty of an offence, and shall be liable to a fine of \$10 or to imprisonment for 1 month.

### **! Inciting dogs, etc., to attack**

Any person who incites a dog or other animal to attack, worry or put in bodily fear any other person or any animal, is guilty of an offence, and shall be liable to imprisonment for 2 months or to a fine of \$200.<sup>17</sup>

### **! Wearing of uniform without authority prohibited**

#### **(1)**

Any person who, not being a person serving in Her Majesty's naval, military or air forces, or in any police force in the United Kingdom, or in any British possession, in any country under the protection of Her Majesty, or in respect of which Her Majesty has accepted a mandate, wears without the permission of the Minister the uniform of any of those forces, or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform, is guilty of an offence, and shall be liable to imprisonment for 1 month or to a fine of \$10:

Provided that nothing in this section shall prevent any person from wearing any uniform or dress in the course of a stage play performed in any place in which stage plays may lawfully be publicly performed, or in the course of a music-hall or circus performance, or in the course of any bona fide military representation.

#### **(2)**

Any person who unlawfully wears the uniform of any of the forces aforesaid, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or in such circumstances as to be likely to bring contempt on that uniform, or employs any other person so to wear such uniform or dress, is guilty of a misdemeanour, and shall be liable for imprisonment for 2 months or to a fine of \$40.

#### **(3)**

Any person who, not being in the service of Tuvalu or having previously received the written permission of the Minister so to do, imports or sells or has in his possession for sale any such uniform as aforesaid, or the buttons or

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badges appropriate thereto, is guilty of misdemeanour, and shall be liable to imprisonment for 6 months, or to a fine of \$100.

- (4) When any person has been convicted of any offence under this section, the uniform, dress, button, badge or other thing in respect of which the offence has been committed shall be forfeited unless the court otherwise orders.

### **§ Negligent act likely to spread infection of disease dangerous to life**

Any person who unlawfully or negligently does any act which is likely, and which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life is guilty of a misdemeanour.

### **§ Adulteration of food, drink or drugs intended for sale**

(1)

Any person who subjects any article of food or drink to such treatment as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink or that any person will be deceived as to its nutritive value, is guilty of a misdemeanour.

(2)

Any person who adulterates any drugs or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medical purpose, as if it had not undergone such adulteration, is guilty of a misdemeanour.

### **§ Sale of noxious food or drink or adulterated drugs**

(1)

Any person who sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious food or drink, is guilty of a misdemeanour.

(2)

Any person selling any article which has been rendered or has become noxious shall be taken to have knowledge that the same is noxious until the contrary is proved.

(3)

Any person who, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated or causes it to be used for medicinal purposes by any person not knowing of the adulteration, is guilty of a misdemeanour.



### **) Fouling air**

Any person who voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is guilty of a misdemeanour.

### **) Offensive trades**

Any person who, for the purposes of trade or otherwise, makes loud noises or offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights commits and is liable to be punished as for a common nuisance.

### **| Endangering property with fire, etc.**

Any person who, in a manner so rash or negligent as to endanger any property, does any act with fire or any combustible matter or omits to take precautions against any probable danger from any fire or combustible matter in his possession, is guilty of a misdemeanour and shall be liable to imprisonment for 3 months.

### **! Criminal trespass**

(1) Any person who —

**(a)**

enters into or upon property in the possession of another with intent to commit or to intimidate or annoy any person lawfully in possession of such property;

**(b)**

having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence; or

**(c)**

unlawfully persists in coming or remaining upon such property after being warned not to come thereon or, to depart therefrom,

is guilty of a misdemeanour, and shall be liable to imprisonment for 3 months; and if the property upon which the offence is committed is any building, tent or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, the offender shall be liable to imprisonment for 1 year.

- (2) Any person who enters by night any dwelling-house, or any verandah or passage attached thereto, or any yard, garden or other land adjacent to or within the curtilage of such dwelling-house, without lawful excuse, is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

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### § Sorcery

Any person who —

(a)

performs any magic ritual in respect of which there is a general belief among any class of persons that harm may be caused to any person; or

(b)

has in his possession, without lawful excuse, any article commonly associated by any class of persons with harmful magic,

is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months or to a fine of \$100.

## PART XIX - DEFAMATION

### § Definition of libel

Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the misdemeanour termed “libel”.

### § Definition of defamatory matter

Defamatory matter is matter, likely to injure the reputation of any person by exposing him to hatred, contempt, or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation

### § Definition of publication

(1)

A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be so dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2)

It is not necessary for libel that a defamatory meaning should be directly or completely expressed, and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

### **' Definition of unlawful publication**

Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part unless —

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(a)

the matter is true and it was for the public benefit that it should be published, or

(b)

it is privileged on one of the grounds hereafter mentioned in this Part.

### **} Cases in which publication of defamatory matter is absolutely privileged.**

(1)

The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable for punishment under this Code in respect thereof, in any of the following cases, namely —

(a)

if the matter is published by the Government or by the Cabinet or Parliament in any official document or proceeding; or

(b)

if the matter is published in the Cabinet or Parliament by the Government or by any Member of such bodies: or

(c)

if the matter is published by order of the Governor-General; or

(d)

if the matter is published concerning a person subject to naval or military discipline for the time being and to his conduct as a person subject to such discipline and is published by some person having authority over him in respect of such conduct; or

(e)

if the matter is published in the course of any judicial proceedings by a person taking part therein as a judge

(f)

if the matter published is in fact a fair report on anything said, done or published in the Cabinet or Parliament; or

(g)

if the person publishing the matter is legally bound to publish it.

(2)

Where a publication is absolutely privileged, it is immaterial for the purposes of this Part whether the matter be true or false, and whether it be or be not known or believed to be false, and whether it be or be not published in good faith:

Provided that nothing in this section shall exempt a person from any liability to punishment under any other Part of this Code or under the express provisions of any other Act in force within Tuvalu.

### **) Cases in which publication of defamatory matter is conditionally privileged**

A publication of defamatory matter is privileged, on condition that it was published in good faith, if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in so publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely

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(a)

if the matter published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court:

Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged; or

(b)

if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published and the previous publication of which was or would have been privileged under the last preceding section; or

- (c)  
if the matter is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity or as to his personal character so far as it appears in such conduct; or
- (d)  
if the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character; so far as it appears in such conduct; or
- (e)  
if the matter is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned; or
- (f)  
if the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech, or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or
- (g)  
if the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the other person, or on the character of the other person so far as it appears in such conduct; or
- (h)  
if the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter or having authority by law to inquire into or receive complaints respecting such conduct or matter; or
- (i)  
if the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person to whom it is published is interested.



A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of the last preceding section, if it is made to appear either —

(a)

that the matter was untrue, and that he did not believe it to be true; or

(b)

that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or

(c)

that, in publishing the matter, he acted with intent to injure the person defamed in substantially greater degree substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.

#### **| Presumption as to good faith**

If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from libel itself, or from the evidence given on behalf of the accused person, or from evidence given on the part of the prosecution.

## **PART XX - MURDER AND MANSLAUGHTER**

#### **? Manslaughter**

(1)

Any person who by an unlawful act or omission causes the death of another person is guilty of the felony known as manslaughter. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

(2)

Any person who commits the felony of manslaughter shall be liable to imprisonment for life.

#### **! Murder**

Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder and shall be sentenced to imprisonment for life.



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### **┆ Killing in the course of another offence**

**(1)**

Where a person kills another in the course or furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express, or implied) as is required for a killing to amount to murder when done in the course or furtherance of another offence.

**(2)**

For the purposes of the foregoing subsection, a killing done in the course or for the purpose of resisting an officer of justice or of resisting or avoiding or preventing a lawful arrest or of affecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course or furtherance of an offence.

### **┆ Malice aforethought**

Malice aforethought may be expressed or implied and expressed as malice shall be deemed to be established by evidence proving either of the following states of mind preceding or co-existing with the act or omission by which death is caused, and it may exist where that act is unpremeditated —

**(a)**

an intention to cause the death of or grievous bodily harm to any person, whether such person is the person actually killed or not; or

**(b)**

knowledge that the act which caused death will probably cause the death of, or grievous bodily harm to, some person whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused.

### **┆ Person suffering from diminished responsibility**

**(1)**

Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing.

**(2)**

On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3)

A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4)

The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

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### **' Cases in which intentional homicide is reduced to manslaughter**

Where a person by an intentional and unlawful act causes the death of another person the offence committed shall not be of murder but only manslaughter if any of the following matters of extenuation are proved on his behalf, namely —

(a)

that he was deprived of the power of self-control by such extreme provocation given by the person killed as is mentioned in the next succeeding section; or

(b)

that he was justified in causing some harm to the other person, and that, in causing harm in excess of the harm which he was justified in causing, he acted from such terror of immediate death or grievous harm as in fact deprived him for the time being of the power of self-control; or

(c)

that, in causing the death, he acted in the belief, in good faith and on reasonable grounds, that he was under a legal duty to cause the death or to do the act which he did.

### **} Provocation**

Where on a charge of murder there is evidence on which the court finds that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be determined by the court; and in determining that question there shall be taken into account everything both done and said according to the effect which it would have on a reasonable man.

## **) Infanticide**

Where a woman by any wilful act or omission causes the death of her child, being a child under the age of 12 months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for the provisions of this section the offence would have amounted to murder, she shall be guilty of felony, to wit, infanticide, and may for such offence be dealt with and punished as if she had been guilty of manslaughter of the child.

## **) Causing death defined**

A person is deemed to have caused the death of another person although his act is not the immediate or the whole cause of death in any of the following cases —

- (a) if he inflicts bodily injury on another person in consequence of which that other person undergoes surgical or medical treatment which causes death. In this case it is immaterial whether the treatment was proper or

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mistaken, if it was employed in good faith and with common knowledge and skill; but the person inflicting the injury is not deemed to have caused the death if the treatment which was its immediate cause was not employed in good faith or was so employed without common knowledge or skill;

**(b)**

if he inflicts bodily injury on another which would not have caused death if the injured person had submitted to proper surgical or medical treatment or had observed proper precautions as his mode of living;

**(c)**

if by actual or threatened violence he causes such other person to perform an act which causes the death of such person, such act being a means of avoiding such violence which in the circumstances would appear reasonable to the person whose death is so caused;

**(d)**

if by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have caused death;

**(e)**

if his act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

## **| When child deemed to be a person**

A child becomes a person capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it had an independent circulation or not, and whether the navel-string is severed or not.

### **? Limitation as to time of death**

**(1)**

A person is not deemed to have killed another if the death of that person does not take place within a year of the cause of death.

**(2)**

Such period is reckoned inclusive of the day on which the last unlawful act contributing of the cause of death was done.

**(3)**

When the cause of death is an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the omission ceased.

**(4)**

When the cause of death is in part an unlawful act, and in part an omission to observe or perform a duty, the period is reckoned inclusive of the day on which the last unlawful act was done or the day on which the omission ceased, whichever is the later.



## **PART XXI - DUTIES RELATING TO THE PRESERVATION OF LIFE AND HEALTH**

### **203 Responsibility of person who has charge of another**

It is the duty of every person having charge of another who is unable by reason of age, sickness, unsoundness of mind, detention or any other cause to withdraw himself from such charge, and who is unable to provide himself with the necessaries of life, whether such charge is undertaken under a contract

or is imposed by law, or arises by reason of any act, whether lawful or unlawful, of the person who has such charge, to provide for that other person the necessaries of life; and he shall be deemed to have caused any consequences which adversely affect the life or health of the other person by reason of any omission to perform that duty.

#### **204 Duty of head of family**

It is the duty of every person who, as head of a family, has charge of a child under the age of 15 years, being a member of his family household, to provide the necessaries of life for such child; and he shall be deemed to have caused any consequences which adversely affect the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

#### **205 Duty of masters**

It is the duty of every person who as master or mistress has contracted to provide necessary food, clothing or lodging for any servant or apprentice under the age of 15 years to provide the same; and he or she shall be deemed to have caused any consequences which adversely affect the life or health of the servant or apprentice by reason of any omission to perform that duty.

#### **206 Duty of persons doing dangerous acts**

It is the duty of every person who, except in the case of necessity, undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty.

#### **207 Duty of persons in charge of dangerous things**

It is the duty of every person who has in his charge or under his control anything, whether living or inanimate, and whether moving or stationary, of such a nature that,

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in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered, to use reasonable care and take reasonable precautions to avoid such danger; and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to perform that duty.

## **PART XXII - OFFENCES CONNECTED WITH MURDER AND SUICIDE**

### **§ Attempt to murder**

Any person who —

(a)

attempts unlawfully to cause the death of another; or

(b)

with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life,

is guilty of a felony, and shall be liable to imprisonment for life.

### **) Accessory after the fact to murder**

Any person who becomes an accessory after the fact to murder is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **) Written threats to murder**

Any person who, knowing the contents thereof; directly or indirectly causes any person to receive any writing threatening to kill any person is guilty of a felony, and shall be liable to imprisonment for 10 years.

### **| Conspiracy to murder**

Any person who conspires with any other person to kill any person, whether such person is in Tuvalu or elsewhere, is guilty of a felony, and shall be liable to imprisonment for 10 years.

### **? Complicity in another's suicide**

(1) Any person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, is guilty of a felony, and shall be liable to imprisonment for 14 years.

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(2) If on the trial of an information for murder or manslaughter it is proved that the accused aided, abetted, counselled or procured the suicide of the person in question, he may be found guilty of that offence.

### **) Concealing the birth of children**

Any person who, when a woman is delivered of a child, endeavours by any secret disposition of the dead body of the child to conceal the birth, whether the child died before, at or after its birth, is guilty of a misdemeanour.

### **| Killing an unborn child**

Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, is guilty of a felony known as child destruction, and shall be liable to imprisonment for life:

Provided that no person shall be found guilty of an offence under this section unless it is proved that the act which caused the death of the child was not done in good faith for the purpose of preserving the life of the mother.

**§ Evidence**

For the purposes of section 214, evidence that a woman had at any material time been pregnant for a period of 28 weeks or more shall be *prima facie* proof that she was at the time pregnant of a child capable of being born alive

**PART XXIII - OFFENCES ENDANGERING LIFE AND HEALTH**

**§ Disabling in order to commit felony or misdemeanour**

Any person who, by any means calculated to choke, suffocate or strangle, and with intent to commit or facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, renders or attempt to render any person incapable of resistance, is guilty of a felony, and shall be liable to imprisonment for life.

**§ Stupifying in order to commit felony or misdemeanour**

Any person who, with intent to commit or to facilitate the commission of a felony or misdemeanour, or to facilitate the flight of an offender after the commission or attempted commission of a felony or misdemeanour, administers or attempts to

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administer any stupefying or overpowering drug or thing to any person, is guilty of a felony, and shall be liable to imprisonment for life.

**§ Acts intended to cause grievous harm or prevent arrest**

Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person —

**(a)**  
unlawfully wounds or does any grievous harm to any person by any means whatever; or

**(b)**  
unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife or other dangerous or offensive weapon; or

**(c)**

unlawfully causes any explosive substance to explode, or

**(d)**

sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

**(e)**

causes any such substance or thing to be taken or received by any person; or

**(f)**

puts any corrosive fluid or any destructive or explosive substance in any place; or

**(g)**

unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person,

is guilty of a felony, and shall be liable to imprisonment for life.

### **) Preventing escape from wreck**

Any person who unlawfully —

**(a)**

prevents or obstructs any person who is on board of, or is escaping from, a vessel which is in distress or wrecked, in his endeavours to save his life; or

**(b)**

obstructs any person in his endeavours to save the life of any person so situated,

is guilty of a felony, and shall be liable to imprisonment for life.

### **) Grievous harm**

Any person who unlawfully does grievous harm to another is guilty of a felony and shall be liable to imprisonment for 7 years.

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### **| Attempting to injure by explosive substances**

Any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and shall be liable to imprisonment for 14 years.

### **? Maliciously administering poison with intent to harm**



Any person who unlawfully, and with intent to injure or annoy another, causes any poison or noxious thing to be administered to, or taken by, any person, and shall thereby endanger his life, or does him grievous harm, is guilty of a felony, and shall be liable to imprisonment for 14 years.

### **§ Unlawful wounding**

Any person who unlawfully wounds another is guilty of a misdemeanour and shall be liable to imprisonment for 5 years.

### **§ Unlawful poisoning**

Any person who unlawfully and with intent to injure or annoy any person causes any poison or other noxious thing to be administered to or taken by any person is guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.

### **§ Failure to supply necessaries**

Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is or is likely to be endangered, or his health is or is likely to be permanently injured, is guilty of a felony, and shall be liable to imprisonment for 3 years.

### **§ Cruelty to children**

**(1)**

If any person who has attained the age of 15 years and has the custody, charge or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight or hearing, or limb or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.

**(2)**

For the purposes of this section —

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**(a)**

a parent or other person legally liable to maintain a child or young person shall be deemed to have neglected him in a manner likely to cause injury to his health if he has failed to provide adequate food, clothing, medical aid or

lodging for him;

**(b)**

where it is proved that the death of an infant under 3 years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) while the infant was in bed with some other person who has attained the age of 15 years, that other person shall, if he was, when he went to bed, under the influence of drink, be deemed to have neglected the infant in a manner likely to cause injury to its health.

**(3)**

A person may be convicted of an offence under this section —

**(a)**

notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person;

**(b)**

notwithstanding the death of the child or young person in question.

**(4)**

Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.

**' Surgical operation**

A person is not criminally responsible for performing in good faith and with reasonable care and skill a surgical operation upon any person for the benefit, or upon any unborn child for the preservation of the mother's life, if the performance of the operation is reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

**‡ Excess of force**

Any person authorised by law or by the consent of the person injured by him to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.

**) Consent**

Notwithstanding anything contained in section 228, consent by a person to the causing of his own death or his own maiming does not affect the criminal responsibility of any person by whom such death or maiming is caused.



## **PART XXIV - CRIMINAL RECKLESSNESS AND NEGLIGENCE**

### **230 Reckless and negligent acts**

Any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person —

- (a)**  
drives any vehicle or rides on any public way; or
- (b)**  
navigates, or takes part in the navigation or working of, any vessel; or
- (c)**  
does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession, or
- (d)**  
omits to take precautions against any probable danger from any animal in his possession; or
- (e)**  
gives medical or surgical treatment to any person whom he has undertaken to treat; or
- (f)**  
dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter: or
- (g)**  
does any act with respect to, or omits to take proper precautions against any probable danger from, any machinery of which he is solely or partly in charge, or
- (h)**  
does any act with respect to, or omits to take proper precautions against any probable danger from any explosive in his possession,

is guilty of a misdemeanour.

#### **| Other negligent acts causing harm**

Any person who unlawfully does any act, or omits to do any act which it is his duty to do, not being an act or omission specified in the preceding section, by which act or omission harm is caused to any person, is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months.

#### **! Dealing in poisonous substances in negligent manner**

Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance, is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months, or a fine of \$200.

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### **233 Endangering safety of persons travelling by aircraft, vehicle or vessel**

Any person who, by any unlawful act or omission not otherwise specified in this Part of this Code, causes the safety of person travelling by any aircraft, vehicle or vessel to be endangered, is guilty of a misdemeanour.

### **234 Exhibition of false light**

Any person who exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be liable to imprisonment for 7 years.

### **235 Conveying person by water for hire in unsafe or overloaded vessel**

Any person who knowingly or negligently conveys, or causes to be conveyed for hire any person by water in any vessel, when that vessel is in such a state or so loaded to be unsafe, shall be guilty of a misdemeanour.

### **236**

#### **Danger or obstruction in public way or line of navigation**

Any person who by doing any act, or by omitting to take reasonable care with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, is liable to a fine not exceeding \$1,000.<sup>18</sup>

## **PART XXV - ASSAULTS**

### **237 Common assaults**

Any person who unlawfully assaults another is guilty of a misdemeanour, and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, shall be liable to imprisonment for 6 months.

### **238 Assaults causing actual bodily harm**

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.

## **239 Assaults on magistrates and other persons protecting wreck**

Any person who assaults and strikes or wounds any magistrate, police or customs officer, or other person lawfully authorised in or on account of the execution of his duty in or concerning the preservation of any vessel in distress, or of any vessel or

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goods or effects wrecked, stranded, or cast on shore or lying under water, is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

### **) Assaults punishable with 2 years' imprisonment**

Any person who —

**(a)**

assaults any person with intent to commit a felony or to resist or prevent the lawful apprehension or detainer of himself or of any other person for an offence; or

**(b)**

assaults, resists or wilfully obstructs any police officer in the due execution of his duty, or any person acting in aid of such officer, or

**(c)**

assaults any person in pursuance of any unlawful combination or conspiracy to raise the rate of wages or respecting any trade, business, or manufacture or respecting any person concerned or employed therein; or

**(d)**

assaults, resists or obstructs any person engaged in lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or

**(e)**

assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of a misdemeanour and shall be liable to imprisonment for 2 years.

## **PART XXVI - OFFENCES AGAINST LIBERTY**

### **| Definition of kidnapping and abduction**

For the purposes of this Part —

**(a)**

any person who conveys any person beyond the limits of Tuvalu without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person; and

(b)

any person who by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

### **! Punishment for kidnapping**

Any person who kidnaps any person is guilty of a felony and shall be liable to imprisonment for 7 years.

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### **! Kidnapping or abducting with intent to confine person**

Any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **! Kidnapping or abducting in order to subject person to grievous harm, slavery, etc.**

Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to put in danger of being subjected, to grievous harm, or slavery, the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of a felony, and shall be liable to imprisonment for 10 years.

### **! Wrongfully concealing or keeping in confinement kidnapped or abducted person**

Any person who, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, is guilty of a felony and shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose, as that with or for which he conceals or detains such person in confinement.

### **! Child stealing**

Any person who unlawfully, either by force or fraud, leads or takes away, or decoys or entices away, or detains any child under the age of 14 years with intent to deprive any parent, guardian or other person having the lawful care or charge of such child of the possession of such child or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; and any person who with any such intent, receives or harbours any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained, as in this section before mentioned, is guilty of a felony, and shall be liable to imprisonment for 7 years:

Provided that no person who shall have claimed in good faith any right to the possession of such child, or is the mother or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child, or taking such child out of the

possession of any person having the lawful charge thereof.

### ' Abducting of girls under 15 years

Any person who unlawfully takes or causes to be taken any unmarried girl, being under the age of 15 years, out of the possession and against the will of her father or

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mother, or of any other person having the lawful care or charge of her, is guilty of a misdemeanour.

### › Punishment for wrongful confinement

Whoever wrongfully confines any person is guilty of a misdemeanour and shall be liable to imprisonment for 1 year or to a fine of \$400.

### ) Unlawful compulsory labour

Any person who unlawfully compels any person to labour against the will of that person is guilty of a misdemeanour.

## PART XXVII - LARCENY, EMBEZZLEMENT AND CONVERSION

### ) Things capable of being stolen

(1)

Every inanimate thing which has value and is the property of any person, and if adhering to the realty then after severance therefrom, is capable of being stolen:

Provided that, save as hereinafter expressly provided with respect to fixtures, growing things, and minerals as defined in the Mineral Development Licensing Act,<sup>19</sup> anything attached to or forming part of the realty is not capable of being stolen by the person who severs the same from the realty, unless after severance he has abandoned possession thereof.

(2)

Every tame creature, whether tame by nature or wild by nature and subsequently tamed, which is the property of any person, is capable of being stolen.

(3)

Creatures wild by nature, of a kind which is not ordinarily found in a condition of natural liberty in Tuvalu, which are the property of any person, and which are usually kept in a state of confinement, are capable of being stolen, whether they are actually in confinement or have escaped from confinement.

(4)

Creatures wild by nature, of a kind which is ordinarily found in a condition of natural liberty in Tuvalu, which are the property of any person, are capable of being stolen while they are in confinement, and while they are being actually pursued after escaping from confinement, but not at any other time.

(5)

A creature wild by nature is deemed to be in a state or confinement so long as it is in a den, cage, sty, tank or other small enclosure, or is otherwise so placed that it cannot escape, and that its owner can take possession of it at pleasure.

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(6)

Wild creatures in the enjoyment of their natural liberty are not capable of being stolen, but their dead bodies are capable of being stolen:

Provided that the carcase of a creature wild by nature and not reduced into possession while living is not capable of being stolen by the person who has killed such creature, unless after killing it he has abandoned possession of the carcase.

(7)

Everything produced by or forming part of the body of a creature capable of being stolen is capable of being stolen.

## **| Definition of theft**

(1) A person steals 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 intent, at the time of such taking, permanently to deprive the owner thereof:

Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner.

(2)

(a)

The expression “takes” includes obtaining the possession —

(i)

by any trick;

(ii)



by intimidation;

(iii) under a mistake on the part of the owner with knowledge on the part of the taker that possession has been so obtained; or (iv) by finding, where at the time of finding the finder believes that the owner can be discovered by taking reasonable steps.

(b)

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.

(c)

The expression “owner” includes any part owner, or person having possession or control of, or a special property in, anything capable of being stolen.

### ! Stealing and embezzlement by co-partners, etc.

If any person, who is a member of any co-partnership or is one of 2 or more beneficial owners of any property, steals or embezzles any such property of or belonging to such co-partnership or to such beneficial owners, he is liable to be dealt with, tried and punished as if he had not been or was not a member of such copartnership or one of such beneficial owners.

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### ! Husband and wife

(1)

A wife has the same remedies and redress under this Code for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*:

Provided that no proceedings under this Part shall be taken by any wife against her husband while they are living together as to or concerning any property claimed by her, nor while they are living apart as to or concerning any act done by the husband while they were living together concerning property claimed by the wife, unless such property has been wrongfully taken by the husband when leaving or deserting or about to leave or desert his wife or for the purpose of giving it to a paramour.

(2)

A wife doing an act with respect to any property of her husband, which, if done by the husband in respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Part, shall be in like manner liable to criminal proceedings by her husband.

### ! General punishment for theft

(1)

Stealing for which no special punishment is provided under this Code or any other Act for the time being in force is simple larceny and a felony punishable with imprisonment for 5 years.

(2)

Any person who commits the offence of simple larceny after having been previously convicted of felony shall be liable to imprisonment for 10 years.

(3)

Any person who commits the offence of simple larceny, after having been previously convicted of any misdemeanour punishable under this Part or under Part XXXV, shall be liable to imprisonment for 7 years.

### **§ Larceny of will**

Any person who steals any will, codicil or other testamentary instrument, either of a dead or of a living person, is guilty of a felony, and shall be liable to imprisonment for life.

### **§ Larceny of documents of title and other legal documents**

Any person who steals the whole or any part of —

(a)

any document of title to lands; or

(b)

any record, writ, return, panel, petition, process, interrogatory, deposition, affidavit, rule, order, warrant of attorney, or any original document of or belonging to any court of record, or relating to any cause or matter, civil or criminal, begun, pending or terminated in any such court; or

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(c) any original document relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, or in the residence or private office of the Governor-General, or in any Government or public office,

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

### **§ Larceny of electricity**

Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity is guilty of a felony, and shall be liable to be punished as in the case of simple larceny.

### **› Larceny of minerals**

Any person who steals or severs with intent to steal any mineral as defined in the Mineral Development Licensing Act is guilty of a felony, and shall be liable to imprisonment for 5 Years.

### **› Larceny of postal packets**

Any person who —

**(a)**

steals a mail bag; or

**(b)**

steals from a mail bag, post office, post office letter box, officer of the post office, or mail, any postal packet in course of transmission by Post; or

**(c)**

steals any chattel, money or valuable security out of a postal packet in course of transmission by post; or

(d) stops a mail with intent to rob the mail, is guilty of a felony, and shall be liable to imprisonment for 10 years.

### **260 Embezzlement by officer of post office**

Any person who, being an officer of the post office, steals or embezzles a postal packet in the course of transmission by post, is guilty of a felony and shall be liable —

**(a)**

if the postal packet contains any chattel, money or valuable security, to imprisonment for life; and

**(b)**

in all other cases to imprisonment for 7 years.

### **261 Definitions relating to larceny and embezzlement of postal packets**

For the purposes of sections 259 and 260 —



**(a)**

a postal packet shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;

**(b)**

the delivery of a postal packet of any description to a letter carrier or other person authorised to receive postal packets of that description for the post shall be a delivery to a post office; and

(c)

the delivery of a postal packet at the house or office of the person to whom the packet is addressed or to him or to his servant or agent or other person considered to be authorised to receive the packet according to the usual manner of delivering that person's postal packets shall be a delivery to the person addressed.

### **! Larceny in dwelling-house**

Any person who steals in any dwelling-house any chattel, money, or valuable security —

(a)

if the value of the property stolen amounts to \$100; or

(b)

if he by any menace or threats puts any person being in such dwelling-house in bodily fear,

is guilty of a felony, and shall be liable to imprisonment for 14 years.<sup>20</sup>

### **! Larceny from the person**

Any person who steals any chattel, money, or valuable security from the person of another is guilty of a felony, and shall be liable to imprisonment for 14 years.

### **! Larceny from ship, dock, etc.**

Any person who steals —

(a)

any goods in any vessel, barge or boat of any description in any haven or any port of entry or discharge or upon any navigable river or canal or in any creek or basin belonging to or communicating with any such haven, port, river or canal; or

(b)

any goods from any dock, wharf or quay adjacent to any such haven, port, river, canal, creek or basin; or

(c)

any part of any vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such vessel,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

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### § Larceny by tenant or lodger

Any person who, being a tenant or lodger, or the husband or wife of any tenant or lodger, steals any chattel or fixture let to be used by such person in or with any house or lodging is guilty of a felony, and shall be liable —

(a)

if the value of such chattel or fixture exceeds the sum of \$10, to imprisonment for 7 years; and

(b)

in all other cases, to imprisonment for 2 years.

### § Larceny and embezzlement by clerks or servants

Any person who —

(a)

being a clerk or servant or person employed in the capacity of a clerk or servant —

(i)

steals any chattel, money or valuable security belonging to or in the possession of his master or employer; or

(ii)

fraudulently embezzles the whole or any part of any chattel, money or valuable security delivered to or received or taken into possession by him for or in the name or on the account of his master or employer; or

(b)

being employed in the public service of Her Majesty —

(i)

steals any chattel, money or valuable security belonging to or in the possession of Her Majesty or entrusted to or received or taken into possession by such person by virtue of his employment; or

(ii)

embezzles or in any manner fraudulently applies or disposes of for any purpose whatsoever except for the public service any chattel, money or valuable security entrusted to or received or taken into possession by him by virtue of his employment; or

(c)

being appointed to any office or service by or under a council established under the Falekaupule Act<sup>21</sup> or any law or laws repealing and replacing the same, or being appointed to any office or service by or under any other Kaupule or other public body —

(i)

fraudulently applies or disposes of any chattel, money or valuable security received by him (whilst employed in such office or service) for or on account of any Kaupule or other public body or department, for his own use or any use or purpose other than that for which the same was paid, entrusted to, or received by him; or

(ii)

fraudulently withholds, retains, or keeps back the same, or any part thereof, contrary to any lawful directions or instructions which he is required to obey in relation to his office or service aforesaid,

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is guilty of a felony, and shall be liable to imprisonment for 14 years.

#### **' Larceny of cattle**

Any person who steals any cattle is guilty of a felony, and shall be liable to imprisonment for 5 years.

#### **› Larceny of dog**

Any person who steals any dog is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months or to a fine of \$100.

#### **) Larceny of creatures not the subject of larceny at common law**

Any person who steals any bird, beast or other animal ordinarily kept in a state of confinement, or for any domestic purpose is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months or to a fine of \$100.

#### **) Larceny of fish**

Any person who unlawfully takes or destroys, or attempts to take or destroy, any fish in any water which is private property, or in which there is any private right of fishery, is guilty of an offence, and shall be liable to a fine of \$100.<sup>22</sup>

#### **| Conversion**

(1) Any person who —

**(a)**

being entrusted either solely or jointly with any other person with any power of attorney for the sale or transfer of any property, fraudulently sells, transfers or otherwise converts the property or any part thereof to his own use or benefit, or the use or benefit of any person other than the person by whom he was entrusted; or

**(b)**

being a director, member or officer of any body corporate or public company, fraudulently takes or applies for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company; or

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**(c)**

**(i)**

being entrusted either solely or jointly with any other person with any property in order that he may retain in safe custody or apply, pay or deliver, for any purpose or to any person, the property or any part thereof or any proceeds thereof; or

**(ii)**

having either solely or jointly with any other person received any property for or on account of any other person,

fraudulently converts to his own use or benefit or the use or benefit of any other person, the property or any part thereof or any proceeds thereof,

is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

(2) Nothing in paragraph (c) of subsection (1) applies to or affects a trustee under any express trust created by a deed or any will, or any mortgagee of any property, real or personal, in respect of any act done by the trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage.

## PART XXVIII - STEALING AND DAMAGING TREES, FIXTURES, ETC.

### **? Larceny of trees**

Any person who steals, or cuts, breaks, roots up or otherwise destroys or damages, with intent to steal, the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles or the injury done being to the amount of 10 cents at the least, is guilty of a misdemeanour.

### **! Larceny of fence**

Any person who steals, or cuts, breaks or throws down, with intent to steal, any part of any live or dead fence or any metal or wooden post, pale, wire or rail set up or used as a fence, or any stile or gate or any part thereof respectively, is guilty of a misdemeanour.

### **! Larceny of fruits and vegetables**

Any person who steals, destroys, roots up or damages with intent to steal, any plant, root, fruit or vegetable production, used for the food of man or beast, or for medicine, or for distilling or for dyeing, or for or in the course of any manufacture,

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and growing in any garden, orchard, pleasure ground, green-house or conservatory, or in any land, open or enclosed, is guilty of a misdemeanour.

### **! Damaging fixtures, trees, etc., with intent to steal**

Any person who —

**(a)**

steals, or, with intent to steal, rips, cuts, severs or breaks —

**(i)**

any glass or woodwork belonging to any building; or

**(ii)**

any metal or utensil or fixture, fixed in or to any building; or

(iii) anything 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; or

**(b)**



steals, or, with intent to steal, cuts, breaks, roots up or otherwise destroys or damages the whole or any part of any tree, sapling, shrub or underwood growing —

(i)

in any place whatsoever, the value of the article stolen or the injury done being to the amount of \$20 at the least, after two previous convictions of any such offence under section 272; or

(ii)

in any park, pleasure ground, garden, orchard or avenue, or in any ground adjoining or belonging to any dwelling-house, the value of the article stolen or the injury done exceeding the amount of \$50; or

(iii) in any place whatsoever, the value of the article stolen or the injury done exceeding the amount of \$100; or

(c)

steals, or with intent to steal, destroys or damages any plant, root, fruit or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, green-house or conservatory, after a previous conviction of any such offence under section 274,

is guilty of a felony, and shall be liable to be punished as in the case of simple larceny.<sup>23</sup>

## PART XXIX - OTHER OFFENCES ALLIED TO STEALING

### § Fraudulent destruction of documents

Any person who, for any fraudulent purpose, destroys, cancels or obliterates the whole or any part of any valuable security, other than a document of title to lands, is guilty of a felony, of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest or deposit to which the security so stolen may relate, or with the money due on the

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security so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned or referred to in or by the security.

### § Fraudulent destruction of documents of title

Any person who, for any fraudulent purpose, destroys, cancels, obliterates or conceals the whole or any part of any document of title to lands, is guilty of a felony, and shall be liable to imprisonment for 3 years.

### § Fraudulent destruction of wills

(1)

Any person who, either during the life of the testator, or after his death, for any fraudulent purpose destroys, cancels, obliterates, or conceals, the whole or any part of any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, is guilty of a felony, and shall be liable to imprisonment for life.

(2)

Nothing in this or the last preceding section mentioned, nor any proceeding, conviction or judgment to be had or taken thereupon, shall prevent, lessen or impeach any remedy at law or in equity, which any party aggrieved by any such offence might or would have had if this Code had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of any of the felonies in this and the last preceding section mentioned by any evidence whatever, in respect of any act done by him, if he shall, at any time previously to his being charged with such offence, have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit or proceeding which shall have been *bona fide* instituted by any party aggrieved; or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in bankruptcy or insolvency.

#### **) Fraudulent destruction of record, writ, etc.**

Any person who, for any fraudulent purpose, takes from its place of deposit for the time being, or from any person having lawful custody thereof, or unlawfully and maliciously cancels, obliterates, injures or destroys the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order or warrant or power of attorney, or of any original document whatsoever of or belonging to any court of equity, or relating to any cause or matter begun, pending or terminated in any such court, or of any original document in relating to the business of any office or employment under Her Majesty, and being or remaining in any office appertaining to any court of justice, is guilty of a felony, and shall be liable to imprisonment for 3 years.

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#### **) Miners removing minerals**

Any person who, being employed in or about any mine takes, removes or conceals any mineral, as defined in the Mineral Development Licensing Act, found or being in such mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, or the holder of any mining licence or prospecting licence, is guilty of a felony, and is liable to imprisonment for 2 years.

#### **| Killing tame birds, etc.**

Any person who unlawfully and wilfully kills, wounds or takes any house-dove or tame bird is guilty of a misdemeanour, and shall be liable to a fine of \$10.

### **! Killing animals with intent to steal**

Any person who wilfully kills any animal with intent to steal the carcass, skin or any part of the animal killed, is guilty of felony, and shall be liable to the same punishment as if he had stolen such animal, provided that the offence of stealing the animal so killed would have amounted to felony.

### **! Larceny of or dredging for oysters**

**(1)**

Any person who unlawfully and wilfully uses any dredge, or any net, instrument or engine whatsoever within the limits of any oyster bed, laying or fishery, being the property of any other person and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or unlawfully and wilfully with any net, instrument or engine drags upon the ground or soil of any such fishery, is guilty of a misdemeanour, and shall be liable to imprisonment for 3 months:

Provided that nothing in this section shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument or engine adapted for taking floating fish only.

**(2)**

It shall be sufficient in any charge or information to describe either by name or otherwise the bed, laying or fishery in which any of the said offences have been committed without stating the same to be in any particular district.

### **! Factors obtaining advances on the property of their principals**

(1) Any person who, being a factor or agent entrusted, either solely or jointly with any other person, for the purpose of sale or otherwise, with the possession of any goods or of any document of title to goods, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use

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or benefit of any person other than the person by whom he was entrusted, and in violation of good faith —

**(a)**

consigns, deposits, transfers or delivers any goods or document of title so entrusted to him as and by way of pledge, lien or security for any money or valuable security borrowed or received or intended to be borrowed or received, by him; or

**(b)**

accepts any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, transfer or deliver any such goods or documents of title,

is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years:

Provided that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring or delivering any such goods or documents of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which, at the time of such consignment, deposit, transfer or delivery, was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent.

(2)

**(a)**

Any factor or agent entrusted as aforesaid and in possession of any document of title to goods shall be deemed to have been entrusted with the possession of the goods represented by such document of title.

**(b)**

Every contract pledging or giving a lien upon such document of title as aforesaid shall be deemed to be a pledge of and lien upon the goods to which the same relates.

**(c)**

Any such factor or agent as aforesaid shall be deemed to be in possession of such goods or documents whether the same are in his actual custody or are held by any other person subject to his control, or for him or on his behalf.

**(d)**

Where any loan or advance is made in good faith, to any factor or agent entrusted with and in possession of any such goods or documents of title on the faith of any contract or agreement in writing to consign, deposit, transfer or deliver such goods or documents of title, and such goods or documents of title are actually received by the person making such loan or advance, without notice that such actor or agent was not authorised to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or documents of title and within the meaning of this section, though such goods or documents of title are not actually received by the person making such loan or advance till the period subsequent thereto.

**(e)**

Any payment made whether by money or bill of exchange or other negotiable security shall be deemed to be an advance within the meaning of this section.



**(f)**

Any contract or agreement whether made direct with such factor or agent as aforesaid or with any person on his behalf shall be deemed to be a contract or agreement with such factor or agent.

(g)

Any factor or agent entrusted as aforesaid, and in possession of any goods or documents of title to goods shall be deemed for the purposes of this section, to have been entrusted therewith by the owner thereof, unless the contrary be shown in evidence.

### § Unlawful use of vehicles

Any person who unlawfully and without claim of right but not so as to be guilty of stealing, takes or converts to his own use or to the use of any other person any vehicle or cycle, however propelled, or any vessel, is guilty of a misdemeanour, and shall be liable to imprisonment for 12 months and to a fine of \$200.

## PART XXX - ROBBERY AND EXTORTION

### § Robbery

(1) Any person who —

(a)

being armed with any offensive weapon or instrument, or being together with one other person or more, robs, or assaults with intent to rob, any person; or

(b)

robs any person and, at the time of or immediately before or immediately after such robbery, uses or threatens to use any personal violence to any person,

is guilty of a felony, and shall be liable to imprisonment for life.

(2)

Any person who robs any person is guilty of a felony, and shall be liable to imprisonment for 14 years.

(3)

Any person who assaults any person with intent to rob is guilty of a felony, and shall be liable to imprisonment for 5 years.

### § Demanding money, etc., with menaces

(1) Any person who —

(a)

utters, knowing the contents thereof, any letter or writing demanding of any person with menaces and without any reasonable or probable cause, any property or valuable thing; or

**(b)**

utters, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person (whether living or dead) of any

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crime to which this section applies, with intent to extort or gain thereby any property or valuable thing from any person; or

(c) with intent to extort or gain any property or valuable thing from any person accuses or threatens to accuse either that person or any other person (whether living or dead) of any such crime, is guilty of a felony, and shall be liable to imprisonment for life.

**(2)**

Any person who with intent to defraud or injure any other person —

**(a)**

by any unlawful violence to or restraint of the person of another; or

**(b)**

by accusing or threatening to accuse any person (whether living or dead) of any such crime or of any felony, compels or induces any person to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security, or to write, impress or affix the name of any person, company, firm or co-partnership, or the seal of any body corporate, company or society upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a felony, and shall be liable to imprisonment for life.

**(3)**

This section applies to any crime punishable with death or imprisonment for not less than 7 years, or any assault with intent to commit any rape, or any attempt to commit any rape, or any solicitation, persuasion, promise or threat offered or made to any person, whereby to move or induce such person to commit or permit the abominable crime of buggery, either with mankind or with any animal.

**(4)**

For the purposes of this Code it is immaterial whether any menaces or threats be of violence, injury or accusation to be caused or made by the offender or by any other person.

### **) Demanding with menaces with intent to steal**

Any person who with menaces or by force demands of any person anything capable of being stolen with intent to steal is guilty of a felony, and shall be liable to imprisonment for 5 years.

### **) Threatening to publish with intent to extort**

Any person who with intent —

**(a)**

to extort any valuable thing from any person; or

**(b)**

to induce any person to confer or procure for any person any appointment or office of profit or trust —

(i) publishes or threatens to publish any libel upon any other person (whether living or dead);  
or

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(ii) directly or indirectly threatens to print or publish, or directly or indirectly proposes to abstain from or offers to prevent the printing or publishing of any matter or thing touching any other person (whether living or dead),

is guilty of a misdemeanour, and shall be liable to imprisonment for 2 years.

## **PART XXXI - BURGLARY, HOUSEBREAKING AND SIMILAR OFFENCES**

### **) Definitions of breaking and entering**

**(1)**

A person who breaks any part, whether external or internal, of a building, or opens by unlocking, pulling, pushing, lifting or any other means whatever, any door, window, shutter, cellar flap or other thing intended to close or cover any opening in a building, or an opening giving passage from one part of a building to another, is deemed to break the building.

**(2)**

A person is deemed to enter a building as soon as any part of his body or any part of any instrument used by him is within the building.

**(3)**

A person who obtains entrance into a building by means of any threat or artifice used for that purpose, or by collusion with any person in the building, or who enters any chimney or other aperture of the

building permanently left open for any necessary purpose, but not intended to be ordinarily used as a means of entrance, is deemed to have broken and entered the building.

### **| Sacrilege**

Any person who —

- (a)**  
breaks and enters any place of divine worship and commits any felony therein; or
- (b)**  
breaks out of any place of divine worship having committed any felony therein,

is guilty of the felony called sacrilege, and shall be liable to imprisonment for 14 years.

### **? Burglary**

Any person who in the night —

- (a)**  
breaks and enters the dwelling-house of another with intent to commit any felony therein; or
- (b)**

breaks out of the dwelling-house of another, having —

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- (i)**  
entered the said dwelling-house with intent to commit any felony therein; or
- (ii)**  
committed any felony in the said dwelling-house,

is guilty of the felony called burglary, and shall be liable to imprisonment for life.

### **! House-breaking and committing felony**

Any person who —

- (a)**  
breaks and enters any dwelling-house, or any building within the curtilage thereof and occupied therewith, or any school-house, shop, warehouse, counting-house, office, store, garage, pavilion, factory or workshop, or any building belonging to Her Majesty, or the Governor-General, or the Government of Tuvalu, or to any Kaupule



established under the Falekaupule Act, or any law or laws repealing and replacing the same, or to any other public body, and commits any felony therein; or

**(b)**

breaks out of the same, having committed any felony therein,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

### **l House-breaking with intent to commit felony**

Any person who, with intent to commit any felony therein —

**(a)**

enters any dwelling-house in the night; or

**(b)**

breaks and enters any dwelling-house, place of divine worship or any building within the curtilage thereof and occupied therewith, or any school-house, shop, counting-house, office, store, garage, pavilion, factory or workshop, or any building belonging to Her Majesty, or to the Governor-General or the Government of Tuvalu, or to any Kaupule established under the Falekaupule Act or any law or laws repealing and replacing the same, or to any other public body,

is guilty of a felony, and shall be liable to imprisonment for 7 years

### **ï Being found by night armed or in possession of housebreaking implements**

Any person who is found by night —

**(a)**

armed with any dangerous or offensive weapon or instrument, with intent to break or enter into any building and to commit any felony therein; or

**(b)**

having in his possession without lawful excuse (the proof whereof shall lie on such person) any key, picklock, crow, jack, bit or other implement of housebreaking; or



**(c)** having his face masked or disguised with intent to commit any felony; or in any building with intent to commit any felony therein, is guilty of a misdemeanour, and shall be liable —

**(i)**

if he has been previously convicted of any such misdemeanour or of any felony, to imprisonment for 10 years; and

**(ii)**

in all other cases to imprisonment for 5 years.

**§ Forfeiture of housebreaking instruments**

When any person is convicted of an offence under this Part the court may order that any instrument of housebreaking used in connection with any offence shall be forfeited to Her Majesty.

**PART XXXII - FRAUDS BY TRUSTEES AND PERSONS IN A POSITION OF TRUST AND FALSE ACCOUNTING**

**7 Conversion by trustee**

Any person who, being a trustee of any property for the use or benefit either wholly or partially of some other person, or for any public or charitable purpose, with intent to defraud converts or appropriates the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise disposes of or destroys such property or any part thereof, is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years:

Provided that no prosecution for any offence included in this section shall be commenced —

**(a)**

by any person without the sanction of the Attorney-General, or

**(b)**

by any person who has taken any civil proceedings against such trustee, without the sanction also of the court before whom such civil proceedings have been or are pending.

**§ Director, etc., of any body corporate or public company wilfully destroying books, etc.**

(1) Any person who —

(a) being a director, manager, public officer or member of any body corporate or public company, with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing or valuable security belonging to the body corporate or public company, or makes or concurs in the making of any false entry, or omits or concurs in

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omitting any material particular in any book of account or other document, or

**(b)**

being a director, manager or public officer of any body corporate or public company, as such receives or possesses himself of any of the property of such body corporate or public company, otherwise than in payment of

a just debt or demand, and, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company; or

(c)

being a director, manager, or public officer of any body corporate or public company, makes, circulates or publishes, or concurs in making, circulating or publishing, any written statement or account which he knows to be false in any material particular, with intent to deceive or defraud any member, shareholder or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof,

is guilty of a misdemeanor, and shall be liable to imprisonment for 7 years.

(2)

Nothing contained in this section shall enable or entitle any person to refuse to make a full and complete discovery by answer to any question or interrogatory in any civil proceeding in any court or upon the hearing of any matter in bankruptcy or insolvency.

(3)

A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible against that person in any proceeding in respect of any of the misdemeanours referred to in this section.

(4)

Nothing contained in this section, nor any proceeding, conviction or judgment to be had or taken thereon against any person under this section, shall prevent, lessen or impeach any remedy at law or in equity which any party aggrieved by any offence against this section might have had if this section had not been passed, but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against and nothing in this section contained shall affect or prejudice any agreement entered into, or security given, by any trustee having for its object the restoration or repayment of any trust property misappropriated.

### **) Fraudulent falsification of accounts**

(1) Any clerk, officer or servant, or any person employed or acting in the capacity of a clerk, officer or servant, who wilfully and with intent to defraud destroys, alters, mutilates, or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or which has been received by him for or on behalf of his employer, or who wilfully and



with intent to defraud makes, or concurs in making, any false entry in, or omits or alters, or concurs in omitting or altering any material particular from or in any such book or document or account, is guilty of a misdemeanour, and shall be liable to imprisonment for 7 years.

(2) It shall be sufficient in any information under this section to allege a general intent to defraud without naming any particular person intended to be defrauded.

## **PART XXXIII - FALSE PRETENCES**

### **) Definition of false pretence**

Any representation made by words, writing or conduct of a matter of fact, either past or present, which representation is false in fact, and which the person making it knows to be false, or does not believe to be true, is a false pretence.

### **| False pretences**

Any person who by any false pretence —

**(a)**

with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person; or

**(b)**

with intent to defraud or injure any other person fraudulently causes or induces any other person —

**(i)**

to execute, make, accept, endorse, alter or destroy the whole or any part of any valuable security; or

**(ii)**

to write, impress, or affix his name or the name of any other person or the seal of any body corporate or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security,

is guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.

### **? Obtaining credits by false pretences**

Any person who —

(a) in incurring any debt or liability obtains credit by any false pretence or by means of any other fraud; or

**(b)**

with intent to defraud his creditors or any of them, makes or causes to be made any gift, delivery or transfer of or any charge on his property; or

**(c)**

with intent to defraud his creditors or any of them conceals, sells or removes any part of his property, after or within 2 months before the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

**› Pretending to tell fortunes**

Any person who for gain or reward undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanour.

**› Obtaining registration, etc., by false pretence**

Any person who wilfully procures or attempts to procure for himself or any other person any registration, licence or certificate under any Act by any false pretence, is guilty of a misdemeanour.

**305 repealed**

**PART XXXIV - RECEIVING PROPERTY STOLEN OR UNLAWFULLY OBTAINED AND LIKE OFFENCES**

**› Receiving**

**(1)**

Any person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour, is guilty of an offence of the like degree (whether felony or misdemeanour) and shall be liable —

**(a)**

in the case of felony, to imprisonment for 14 years; and

**(b)**

in the case of misdemeanour, to imprisonment for 7 years.

**(2)**

Any person who receives any mail bag, or any postal packet, or any chattel, or money, or valuable security, the stealing, or taking, or embezzling or secreting whereof amounts to a felony or misdemeanour under the Post Office Act<sup>24</sup> or this Code, owing the same to have been so feloniously stolen, taken, embezzled or secreted, and to have been sent or to have been intended to be sent by post, is guilty of a felony or misdemeanour as the case may be and

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shall be liable to the same punishment as if he had stolen, taken, embezzled or secreted the same.

(3) Every such person may be proceeded against on information and convicted, whether the principal offender has or has not been previously convicted, or is or is not amendable to justice.

### **’ Receiving goods stolen outside Tuvalu**

Any person who, without lawful excuse, knowing the same to have been stolen or obtained in any way whatsoever under such circumstances that if the act had been committed in Tuvalu the person committing it would have been guilty of felony or misdemeanour, receives or has in his possession any property so stolen or obtained outside Tuvalu, is guilty of an offence of the like degree (whether felony or misdemeanour) and shall be liable to imprisonment for 7 years.

### **’ Power of Minister to notify applied marks for public stores**

(1)

The Minister may by notice give directions as to the marks which may be applied in or on any stores under the control of any branch or department of, and being the property of, the Government.

(2)

Any person who is charged with unlawfully conveying or having in his possession, or keeping in any building or place, whether open or enclosed, any stores so marked reasonably suspected to have been stolen or unlawfully obtained and who, upon being proved to the satisfaction of the court that there are reasonable grounds to suspect that such stores have been stolen or unlawfully obtained, fails to satisfy the court that he came by the same by lawful means, is guilty of a misdemeanour.

(3)

For the purposes of this section the term “stores” includes all goods and chattels and any single store or article or part thereof, and the word “marks” includes mark or any part of a mark.

### **’ Tracing possession and penalty for unlawful possession**

(1)

If any person brought or appearing before a court under the provisions of the last preceding section declares that he received any such thing as therein mentioned from some other person, or that he was employed as a carrier, agent or servant to convey the same for some other person, the court may

cause every such other person, and also any other person through whose possession any such thing may be suspected previously to have passed, to be brought before it, and may examine such person as to whether he has been in possession of any such thing.

(2)

Any such person who has been examined by the court under the provisions of the preceding subsection may be charged with unlawfully having possession

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of such thing reasonably suspected to have been stolen or unlawfully obtained and any person so charged who, upon it being proved to the satisfaction of the court —

(a)

that he has been in possession of such thing, or has admitted possession of such thing to the court; and

(b)

that there are reasonable grounds to suspect that such thing has been stolen or unlawfully obtained, fails to satisfy the court that he came by the same by lawful means, is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months or to a fine of \$100.

(3) For the purposes of this section, the possession of a carrier, agent or servant shall be deemed to be the possession of the person who shall have employed such carrier, agent or servant to convey the same.

### **) Evidence on charge of receiving**

Whenever any person is being proceeded against for receiving any property knowing it to have been stolen, or for having in his possession stolen property, for the purpose of proving guilty knowledge there may be given in evidence at any stage of the proceedings —

(a)

the fact that other property stolen within the period of 12 months preceding the date of the offence charged was found or has been in his possession; and

(b)

the fact that within the 5 years preceding the date of the offence charged he was convicted of any offence involving fraud or dishonesty. This last-mentioned fact may not be proved unless —

(i)

7 days notice in writing has been given to the offender that proof of such previous conviction is intended to be given; and

(ii)

evidence has been given that the property in respect of which the offender is being tried was found or has been in his possession.

### **| Compulsory disclosure not to afford evidence**

**(1)**

No person is liable to be convicted of any offence under sections 255, 256(a), 271, 284 and 297 upon any evidence whatever in respect of any act done by him if, at any time previously to his being charged with such offence, he has first disclosed such act on oath in consequence of any compulsory process of any court of law or equity in any action, suit or proceeding which has been *bona fide* instituted by any person aggrieved.

**(2)**

In any proceeding in respect of any proceedings in respect of any offence under sections 255, 256(a), 271, 284 and 297 a statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy is not admissible in evidence against that person.

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## **PART XXXV - OFFENCES INVOLVING INJURY TO PROPERTY**

### **? Arson**

Any person who wilfully and unlawfully sets fire to —

**(a)**

any building or structure whatever, whether completed or not; or

**(b)**

any aircraft, vehicle or vessel, whether completed or not; or

**(c)**

any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

(d) a mine, or the workings, fittings or appliances of a mine, is guilty of a felony, and shall be liable to imprisonment for life.

### **313 Attempts to commit arson**

Any person who —

**(a)**



attempts unlawfully to set fire to any such thing as is mentioned in the last preceding; or

**(b)**

wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

#### **l Setting fire to crops and growing plants**

Any person who wilfully and unlawfully sets fire to —

**(a)**

a crop of cultivated produce, whether standing, picked or cut; or

**(b)**

a crop of hay or grass under cultivation, whether the natural or indigenous produce of the soil or not, and whether standing or cut; or

**(c)**

any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

#### **ï Attempting to set fire on crops, etc.**

Any person who —

(a) attempts unlawfully to set fire to any such thing as is mentioned in the last preceding section; or

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(b) wilfully and unlawfully sets fire to anything which is so situated that any such thing as is mentioned in the last preceding section is likely to catch fire from it,

is guilty of a felony, and shall be liable to imprisonment for 7 years.

#### **ï Casting away vessels**

Any person who —

**(a)**

wilfully and unlawfully casts away or destroys any vessel, whether completed or not; or

**(b)**

wilfully and unlawfully does any act which tends to the immediate loss or destruction of a vessel in distress; or

(c) with intent to bring a vessel into danger, interferes with any light, beacon, buoy, mark or signal used for purposes of navigation, or exhibits any false light or signal,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

### **' Attempts to cast away vessels**

Any person who attempts unlawfully to cast away or destroy a vessel, whether completed or not, or attempts unlawfully to do any act tending to the immediate loss or destruction of a vessel in distress, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **› Injuring animals**

Any person who wilfully and unlawfully kills, maims or wounds any animal or bird capable of being stolen, is guilty of a misdemeanour.

### **) Punishment for malicious injuries in general and in special cases**

(1)

Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and he shall be liable, if no other punishment is provided, to imprisonment for 2 years.

(2)

If the property in question is a dwelling- house or a vessel, and the injury is caused by the explosion of any explosive substance, and if —

(a)

any person is in the dwelling-house or vessel; or

(b)

the destruction or damage actually endangered the life of any person,

the offender is guilty of a felony, and shall be liable to imprisonment for life.

(3)

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(a)

If the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or work which appertains to a dock, reservoir or inland water, and the injury causes actual danger of inundation or damage to any land or building; or

(b)

if the property in question is a bridge, viaduct or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes and the property is destroyed; or

**(c)**

if the property in question, being any such bridge, viaduct or aqueduct, is damaged, and the damage is done with intent to render the bridge, viaduct or aqueduct, or the highway or canal passing over or under the same, or any part thereof, dangerous or impassable, and the same or any part thereof is rendered dangerous or impassable,

the offender is guilty of a felony, and shall be liable to imprisonment for life.

**(4)**

If the property in question is a testamentary instrument, whether the testator is living or dead or a register which is authorised or required by law to be kept for authenticating or recording the title to any property, or for recording births, baptisms, marriage, deaths or burials, or a copy of any part of any such register which is required by law to be sent to any public officer, the offender is guilty of a felony, and shall be liable to imprisonment for 14 years.

**(5)**

If the property in question is a vessel in distress or wrecked or stranded, or anything which belongs to such vessel, the offender is guilty of a felony and shall be liable to imprisonment for 7 years.

**(6)**

**(a)**

If the property in question, being a vessel, whether completed or not, is destroyed; or

**(b)**

if the property in question being a vessel, whether completed or not, is damaged, and the damage is done with intent to destroy it or render it useless; or

**(c)**

if the property in question is a light, beacon, buoy, mark or signal used for the purposes of navigation, or for the guidance of persons engaged in navigation; or

**(d)**

if the property in question is a bank or wall of a river, canal, aqueduct, reservoir or inland water, or a work which appertains to a dock, canal, aqueduct, reservoir or inland water, or which is used for the purpose of lading or unloading goods; or

**(e)**

if the property in question, being a bridge, viaduct or aqueduct which is constructed over a highway or canal, or over which a highway or canal passes, is damaged, and the damage is done with intent to render the bridge, viaduct or aqueduct, or the highway or canal passing over or under the same, or any part thereof, dangerous or impassable; or

**(f)**

if the property in question, being anything in process of manufacture, or an agricultural or manufacturing machine, or a manufacturing

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implement or a machine or appliance used or intended to be used for performing any process connected with the preparation of any agricultural or pastoral produce, is destroyed; or

**(g)**

if the property in question, being any such thing, machine, implement or appliance as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question, or to render it useless; or

**(h)**

if the property in question is a shaft or a passage of a mine, and the injury is done with intent to damage the mine or to obstruct its working; or

**(i)**

if the property in question is a machine, appliance, apparatus, building, erection, bridge, or road, appertaining to or used with a mine, whether the thing in question is completed or not; or

**(j)**

if the property in question, being a rope, chain, or tackle or of whatever material, which is used in a mine, or upon any way or work appertaining to or used with a mine, is destroyed; or

**(k)**

if the property in question, being any such rope, chain or tackle, as last aforesaid, is damaged, and the damage is done with intent to destroy the thing in question or to render it useless; or

**(l)**

if the property in question is a well, or bore for water, or the dam, bank, water, or floodgate of a millpond or pool,

the offender is guilty of a felony and shall be liable to imprisonment for 7 years.

(7) If the property in question is a document which is deposited or kept in a public office, or which is evidence of title to any land or estate in land, the offender is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **) Attempts to destroy property by explosives**

Any person who, unlawfully and with intent to destroy or damage any property, puts any explosive substance in any place whatsoever, is guilty of a felony, and shall be liable to imprisonment for 14 years.

### **| Communicating infectious diseases to animals**

Any person who wilfully and unlawfully causes or is concerned in causing, or attempts to cause, any infectious disease to be communicated to or among any animal or animals capable of being stolen, is guilty of a felony and shall be liable to imprisonment for 7 years.



**! Removing boundary marks with intent to defraud**

Any person who wilfully and unlawfully, and with intent to defraud, removes or defaces any object or mark which has been lawfully erected or made as an indication of the boundary of any land, is guilty of a felony, and shall be liable to imprisonment for 3 years.

**! Wilful damage, etc., to survey and boundary marks**

Any person who —

**(a)**

wilfully removes, defaces or injures any survey mark or boundary mark, which shall have been made or erected by or under the direction of any Government department or in the course of or for the purposes of a Government survey; or

**(b)**

being under an obligation to maintain in repair any boundary mark made or erected as aforesaid, neglects or refuses to repair the same; or

**(c)**

wilfully removes, defaces or injures any survey mark erected by or under the authority of any licensed surveyor or any mark erected by an intending applicant for any lease, licence or right under an Act relating to mines or minerals,

is guilty of a misdemeanour, and may further be ordered by the court to pay the cost of repairing or replacing the survey mark or boundary mark and of making any survey rendered necessary by the offender's act or neglect.

**! Threats to burn, etc.**

Any person who, knowing the contents thereof, sends, delivers, utters, or directly or indirectly causes to be received, any letter or writing threatening to burn or destroy any house, barn or other building, or any rick or stack of grain, hay or straw, or other agricultural produce, whether in or under any building or not, or any vessel, or to kill, maim or wound any cattle, is guilty of a felony, and shall be liable to imprisonment for 7 years.

## PART XXXVI - FORGERY, COINING, COUNTERFEITING AND SIMILAR OFFENCES

### Definitions for purposes of sections relating to forgery, etc.

(1) In this Part, unless the context otherwise requires —

“**bank note**” includes any note or bill of exchange of the Bank of England or of any other person, body corporate or company carrying on the business of banking, in any part of the world, and includes “**bank bill**, “**bank post bill**”,

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“**blank bank note**”, “**blank bank bill of exchange**” and “**blank bank post bill**”;

“**coin**” and “**current coin**” —

(a)

“**copper coin**” includes any coin or any metal not being a gold or silver coin;

(b)

a coin shall be deemed to be current if it has been coined in any of Her Majesty’s Mints, or is lawfully current, by virtue of any proclamation or otherwise, in any part of Her Majesty’s dominions, whether within Tuvalu or otherwise, or is lawfully current in any foreign country;

(c)

a coin apparently intended to resemble or pass for any current coin shall be deemed to resemble that current coin;

(d)

a current coin which has been gilt, silvered, washed, coloured or cased over or in any manner altered so as to resemble any current coin of a higher denomination shall be deemed to be false or counterfeit coin resembling a current gold or silver coin;

“**currency note**” includes any currency note issued by Her Majesty’s Treasury under any Act of the Imperial Parliament, and any currency note (by whatever name called) which is legal tender in the country in which it is issued;

“**die**” includes any plate, type, tool, or implement whatsoever, and also any art of any die, plate, type, tool, or implement, and any stamp or impression thereof or any part of such stamp or impression;

“**revenue paper**” means any paper provided by the proper authority for the purpose of being used for stamps, licences, permits, post office money orders, or postal orders, or for any purpose whatever connected with the public revenue;

“**seal**” includes any stamp or impression of a seal or any stamp or impression made or apparently intended to resemble the stamp or impression of a seal as well as the seal itself;

“**stamp**” includes a stamp impressed by means of a die as well as an adhesive stamp;

“**treasury bill**” includes Exchequer bill, Exchequer bond, Exchequer debenture, and War bond.

- (2) References in this Part to any Government department shall, in relation to any functions performed by that department, be held to include references to any other Government department by which the same functions were previously performed.



### § Definition of forgery

(1)

Forgery is the making of a false document in order that it may be used as genuine, and in the case of the seals and dies mentioned in this Part the counterfeiting of a seal or die, and forgery with intent to defraud or deceive, as the case may be, shall be punishable as provided in this Part.

(2)

It is immaterial in what language a document is expressed or in what place within or without Her Majesty’s dominions it is expressed to take effect.

(3)

Forgery of a document may be complete even if the document when forged is incomplete, or is not or does not purport to be such a document as would be binding or sufficient in law.

(4)

The crossing on any cheque, draft on a banker, post office money order, postal order, coupon, or other document the crossing of which is authorised or recognised by law, is a material part of such cheque, draft, order, coupon, or document.

### ’ False document

(1)

A document is false if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorise its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false —

(a)

if any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein; or

**(b)**

if the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person; or

**(c)**

if, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorised it.

**(2)**

A document may be a false document for the purposes of this Part notwithstanding that it is not false in any such manner as is described in subsection (1).

### **3 Intent to defraud**

An intent to defraud is presumed to exist if it appears that at the time when the false document was made there was in existence a specific person ascertained or unascertained capable of being defrauded thereby, and this presumption is not

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rebutted by proof that the offender took or intended to take measures to prevent such person from being defrauded in fact, nor by the fact that he had or thought he had a right to the thing to be obtained by the false document.

### **4 Forgery of certain documents with intent to defraud**

**(1)**

Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for life —

**(a)**

any will, codicil, or other testamentary document, either of a dead or of a living person, or any probate or letters of administration, whether with or without the will annexed;

**(b)**

any deed or bond, or any assignment at law or in equity of any deed or bond or any attestation of the execution of any deed or bond;

**(c)**



any currency note or bank note, or any endorsement on or assignment of any bank note.

**(2)**

Forgery of any of the following documents, if committed with intent to defraud, is a felony, and punishable with imprisonment for 14 years —

**(a)**

any valuable security or assignment thereof or endorsement thereon, or where the valuable security is a bill of exchange, any acceptance thereof;

**(b)**

any document of title to lands or any assignment thereof or endorsement thereon;

**(c)**

any document of title to goods or any assignment thereof or endorsement thereon;

**(d)**

any power of attorney or other authority to transfer any share or interest in any stock, annuity, or public fund of the United Kingdom or any part of Her Majesty's dominions or of any foreign state or country or to transfer any share or interest in the debt of any public body, company or society, British or foreign, or in the capital stock of any such company or society, or to receive any dividend or money payable in respect of such share or interest or any attestation of any such power of attorney or other authority;

**(e)**

any entry in any book or register which is evidence of the title of any person to any share or interest hereinbefore mentioned or to any dividend or interest payable in respect thereof;

**(f)**

any policy of insurance or any assignment thereof or endorsement thereon;

**(g)**

any charter-party or any assignment thereof;

**(h)**

any certificate of the Accountant or other officer acting in execution of the Income Tax Act.<sup>25</sup>



**(1)**

Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony and punishable with imprisonment for life, any document whatsoever having thereon or affixed thereto the stamp or impression of the Great Seal of the United Kingdom, Her Majesty's Privy Seal, and privy signet of Her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's official seals, or the public seal of Tuvalu.

**(2)**

Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 14 years —

**(a)**

any register or record of births, baptisms, namings, dedications, marriages, deaths, burials or cremations, which now is, or hereafter may be by law authorised or required to be kept in Tuvalu, relating to any birth, baptism, naming, dedication, marriage, death, burial or cremation, or any part of any such register, or any certified copy of any such register, or of any part thereof;

**(b)**

any copy of any register of baptisms, marriages, burials or cremations, directed or required by law to be transmitted to any registrar or other officer;

**(c)**

any certified copy of a record purporting to be signed by any officer having charge of any public documents or records in Tuvalu;

**(d)**

any wrapper or label provided by or under the authority of the Accountant or the Customs Officer.

**(3)**

Forgery of any of the following documents, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 7 years —

**(a)**

any official document whatsoever of or belonging to any court of justice, or made or issued by any judge, magistrate, officer or clerk of any such court;

**(b)**

any register or book kept under the provisions of any law in or under the authority of any court of justice;

**(c)**

any certificate, office copy or certified copy of any such document, register, or book or of any part thereof;

**(d)**

any document which any magistrate is authorised or required by law to make or issue;

**(e)**

any document which any person authorised to administer an oath under any law in force in Tuvalu is authorised or required by law to make or issue;

**(f)**

any document made or issued by a head of a Government department or law officer of the Crown, or any document upon which, by the law or usage at the time in force, any court of justice or any officer might act:

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**(g)**

any document or copy of a document used or intended to be used in evidence in any court of record, or any document which is made evidence by law;

**(h)**

any certificate or consent required by any Act for the celebration of marriage,

**(i)**

any licence for the celebration of marriage which may be given by law;

**(j)**

any certificate, declaration or order under any enactment relating to the registration of births or deaths;

**(k)**

any register, book, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certificate of mortgage or sale, under Part I of the Merchant Shipping Act 1894 or any entry or endorsement required by the said Part of the said Act to be made in or on any of those documents;

**(l)**

any permit, certificate or similar document made or granted by or under the authority of the Customs Officer or any other officer of Customs;

**(m)**

any certificate not heretofore specified.

### **| Forging copies of certificates of records**

Any person, being the clerk of any court or other officer having the custody of the records of any court, or being the deputy of any such clerk or officer, utters any false copy or certificate of any record knowing the same to be false, and any person who delivers, or causes to be delivered, to any person any paper falsely purporting to be any such process, or a copy thereof, or to be any judgment, decree or order of any court of

law or equity, or a copy thereof, knowing the same to be false, or acts or professes to act under any such false process knowing the same to be false, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **? Forging registers of births, baptisms, marriages, death or burial**

Any person who knowingly and unlawfully inserts, or causes or permits to be inserted, in any register of births, baptisms, marriages, deaths or burials which now is or hereafter shall be by law authorised or required to be kept in Tuvalu, or in any certified copy thereof, any false entry of any matter relating to any birth, baptism, marriage, death or burial, or knowingly and unlawfully gives any false certificate relating to any birth, baptism, marriage, death or burial or certifies any writing to be a copy or extract from any such register, knowing such writing or the part of such register where of such copy or extract shall be so given, to be false in any material particular, or offers, utters, disposes of or puts off any such register, entry, certified copy, or certificate knowing the same to be false, or offers, utters, disposes of or puts off any copy of an entry in any such register, knowing such entry to be false, is guilty of a felony, and shall be liable to imprisonment for 14 years.

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### **! Making false entry in copies of register sent to registrar**

Any person who knowingly and wilfully inserts, or causes or permits to be inserted, in any copy of any register directed or required by law to be transmitted to any registrar or other officer any false entry of any matter relating to any baptism, marriage, or burial, or knowingly and wilfully signs or verifies any copy of any register so directed or required to be transmitted as aforesaid, which copy is false in any part thereof, knowing the same to be false, or for any fraudulent purpose takes from its place of deposit and conceals any such copy of any register, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **! Forgery of other document with intent to defraud or deceive a misdemeanour**

(1)

Forgery of any document which is not made a felony under this or any other Act for the time being in force, if committed with intent to defraud, is a misdemeanour.

(2)

Forgery of any public document which is not made a felony under this or any other Act for the time being in force, if committed with intent to defraud or deceive, is a misdemeanour.

(3)

Forgery of any passport is a misdemeanour.

### **! Forgery of seals and dyes**

(1)

Forgery of any of the following seals, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for life —

**(a)**

the Great Seal of the United Kingdom, Her Majesty's Privy Seal, any privy signet of Her Majesty, Her Majesty's Royal Sign Manual, or any other of Her Majesty's seals, or the public seal of Tuvalu;

**(b)**

the seal of any court of record.

**(2)**

Forgery of any of the following seals, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 14 years —

**(a)**

the seal of any registry office relating to births, baptisms, marriages, or deaths;

**(b)**

the seal of any burial authority or of any local authority performing the duties of a burial authority;

**(c)**

the seal of or belonging to any office for the registry of deeds or titles to lands.

**(3)**

Forgery of any of the following seals, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 7 years —

**(a)**

the seal of any court of justice other than a court of record;

**(b)**

the seal of a notary public.

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**(4)**

Forgery of any of the following dies, if committed with intent to defraud or deceive, is a felony and punishable with imprisonment for 14 years —

**(a)**

any die provided, made or used by the Accountant or the Customs Officer;

**(b)**

any die which is or has been required or authorised by law to be used for the marking or stamping of gold or silver plate or gold or silver wares.

**(5)**

Forgery of any of the following dies, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for 7 years —

Any stamp or die provided, made or used in pursuance of the Post Office Act.

### **§ Uttering**

**(1)**

Any person who knowingly and with intent to deceive or defraud utters any forged document, seal or die is guilty of an offence of the like degree (whether felony or misdemeanour) and shall be liable to the same punishment as if he himself had forged the document, seal or die.

**(2)**

It is immaterial where the document, seal or die was forged.

### **¶ Uttering cancelled or exhausted documents**

Any person who knowingly utters, as and for a subsisting and effectual document, any document which has by any lawful authority been ordered to be revoked, cancelled or suspended, or the operation of which has ceased by effluxion of time, or by death, or by the happening of any other event, is guilty of an offence of the same kind, and is liable to the same punishment, as if he had forged the document.

### **§ Demanding property on forged documents**

Any person who, with intent to defraud, demands, receives or obtains, or causes or procures to be delivered, paid or transferred to any person, or endeavours to receive or obtain or to cause or procure to be delivered, paid or transferred to any person any money, security for money or other property, real or personal —

**(a)**

under, upon or by virtue of any forged instrument whatsoever, knowing the same to be forged; or

**(b)**

under, upon or by virtue of any probate or letters of administration, knowing the will, testament, codicil, or testamentary writing on which such probate or letters of administration have been obtained to have been forged, by any false oath, affirmation, or affidavit,

is guilty of a felony, and shall be liable to imprisonment for 14 years.



### **) Possession of forged documents, seals and dies**

**(1)**

Any person who, without lawful authority or excuse the proof whereof lies on the accused, imports into Tuvalu or purchases or receives from any person, or has in his custody or possession, a forged currency note or bank note, knowing the same to be forged, is guilty of a felony, and shall be liable to imprisonment for 14 years.

**(2)**

Any person who, without lawful authority or excuse, the proof whereof lies on the accused, and knowing the same to be forged, has in his custody or possession —

**(a)**

any forged die required or authorised by law to be used for the marking of gold or silver plate, or of gold or silver wares, or any ware of gold, silver or base metal bearing the impression of any such forged die; or

**(b)**

any forged stamp or die as defined by the Post Office Act; or

**(c)**

any forged wrapper or label provided by or under the authority of the Accountant or Customs Officer,

is guilty of a felony, and shall be liable to imprisonment for 14 years.

**(3)** Any person who, without lawful authority or excuse, the proof whereof lies on the accused, and knowing the same to be forged, has in his custody or possession any forged stamps or die, resembling or intended to resemble either wholly or in part any stamp or die which at any time whatever has been or may be provided made or used by or under the direction of the local authority for the purposes of the Post Office Act, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **) Making or having in possession paper or implements for forgery**

Any person who, without lawful authority or excuse, the proof whereof lies on the accused —

**(a)**

makes, uses, or knowingly has in his custody or possession, any paper intended to resemble and pass as —

**(i)**

special paper such as is provided and used for making any currency note, bank note or treasury bill; or

**(ii)**

revenue paper; or

**(b)**

makes, uses, or knowingly has in his custody or possession, any frame, mould, or instrument for making such paper, or for producing in or on such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper; or

(c)

engraves or in anywise makes upon any plate, wood, stone, or other material, any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines or devices peculiar to and used in or on any currency note or bank note, or in or on any document entitling or evidencing the title

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of any person to any share of interest in any public stock, annuity, fund or debt of any part of Her Majesty's dominions or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company, or society, whether within or without Her Majesty's dominions; or

(d)

uses or knowingly has in his custody or possession any plate, wood, stone, or other material, upon which any such words, figures, letters, marks, lines or devices have been engraved or in anywise made as aforesaid; or

(e)

uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines or devices have been printed or in anywise made as aforesaid,

is guilty of a felony, and shall be liable to imprisonment for 7 years.

#### **| Purchasing or having in possession certain paper before it had been stamped and issued**

Any person who, without lawful authority or excuse, the proof whereof lies on the accused, purchases, receives, or knowingly has in his custody or possession —

(a)

any special paper provided and used for making currency notes, treasury bills or any revenue paper before such paper has been duly stamped, signed, and issued for public use; or

(b)

any die peculiarly used in the manufacture of any such paper; or

(c)

any facsimile of the signature on or the design of any currency notes which are lawful tender in Tuvalu; or

(d)

any unfinished or incomplete currency note purporting to be similar to a currency note which is lawful tender in Tuvalu,



is guilty of a misdemeanour.

### **! Falsifying warrant for money payable under public authority**

Any person who, being employed in the public service, knowingly and with intent to defraud makes out or delivers to any person a warrant for the payment of any money payable by public authority, for a greater or less amount than that to which the person on whose behalf the warrant is made out is entitled, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **! Procuring execution of documents by false pretences**

Any person who, by means of any false and fraudulent representations as to the nature, contents or operation of a document, procures another to sign or execute the document, is guilty of an offence of the same kind, and shall be liable to the same punishment, as if he had forged the document.

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### **! Letter written for certain persons to be signed etc., by writer**

(1)

Any person who writes a letter or petition at the request or in the name of a person who is unable to read the language in which the letter or petition is written, shall write thereon his own name and address; and his doing so shall imply a statement by him that he was instructed to write the letter or petition by the said person and that it conveys neither more or less than the meaning intended by that person, and (if it is or purports to be signed or executed by him) that it was read over and explained to him and that he fully understood the contents thereof before he signed or executed it, and that the mark or signature thereon which purports to be his, is his mark or signature; and if the writer does not write his own name and address on such letter or petition, or if (having done so), the statement implied as aforesaid is in any particular untrue, he is guilty of an offence, and shall be liable to a fine of \$10.

(2)

For the purposes of this section “own name” means full, true and proper country or native name, where a person has a country or native name, otherwise a person’s true and proper surname and his Christian or other first name if any.

### **! Counterfeiting**

(1)

Any person who falsely makes or counterfeits any coin resembling any current coin is guilty of a felony, and shall be liable —

(a)

in a case where the coin resembles a current gold or silver coin, to imprisonment for life; and

**(b)**

in the case where the coin resembles a current copper coin, to imprisonment for 7 years.

**(2)**

The offence of falsely making or counterfeiting a coin is deemed to be complete although the coin made or counterfeited is not in a fit state to be uttered or the making or counterfeiting thereof has not been finished or perfected.

### **§ Gilding, silvering, filing and altering**

Any person who —

(a) gilds or silvers, or with any wash or materials capable of producing the colour or appearance of gold or silver or by any means whatsoever, washes, cases over or colours —

**(i)**

any coin whatsoever resembling any current gold or silver coin; or

**(ii)**

any current copper coin, with intent to make it resemble or pass for any current gold or silver coin; or

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(iii) any piece of silver or copper or of coarse gold or coarse silver or of any metal or mixture of metals, being of a fit size and figure to be coined, with intent that it shall be coined into false and counterfeit coin resembling any current gold or silver coin; or

**(b)**

gilds, or, with any wash or materials capable of producing the colour or appearance of gold or by any means whatsoever, washes, cases over or colours, any current silver coin with intent to make it resemble or pass for any current gold coin; or

**(c)**

files or in any manner alters —

**(i)**

any current silver coin with intent to make it resemble or pass for any current gold coin; or

(ii)

any current copper coin with intent to make it resemble or pass for any current gold or silver coin,

is guilty of a felony, and shall be liable to imprisonment for life.

**’ Impairing gold or silver coin and unlawfully possession of filing, etc.**

(1)

Any person who impairs, diminishes or lightens any current gold or silver coin with intent that the coin so impaired, diminished or lightened may pass for a current gold or silver coin, is guilty of a felony of a felony, and shall be liable to imprisonment for 14 years

(2)

Any person who unlawfully has in his possession any filing or clipping, or any gold or silver bullion, or any gold or silver in dust, solution or otherwise, which has been produced or obtained by impairing, diminishing or lightening any current gold or silver coin, knowing that it has been so produced or obtained, is guilty of a felony, and shall be liable to imprisonment for 7 years.

**’ Uttering and possession with intent to utter**

(1)

Any person who tenders, utters or puts off any false or counterfeit coin resembling any current coin knowing it to be false or counterfeit, is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

(2)

Any person who tenders, utters or puts off any false or counterfeit coin resembling any current gold or silver coin, knowing it to be false or counterfeit, and —

(a)

at the time of the tendering, uttering or putting off has in his possession, besides that coin, knowing it to be false or counterfeit coin; or

(b)

on the date of the tendering, uttering or putting off, or within the period of 10 days next following, tenders, utters or puts off any other such false or counterfeit coin, knowing it to be false or counterfeit,

is guilty of a misdemeanour.



(3)

Any person who has in his possession 3 or more false or counterfeit coins resembling any current gold or silver coin, knowing them to be false or counterfeit, and with intent to utter or put off the said coins or any of them, is guilty of a misdemeanour, and shall be liable to imprisonment for 5 years.

(4)

Any person who has in his possession 3 or more false or counterfeit coins resembling any current copper coin, knowing them to be false or counterfeit, and with intent to utter or put off said coins or any of them, is guilty of a misdemeanour, and will be liable to imprisonment for 1 year

(5)

Any person who commits —

(a)

any misdemeanour under subsection (1) in respect of a coin resembling a current gold or silver coin; or

(b)

any misdemeanour under subsection (2) or subsection (3),

having been previously convicted of any such misdemeanour or of any felony under this Part, is guilty of a felony, and shall be liable to imprisonment for life.

(6) Any person who, with intent to defraud, tenders, utters or puts off as or for any current gold or silver coin —

(a)

any coin not being that current coin and being of less value than that current coin; or

(b)

any medal or piece of metal or mixed metals resembling in size, figure and colour that current coin and being of less value than that current coin,

is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

(7) The offence of tendering, uttering, or putting off a false or counterfeit coin is deemed to be complete although the coin is not in a fit state to be uttered or the counterfeiting thereof has not been finished or perfected.

### **) Buying or selling etc., counterfeit coin for lower value than its denomination**

(1)

Any person who, without lawful authority or excuse the proof whereof lies on the accused, buys, sells, receives, pays or puts off, or offers to buy, sell, receive, pay or put off, any false or counterfeit coin resembling any current coin at or for a lower rate of value than the false or counterfeit coin imports, or apparently is intended to import, is guilty of a felony, and shall be liable —

(a)

in a case where the coin resembles a current gold or silver coin, to imprisonment for life; and

**(b)**

in a case where the coin resembles a current copper coin, to imprisonment for 7 years.

**(2)**

An offence under this section shall be deemed to be complete although the coin bought, sold, received, paid or put off, or offered to be bought, sold,

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received, paid or put off, is not in a fit state to be uttered, or the counterfeit thereof has not been finished or perfected.

### **l Importing and exporting counterfeit coin**

(1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused —

**(a)**

imports or receives into Tuvalu from beyond the seas any false or counterfeit coin resembling any current gold or silver coin, knowing it to be false or counterfeit; or

**(b)**

exports from Tuvalu or puts on board any ship, vessel, or boat of being so exported, any false or resembling any current coin, knowing it to be false or counterfeit,

is guilty, in the case of importing or receiving, of a felony, and, in the case of exporting or putting on board, of a misdemeanour, and shall be liable to imprisonment for 14 years.

(2) Nothing in this section shall affect the provisions relating to the importation of coin and counterfeit coin contained in the Customs Act.

### **l Making, possessing and selling medals resembling gold or silver coin**

Any person who, without lawful authority or excuse, the proof whereof lies on the accused, makes, sells, offers for sale or has in his possession for sale, any medal, cast, coin, or other like made wholly or partially of metal or any mixture of metals, and either —

**(a)**

resembling in size, figure and colour any current gold or silver coin; or

**(b)**

having thereon a device resembling a device on any such current coin; or

**(c)**

be so formed that it can, by gilding, silvering, colouring, washing or other like process be so dealt with as to resemble any such coin,

is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

### **! Making, mending and having possession of coining implements**

- (1) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, knowingly makes or mends or begins or proceeds to make or mend, or buys or sells or has in his possession, any puncheon, counter puncheon, matrix, stamp, die, pattern or mould in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended to make or impress, the figure, stamp or apparent resemblance of both or either of the sides of any current gold or silver coin, or any part of

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both or either of those sides, is guilty of a felony and shall be liable to imprisonment for life.

- (2) Any person who, without lawful authority or excuse the proof whereof lies on the accused makes, or mends, or begins or proceeds to make or mend, or buys or sells, or has in his possession —

**(a)**

any edger, edging or other tool, collar instrument or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any current gold or silver coin, knowing it to be so adapted and intended as aforesaid; or

**(b)**

any press for coinage, or any cutting engine for cutting by force of a screw or of any other contrivance round blanks out of gold, silver or other metal or mixture of metals, or any other machine, knowing the press to be a press for coinage or knowing the engine or machine to have been used or to be intended to be used for the false making or counterfeiting of any current gold or silver coin,

is guilty of a felony, and shall be liable to imprisonment for life.

- (3) Any person who, without lawful authority or excuse, the proof whereof lies on the accused, knowingly makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his possession, any instrument, tool or engine adapted and intended for the counterfeiting of any current copper coin, is guilty of a felony, and shall be liable to imprisonment for 7 years.

### **! Breaking up coin suspected to be counterfeit**

**(1)**

If any person suspects any coin tendered to him as current gold or silver coin to have been diminished otherwise than by reasonable wearing or to be counterfeit, it shall be lawful for him to break the coin.

**(2)**

If any coin when so broken appears to have been diminished otherwise than as aforesaid or to be counterfeit the person tendering it shall bear the loss thereof, but if it is of due weight and appears to be lawful coin the person breaking it shall receive it at the rate it was coined for.

**(3)**

If any dispute arises whether any coin so broken has been diminished otherwise than as aforesaid or is counterfeit it shall be heard and finally determined in a summary manner by a magistrate.

**(4)**

In this section reference to breaking shall include references to cutting, binding, and defacing.

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### **┆ Evidence of coin being counterfeit**

Where a person is charged with an offence against this Part the fact that a coin produced in evidence against him is false or counterfeit may be proved by the evidence of any credible witness.

### **┆ Defacing and uttering defaced coins**

**(1)**

Any person who defaces any current coin by stamping thereon any names or words, whether the coin is or is not thereby diminished or lightened, is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

**(2)**

A tender of payment in money made in any coin which has been defaced as aforesaid is not legal tender.

**(3)**

Any person who tenders, utters or puts off any coin which has been defaced as aforesaid is guilty of an offence, and shall be liable to a fine of \$4:

Provided that no proceeding shall be instituted under this section without the consent of the Attorney-General.

### **┆ Melting down of currency**

Any person who melts down, or breaks up or uses otherwise than as currency any silver coin current for the time being in Tuvalu, is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months.

#### **' Mutilating or defacing currency notes**

Any person who, without lawful authority or excuse, the proof whereof lies on the accused, mutilates or in any way defaces a currency note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto anything in the nature or form of an advertisement, is guilty of a misdemeanour, and shall be liable to a fine of \$40.

#### **} Imitation of currency**

(1)

Any person who, without lawful authority or excuse, the proof whereof lies on the accused, sells or offers or exposes for sale, any article which bears a design in imitation of any currency note or bank note or coin in current use in Tuvalu or elsewhere is guilty of a misdemeanour, and shall be liable to imprisonment for 6 months.

(2)

Any person who makes or causes to be made or uses for any purpose whatsoever any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency note, or any

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part thereof, is guilty of a misdemeanour, and shall be liable to a fine of \$10 in respect of each such document.

(3)

Any person whose name appears on any document the making of which is an offence under this section, who refuses to disclose to a police officer the name and address of the person by whom it was printed or made, is guilty of a misdemeanour, and shall be liable to a fine of \$ 20.

(4)

Where the name of any person appears on any document in respect of which any person is charged with an offence under this section or on any other document used or distributed in connection with that document, it shall be prima facie evidence that that person caused the document to be made.

#### **) Forfeiture of forged bank notes, currency notes, etc.**



Where any forged bank note, currency, note or any counterfeit coin or any machinery, implement, utensil or material used or intended to be used for the forging of a bank note or currency note or for counterfeiting coin, is seized under a search warrant or by any police officer, the bank note, currency note, counterfeit coin, machinery, implement, utensil or material, as the case may be, shall be delivered up to the Minister, or to any person authorised by him for the purpose, by order of the court before which the offender is tried or if there is no trial by order of the court issuing the search warrant or by the police officer seizing such note, coin, machinery, implement, utensil or material, and upon delivery to the Minister or to any person authorised by him, such note, coin, machinery, implement, utensil or material shall be deemed forfeit.

## **PART XXXVII - PERSONATION**

### **) Personation in general**

**(1)**

Any person who, with intent to defraud any person, falsely represents himself to be some other person, living or dead, is guilty of a misdemeanour.

**(2)**

If the personation is that the offender is a person entitled by will or operation of law to any specific property and he commits the offence to obtain such property or possession thereof, he shall be liable to imprisonment for 7 years.

### **| Falsely acknowledging deeds, recognisances, etc.**

Any person who, without lawful authority or excuse, the proof of which lies on him, makes, in the name of any other person, before any court or person lawfully authorised to take such an acknowledgement, an acknowledgement or liability of any kind, or an acknowledgement of a deed or other instrument, is guilty of a felony, and shall be liable to imprisonment for 7 years.

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### **? Personation of a person named in a certificate**

Any person who utters any document which has been issued by lawful authority to another person, and whereby that other person is certified to be a person possessed of any qualification recognised by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege, or to enjoy any rank or status, and falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and shall be liable to the same punishment as if he had forged the document.

### **} Lending, etc., certificate for personation**

Any person who, being a person to whom any document has been issued by lawful authority whereby he is certified to be a person possessed of any qualification recognised by law for any purpose to be the holder of any office or to be entitled to exercise any profession, trade or business, or to be entitled to any right or privilege, or to enjoy any rank or status, sells, gives or lends the document to another person with intent that that other may represent himself to be the person named therein, is guilty of a misdemeanour.

#### **l Personation of person named in a testimonial of character**

Any person who, for the purpose of obtaining any employment, utters any document of the nature of a testimonial of character given to another person, is guilty of a misdemeanour, and shall be liable to imprisonment for 1 year.

#### **ï Lending etc., testimonial for personation**

Any person who, being a person to whom any such document as is mentioned in the last preceding section has been given, gives, sells or lends such document to another person with the intent that that other person may utter such document for the purpose of obtaining any employment, is guilty of a misdemeanour

## **PART XXXVIII - SECRET COMMISSIONS AND CORRUPT PRACTICES**

#### **ï Interpretation for purposes of sections dealing with corrupt practices etc.**

(1) For the purpose of this Part, the expression “consideration” includes valuable consideration of any kind; the expression “agent” includes any person

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employed by or acting for another; and the expression “principal” includes an employer.

(2) A person serving under the Crown or under any Kaupule or other public body and a member of any such council or other public body, is an agent within the meaning of this Part.

#### **’ Corrupt practices**

If—

**(a)**

any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do or for having done or forborne to do, any act in relation to his principal’s affairs or business or for showing or forbearing to show favour or disfavour to any person in relation to his principal’s affairs or business; or

**(b)**

any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal’s

affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to, his principal's affairs or business;

(c)

any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,

he is guilty of a misdemeanour, and shall be liable to imprisonment for 2 years or to a fine of \$600.

### **3 Secret commission on Government contracts**

Any person committing an offence under this Part where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any Government department or Kaupule or other public body, or a sub-contract to execute any work comprised in such contract, shall be liable to imprisonment for 7 years or to a fine of \$10,000.<sup>26</sup>

### **4 Presumption as to corrupt practices**

Where in any proceedings against a person for an offence under this Part it is proved that any money, gift or other consideration has been paid or given to or received by

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a person in the employment of the Crown or any Government department or Kaupule or other public body, by or from a person or agent of a person holding or seeking to obtain a contract from the Crown or any Government department or Kaupule or other public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in this Part, unless the contrary is proved.

### **5 Consent to prosecution**

A prosecution for an offence under this Part shall not be instituted without the sanction of the Attorney-General.

## **PART XXXIX - ATTEMPTS**

### **1 Attempt defined**

(1)

When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his

intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.

(2)

It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfilment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.

(3)

It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence

### **! Attempts to commit offences**

Any person who attempts to commit a felony or misdemeanour is guilty of an offence, which, unless otherwise stated, is a misdemeanour.

### **! Punishment of attempts to commit certain felonies**

Any person who attempts to commit a felony of such a kind that a person convicted of it is liable to the punishment of imprisonment for a term of 14 years or upwards, with or without other punishment, is guilty of a felony, and shall be liable, if no other punishment is provided, to imprisonment for 7 years.



### **374 Soliciting or inciting others to commit offence in Tuvalu or elsewhere**

Any person who solicits or incites or attempts to procure another to do any act, or make any omission, whether in Tuvalu or elsewhere, of such a nature that, if the act were done or the omission were made, an offence would thereby be committed, under the laws of Tuvalu or the laws in force in the place where the act or omission is proposed to be done or made, whether by himself or by that other person, is guilty of an offence of the same kind and shall be liable to the same punishment as if he had himself attempted to do the same act or make the same omission in Tuvalu:

Provided that if the act or omission is proposed to be done or made at a place not in Tuvalu, the punishment shall not exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission:

Provided also that, in the last-mentioned case, a prosecution shall not be instituted except at the request of the Government of the State having jurisdiction in the place where the act or omission was proposed to be done or made.

### **375 Neglect to prevent felony**

Every person who, knowing that a person designs to commit or is committing a felony, fails to use all reasonable means to prevent the commission or completion thereof, is guilty of a misdemeanour.

## **PART XL - CONSPIRACIES**

### **376 Conspiracy to commit felony**

Any person who conspires with another to commit any felony, or to do any act in any part of the world, which if done in Tuvalu would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony and shall be liable, if no other punishment is provided, to imprisonment for 7 years, or, if the punishment to which a person convicted of the felony in question is liable is less than imprisonment for 7 years, then to such lesser punishment.

### **377 Conspiracy to commit misdemeanour**

Any person who in Tuvalu conspires with another to commit a misdemeanour, or to do any act in any part of the world which if done in Tuvalu would be a misdemeanour, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour.

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### **Other conspiracies**

Any person who conspires with another to effect any of the purposes following, that is to say —

**(a)**

to effect any unlawful purpose; or

**(b)**

to effect any lawful purpose by any unlawful means,

is guilty of a misdemeanour.

## **PART XLI - ACCESSORIES AFTER THE FACT**

### **Definition of accessories after the fact**

**(1)**

A person who receives or assists another who is, to his knowledge, guilty of a felony, in order to enable him to escape punishment, is said to become an accessory after the fact to the felony.

(2)

A wife does not become an accessory after the fact to an offence of which her husband is guilty by receiving or assisting him in order to enable him to escape punishment; or by receiving or assisting in her husband's presence and by his authority another person who is guilty of an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment.

**) Punishment of accessories after the fact to felonies**

Any person who becomes an accessory after the fact to a felony is guilty of a felony, and shall be liable, if no other punishment is provided, to imprisonment for 3 years.

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**ENDNOTES**

<sup>1</sup> Cap. 8 1990 Revised Edition

Amended by Act 10 of 1985

Amended by Act 8 of 1987

Amended by Act 4 of 2009, commencement 6 July 2009 <sup>2</sup> Cap. 1.08 <sup>3</sup> Cap. 10.05 <sup>4</sup> Amended by Act 8 of 1987 <sup>5</sup>

Inserted by Act 10 of 1985 <sup>6</sup> Cap. 20.28 <sup>7</sup> Amended by Act 4 of 2009 <sup>8</sup> Repealed by Act 4 of 2009 <sup>9</sup> Amended by Act 8 of 1987 <sup>10</sup> Cap. 7.48 <sup>11</sup> Amended by Act 4 of 2009 <sup>12</sup> Amended by Act 4 of 2009 <sup>13</sup> Cap. 54.05 <sup>14</sup> Amended by Act 4 of

2009 **15** Amended by Act 4 of 2009 **16** Amended by Act 4 of 2009 **17** Amended by Act 4 of 2009 **18** Amended by Act 4 of  
2009 **19** Cap. 46.15 **20** Amended by Act 4 of 2009 **21** Cap. 4.08 **22** Amended by Act 4 of 2009 **23** Amended by Act 4 of  
2009 **24** Cap. 32.02 **25** Cap. 26.16 **26** Amended by Act 4 of 2009